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DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1208 and 1240

[EOIR Docket No. 173; AG Order No. 3375–2013]

RIN 1125–AA65

Forwarding of Asylum Applications to the Department of State

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts without substantive change the proposed rule with request for comments published in the **Federal Register** on October 31, 2011, and includes several non-substantive, technical corrections. The Department of Justice (Department) is amending its regulations to alter the process by which the Executive Office for Immigration Review (EOIR) forwards asylum applications for consideration by the Department of State (DOS), Bureau of Democracy, Human Rights, and Labor. Currently, EOIR forwards to DOS all asylum applications that are submitted initially in removal proceedings before an immigration judge. The final rule amends the regulations to provide for sending asylum applications to DOS on a discretionary basis. For example, EOIR may forward an application in order to ascertain whether DOS has information relevant to the applicant's eligibility for asylum. This change increases the efficiency of DOS' review of asylum applications and is consistent with similar changes already made by U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

DATES: This rule is effective April 29, 2013.

FOR FURTHER INFORMATION CONTACT: Jeff Rosenblum, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone (703) 305–0470 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

On October 31, 2011, the Department published in the **Federal Register** a rule proposing to amend EOIR's regulations by removing the mandatory submission of all asylum applications to DOS. *See* 76 FR 67099 (Oct. 31, 2011). The comment period ended December 30, 2011. The Department received three public comments. As explained below, the Department is adopting all amendments in the proposed rule, as well as making several non-substantive, technical corrections.

II. Background

The current regulations require that EOIR send a copy of all defensive asylum applications to DOS.[1] The Department is amending the regulations at 8 CFR 1208.11, 1240.11, 1240.33, and 1240.49 in order to remove this mandatory requirement. Under this rule, an immigration court has the discretion to forward a defensively filed asylum application to DOS, but is not required to do so. For example, EOIR may forward an application in order to ascertain whether DOS has information relevant to the adjudication of a particular case or type of claims. By consolidating certain paragraphs, the final rule also removes redundant references to the types of information that DOS may provide to EOIR. These amendments increase the efficiency of DOS' review of asylum applications and are consistent with similar changes USCIS has already made. *See* 74 FR 15367 (Apr. 6, 2009).

EOIR's changes to the regulations do not require additional resources, either in the hiring of personnel at EOIR or DOS or in the expenditure of material or financial resources. Amending the regulations permits both EOIR and DOS to conserve resources. EOIR will no longer be required to expend resources on mailing to DOS every properly filed defensive asylum application it receives. Rather, an immigration judge may request, in his or her discretion, specific comments from DOS regarding individual cases or types of claims under consideration, or other information the immigration judge deems appropriate. By focusing on select cases forwarded by EOIR, DOS officers can better utilize their time and resources toward accomplishing their asylum responsibilities. These regulatory changes will also result in resource savings for asylum applicants, as an applicant will no longer be required to make an extra copy of his or her application for EOIR to forward to DOS, pursuant to current instructions to the Form I–589, Application for Asylum and for Withholding of Removal.

Under this rule, the types of comments that DOS may provide will not change. At its option, DOS may provide detailed country conditions information relevant to the applicant's eligibility for asylum and withholding of removal. DOS may also provide an assessment of the accuracy of the applicant's assertions about conditions in the applicant's country of nationality or habitual residence and the applicant's particular situation, information about whether persons who are similarly situated to the applicant are persecuted or tortured in the applicant's country of nationality or habitual residence and the frequency of such persecution or torture, or such other information as DOS deems relevant.

Additionally, these regulatory amendments are consistent with changes effected by implementation of the Homeland Security Act of 2002. The Homeland Security Act authorized the

[1] EOIR receives and adjudicates asylum applications submitted directly to the immigration judge (known as defensive asylum applications) and those that are referred for consideration in proceedings before an immigration judge after initially being adjudicated through DHS USCIS' affirmative asylum process (known as affirmative asylum applications). We note that the regulations at 8 CFR 1208.1(a)(1) provide, in part, that subpart A of part 1208 ''shall apply to all applications for asylum under section 208 of the Immigration and Nationality Act (Act) or for withholding of deportation or withholding of removal under section 241(b)(3) of the Act, or under the Convention Against Torture.'' Thus, the terms ''asylum application'' or ''application for asylum,'' as used in the current regulations and in this final rule, refer to an application for: (1) Asylum under section 208 of the Act; (2) withholding of removal under section 241(b)(3) of the Act; (3) withholding or deferral of removal under the Convention Against Torture as provided in 8 CFR 1208.16 and 1208.17; and (4) withholding of deportation under former section 243(h) of the Act.

creation of DHS and transferred the functions of the former Immigration and Naturalization Service (INS) to DHS, while retaining EOIR under the authority of the Attorney General. In order to accommodate these changes, title 8 of the Code of Federal Regulations was reorganized into separate chapters, chapter I for DHS and chapter V for the Department of Justice. *See* 68 FR 9824, 9834 (Feb. 28, 2003). The provisions governing procedures for asylum and withholding of removal in part 208 were duplicated into a new part 1208. As a result, part 208 governs asylum adjudications before DHS's USCIS and part 1208 governs asylum adjudications before EOIR. As this final rule only addresses submissions of asylum applications from EOIR to DOS, it is limited to amending 8 CFR 1208.11, 1240.11, 1240.33, and 1240.49. To be consistent with changes that effected implementation of the Homeland Security Act, references in EOIR's regulations to ''The Service'' and USCIS ''asylum officers'' forwarding asylum applications to DOS are removed, as those matters are now governed by the DHS regulations at 8 CFR 208.11.

III. Technical Corrections

This rule also includes several technical corrections. The regulations currently refer to 8 U.S.C. 1101 and Title VII of Public Law 110–229 as authority for 8 CFR part 1208. The proposed rule that was published on October 31, 2011, inadvertently omitted citations to 8 U.S.C. 1101 and Title VII of Public Law 110–229 in the authority section of 8 CFR part 1208. The proposed rule did not intend to remove those references. This final rule corrects these typographical omissions and includes citations to 8 U.S.C. 1101 and Title VII of Public Law 110–229 in the authority section of 8 CFR part 1208. The regulations currently refer to 8 U.S.C. 1224, 1251, 1252a, 1228 as authority for 8 CFR part 1240, but 8 U.S.C. 1224 is no longer directly applicable to part 1240 following the creation of DHS and related changes in the regulations. Sections 1251 and 1252a have been transferred to 8 U.S.C. 1227 and 1228, respectively, and 8 U.S.C. 1252b has been repealed. Additionally, the regulations currently do not include the following authorities, which are applicable to part 1240: 8 U.S.C. 1158, 1186b, 1229a, 1229b, 1229c, and 1361. This final rule updates the authority for 8 CFR part 1240 to reflect these changes. This final rule also includes two minor, non-substantive changes to 8 CFR 1208.11(a): Deleting the words ''such'' and ''as an'' and inserting the word ''the'' before ''immigration judge.'' Additionally, 8 CFR 1208.11(b)(3) is revised to duplicate 8 CFR 208.11(b)(3) by deleting the words ''their respective'' and inserting the words ''the applicant's.'' 8 CFR 1208.11(c) is also revised to change the word ''the'' to the word ''an'' before ''applicable Executive Order.'' The regulations at 8 CFR 1240.11(c)(2), 1240.33(b), and 1240.49(c)(3) are also revised to change the word ''the'' to the word ''an'' before ''applicable Executive Order.'' As announced in the proposed rule, the Department is also amending part 1240 to cite to the correct regulatory provision regarding filing of an asylum application as provided in 8 CFR 1208.4(b). The regulations at 8 CFR 1240.11(c)(2) and 8 CFR 1240.33(b) are corrected to cite to 8 CFR 1208.4(b). This change is consistent with 8 CFR 1240.49(c)(3). These amendments are technical corrections and do not make any substantive changes to parts 1208 and 1240.

IV. Responses to Comments

The Department of Justice provided an opportunity for comment, which ended on December 30, 2011. The Department received three comments: One from an anonymous individual; one from a candidate for a Master of Social Work degree; and one from a candidate for a *juris doctor* degree. The Department considered these comments in preparing this final rule. The comments are numbered one through three in order of receipt. All comments and other docket materials are available for viewing by making arrangements with the EOIR Office of the General Counsel as discussed above.

The first comment is general in nature and expresses the view that the United States should withdraw from its international protection obligations towards applicants for asylum and withholding of removal and should, instead, impose a general immigration moratorium. As this comment does not address the changes set forth in the proposed rule, the comment does not require a response.

The second commenter supports this rulemaking initiative. The commenter notes that while the DOS serves as an informational resource tool for immigration judges, the information provided by DOS is not normally dispositive of the outcome of a given case. This commenter recognizes EOIR's proposed regulatory changes will allow both the Department and the DOS to utilize DOS as an information resource and ''not as a storage locker for thousands of filed defensive applications; many of which they are unable to review in a reasonably timely manner.'' The commenter also expresses concern that the existing regulatory construct requiring DOS mandatory review of all defensive asylum and withholding applications filed with EOIR creates system inefficiencies, duplication of effort, and delays that may inadvertently extend the time an asylum applicant must remain in immigration detention during his or her immigration proceedings before EOIR. The commenter notes that the efficiencies to be gained by these regulatory changes outweigh possible negative considerations. Finally, the commenter notes that the direct and indirect cost savings to the government agencies directly affected by the regulation, as well as the cost savings to the public, allow for ''a redirecting of tax dollars to other areas in need.'' The Department agrees with this commenter that the proposed regulatory changes will make the DOS asylum application review process more economical and efficient.

The third commenter opposes this rulemaking initiative. The commenter asserts that the proposed cost savings do not outweigh the possible harm to defensive asylum and withholding applicants. This commenter views the mandatory submission to DOS of all defensively received applications for asylum and withholding of removal as a safeguard against possible abuses of discretion by immigration judges making credibility determinations on asylum applicants' protection claims. The commenter notes that asylum applicants often suffer from some form of post-traumatic stress or depression that affects long-term memory, making credibility determinations very difficult and prone to error. The commenter further notes that DOS' cultural and country condition information may safeguard against immigration judges making incorrect adverse credibility determinations based upon asylum applicants' behavior and information that does not easily transfer across cultures.

The Department appreciates this commenter's concerns. However, EOIR provides training to its adjudicators on cultural sensitivity and makes available numerous resources on country condition information, which more directly address the commenter's concerns. Moreover, continuing the current mandatory submission of all defensively filed asylum and withholding applications is not sustainable. DOS is tasked with numerous reporting and country condition responsibilities. DOS' review and comment on defensive asylum and

withholding applications is a small part of its overall mission. Revising the regulations to allow for immigration judges to exercise their discretion to request DOS review and comment on specific protection claims will allow DOS to better focus its limited resources. The existing process is neither efficient nor efficacious in producing the results originally contemplated by the regulation. In a time of dwindling resources, both human and monetary, the Department has determined that it is best to amend the regulations to provide immigration judges with the discretion to determine when and for which cases to seek DOS review. The final rule also provides DOS with the ability to focus its resources on providing review and comment for the cases that immigration judges have identified as most in need of DOS' expertise. Additionally, DOS is required to provide to Congress annually Country Reports on Human Rights Practices and International Religious Freedom Reports, which provide world-wide country conditions information that continue to be useful to the adjudication of asylum applications. This rule does not alter these DOS responsibilities, nor affect how immigration judges utilize these DOS country condition resources.

Accordingly, the Department is adopting as a final rule the proposed rule amending 8 CFR parts 1208 and 1240 that was published on October 31, 2011, including the non-substantive, technical corrections discussed in this rule.

V. Regulatory Requirements

A. Regulatory Flexibility Act

The Department has reviewed this regulation in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and has determined that this rule will not have a significant economic impact on a substantial number of small entities for the following reason: This rule affects only the process by which EOIR forwards and DOS receives asylum applications. The rule will not regulate ''small entities'' as that term is defined in 5 U.S.C. 601(6).

B. Unfunded Mandates Reform Act of 1995

This rule will not 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 one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

D. Executive Orders 12866 and 13563

The Department has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and Executive Order 13563. Accordingly, this rule has not been submitted to the Office of Management and Budget for review. Nevertheless, the Department certifies that this regulation has been drafted in accordance with the principles of Executive Order 12866, section 1(b), and Executive Order 13563.

E. Executive Order 13132: Federalism

This 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, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, apply to this rule. The information collection requirement (Form I–589, Application for Asylum and for Withholding of Removal) discussed in this rule has been previously approved by the Office of Management and Budget (OMB. No. 1615–0067) as provided by the Paperwork Reduction Act. This rule will require revisions to the existing information collection. The Form I–589 instructions will be revised to reduce the number of form copies that must be submitted by applicants on and after the effective date of these regulations. Once a final rule is issued, EOIR and USCIS will work to modify the instructions to the Form I–589 to reflect the changes.

List of Subjects

8 CFR Part 1208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 1240

Administrative practice and procedure, Aliens.

Accordingly, for the reasons set forth in the preamble, part 1208 and part 1240 of chapter V of title 8 of the Code of Federal Regulations are amended as follows:

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 1. The authority citation for part 1208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1225, 1231, 1282; Title VII of Public Law 110–229.

■ 2. Revise § 1208.11 to read as follows:

§ 1208.11 Comments from the Department of State.

(a) The immigration judge may request, in his or her discretion, specific comments from the Department of State regarding individual cases or types of claims under consideration, or other information the immigration judge deems appropriate.

(b) With respect to any asylum application, the Department of State may provide, at its discretion, to the Immigration Court:

(1) Detailed country conditions information relevant to eligibility for asylum, withholding of removal under section 241(b)(3) of the Act, and withholding of removal under the Convention Against Torture;

(2) An assessment of the accuracy of the applicant's assertions about conditions in the applicant's country of nationality or habitual residence and the applicant's particular situation;

(3) Information about whether persons who are similarly situated to the applicant are persecuted or tortured in the applicant's country of nationality or habitual residence and the frequency of such persecution or torture; or

(4) Such other information as it deems relevant.

(c) Any comments received pursuant to paragraph (b) of this section shall be made part of the record. Unless the comments are classified under an applicable Executive Order, the applicant shall be provided an opportunity to review and respond to such comments prior to the issuance of any decision to deny the application.

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

■ 3. The authority citation for part 1240 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1182, 1186a, 1186b, 1225, 1226, 1227, 1228, 1229a, 1229b, 1229c, 1252 note, 1361, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681).

■ 4. Amend § 1240.11 by revising paragraph (c)(2) to read as follows:

§ 1240.11 Ancillary matters, applications.

* * * * *

(c) * * *

(2) An application for asylum or withholding of removal must be filed with the Immigration Court, pursuant to § 1208.4(b) of this chapter. Upon receipt of an application, the Immigration Court may forward a copy to the Department of State pursuant to § 1208.11 of this chapter and shall calendar the case for a hearing. The reply, if any, from the Department of State, unless classified under an applicable Executive Order, shall be given to both the alien and to DHS counsel and shall be included in the record.

* * * * *

■ 5. Amend § 1240.33 by revising paragraph (b) to read as follows:

§ 1240.33 Applications for asylum or withholding of deportation.

* * * * *

(b) An application for asylum or withholding of deportation must be filed with the Immigration Court, pursuant to § 1208.4(b) of this chapter. Upon receipt of an application, the Immigration Court may forward a copy to the Department of State pursuant to § 1208.11 of this chapter and shall calendar the case for a hearing. The reply, if any, from the Department of State, unless classified under an applicable Executive Order, shall be given to both the applicant and to DHS counsel and shall be included in the record.

* * * * *

■ 6. Amend § 1240.49 by revising paragraph (c)(3) to read as follows:

§ 1240.49 Ancillary matters, applications.

* * * * *

(c) * * *

(3) An application for asylum or withholding of deportation must be filed with the Immigration Court, pursuant to § 1208.4(b) of this chapter. Upon receipt of an application, the Immigration Court may forward a copy to the Department of State pursuant to § 1208.11 of this chapter and shall calendar the case for a hearing. The reply, if any, of the Department of State, unless classified under an applicable Executive Order, shall be given to both the applicant and to DHS counsel and shall be included in the record.

* * * * *

Dated: March 22, 2013.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2013–07252 Filed 3–28–13; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 53, 71, 82, 93, 94, 95, and 104

[Docket No. APHIS–2009–0094]

RIN 0579–AD45

Importation of Live Birds and Poultry, Poultry Meat, and Poultry Products From a Region in the European Union

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of animals and animal products by recognizing 25 Member States of the European Union (EU) as the Animal and Plant Health Inspection Service (APHIS)-defined EU poultry trade region and adding it to the list of regions we consider to be free of Newcastle disease. We are taking this action based on a risk evaluation that we prepared in which we determined that the region meets our requirements for being considered free of Newcastle disease. We also determined that the region meets our requirements for being considered free of highly pathogenic avian influenza (HPAI). In addition, we are establishing requirements governing the importation of live birds and poultry and poultry meat and products from the APHIS-defined EU poultry trade region and updating avian disease terms and definitions. We are also allowing importation from the APHIS-defined EU poultry trade region of hatching eggs under official seal, including those that have transited a restricted zone established because of detection of HPAI within the boundaries of the APHIS-defined EU poultry trade region. These actions will facilitate the importation of live birds and poultry, including hatching eggs, and poultry meat and products from the APHIS-defined EU poultry trade region while maintaining safeguards to protect the United States from the introduction of communicable avian diseases.

DATES: *Effective Date:* April 15, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Javier Vargas, Case Manager, Regionalization and Evaluation, National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 851–3300.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) regulations in title 9 of the Code of Federal Regulations (CFR), parts 93, 94, and 95, govern the importation into the United States of specified animals and animal products and byproducts to prevent the introduction of various animal diseases, including Newcastle disease and highly pathogenic avian influenza (HPAI). These are dangerous and destructive communicable diseases of birds and poultry. The regulations in § 94.6 restrict the importation of carcasses, parts of products of carcasses, and eggs (other than hatching eggs) [1] of poultry, game birds, and other birds, from all regions where Newcastle disease or any subtype of HPAI are considered to exist.

On July 19, 2011, we published in the **Federal Register** (76 FR 42595–42602, Docket No. APHIS–2009–0094) a proposal [2] to amend the regulations governing the importation of live birds and poultry, and poultry meat and products, by recognizing 25 Member States of the European Union (EU) as the APHIS-defined EU poultry trade region and adding it to the list of regions we consider to be free of Newcastle disease. We also determined that the region meets our requirements for being considered free of HPAI. In addition, we proposed to establish requirements for the importation of live birds and poultry, including hatching eggs, and poultry meat and products to the United

[1] Regulations for importing hatching eggs are included in §§ 93.104, 93.205, and 93.209.

[2] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS–2009–0094.*

States from the APHIS-defined EU poultry trade region.

We solicited comments concerning our proposal for 60 days ending September 19, 2011, and received four comments by that date. They were from an organization representing zoo veterinarians, an association representing zoos and aquariums, a foreign government, and a private citizen. Three of the commenters were in favor of recognizing the APHIS-defined EU poultry trade region as a region free of Newcastle disease and HPAI and establishing requirements governing the importation of live birds and poultry, including hatching eggs, and poultry meat and products from that region. One of those commenters also offered a recommendation regarding zoo ruminants from Canada that we determined to be outside the scope of the proposed rule. One commenter generally opposed our proposal but did not offer any specific comments on any aspect of the proposed rule. We are not making any changes to the proposed provisions based on the comments we received.

We are, however, making one change in this final rule after additional consideration of industry practices and regulations within the EU regarding the transport of hatching eggs. In proposed § 94.28, we included conditions for the importation from the APHIS-defined EU poultry trade region of live birds and poultry, including hatching eggs, to the United States. The proposed conditions included a requirement that live birds and poultry, including hatching eggs, imported from the APHIS-defined EU poultry trade region must not have been in any region in which Newcastle disease or HPAI is considered to exist, except for the APHIS-defined EU poultry trade region. We also proposed that within the APHIS-defined EU poultry trade region itself, live birds and poultry intended for importation to the United States, including hatching eggs, must not have been in a restricted zone established because of detection of Newcastle disease or HPAI in commercial poultry from the time of detection until the designation of the zone as a restricted zone is removed by the competent veterinary authority of the Member State, or until 3 months following depopulation of the poultry on affected premises in the restricted zone and the cleaning and disinfection of the last affected premises in the zone, whichever is later.

Since publication of the proposed rule, an official representing the European Commission, the executive body of the EU, commented on another APHIS rulemaking [3] that placed restrictions on the importation of bird and poultry products from regions where any subtype of HPAI is considered to exist. The commenter noted that EU regulations [4] allow transit of live poultry, including day-old chicks and hatching eggs, through zones within the EU under restrictions due to HPAI on the condition that transport takes place on roads or rail without unloading or stopping and that the shipment is kept under strictly controlled, biosecured, and air-conditioned circumstances at all times while in transit.

While we maintain that importation should remain prohibited for live birds, poultry, and day-old chicks that have been moved through zones restricted for HPAI within the APHIS-defined EU poultry trade region, we have determined that the risk of exposure of hatching eggs to HPAI while transiting such zones is very low when secure means of shipping are employed, such as transporting the hatching eggs under the official requirements specified in the Council directive.

Therefore, we have decided to allow the importation of hatching eggs from the APHIS-defined EU poultry trade region that have transited a restricted zone established because of detection of HPAI within that region as long as all control measures in the import permit issued by APHIS are followed and the shipment travels under seal issued by the veterinary competent authority. The seal number must be listed on the health certificate that accompanies the shipment and the veterinarian who places the seal is required to sign his or her name under the seal number. Seals are not to be broken until the shipment reaches its U.S. port of entry. Hatching egg shipments with seals that are not intact will be rejected upon inspection at the U.S. port of entry.

APHIS-issued import permits accompanying hatching eggs from the APHIS-defined EU poultry trade region will include specific information regarding the route and means of shipment, listing all other countries that will be involved before arrival in the United States and all ports or other points in the route, as well as the types of transportation that will be used for moving the shipment to the United States. Import permits issued by APHIS for importation of hatching eggs to the United States require certified veterinarians to verify the authenticity of seals used in such shipments.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule with the change discussed in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after date of publication in the **Federal Register**. Based on a risk evaluation that we prepared, we determined that the APHIS-defined EU poultry trade region meets our requirements for being considered free of Newcastle disease and that it is therefore no longer necessary to impose Newcastle disease and HPAI-related restrictions on the importation of live birds and poultry, including hatching eggs, and poultry meat and products from that region.

Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see footnote 2 in this document for a link to Regulations.gov).

We expect this rule to have negligible economic effects on U.S. entities, large or small, because of the relatively small quantities of poultry and poultry products likely to be imported from the APHIS-defined EU poultry trade region. In addition, the poultry industry in the United States is highly concentrated and vertically integrated, with extensive use of contractual agreements for production, an industry structure that will tend to mitigate any economic effects of the rule on small entities. The United States is the world's largest producer and second-largest exporter of poultry meat; about 20 percent of U.S. poultry production was exported in 2010. Imports from the APHIS-defined

[3] To view the interim rule, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2006-0074.*

[4] Council Directive 2005/94/EC, 20 December 2005: *http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:010:0016:0016:EN:PDF.*

EU poultry trade region will face a highly competitive U.S. market.

The EU is a large producer of live poultry, poultry meat, and other poultry products, but two-thirds of the region's trade in poultry and poultry products is between EU Member States; 13 of the 25 Member States had a within-region trade in poultry and poultry products of 70 percent or more. More than half of the Member States are net importers of live poultry and poultry products (13 are net importers of live poultry, 16 of poultry meat) and 17 of hatching eggs.

Nine EU Member States are currently recognized by APHIS as free of Newcastle disease; however, quantities of poultry or poultry products exported to the United States in recent years have been negligible. U.S. imports of live poultry and hatching eggs from EU–25 Member States have been sporadic and at insignificant levels.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the recognition of 25 Member States of the EU as the APHIS-defined EU poultry trade region will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.[5] Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 53

Animal diseases, Indemnity payments, Livestock, Poultry and poultry products.

9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 82

Animal diseases, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 95

Animal feeds, Hay, Imports, Livestock, Reporting and recordkeeping requirements, Straw, Transportation.

9 CFR Part 104

Animal biologics, Imports, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR parts 53, 71, 82, 93, 94, 95, and 104 as follows:

PART 53—FOOT-AND-MOUTH DISEASE, PLEUROPNEUMONIA, RINDERPEST, AND CERTAIN OTHER COMMUNICABLE DISEASES OF LIVESTOCK OR POULTRY

■ 1. The authority citation for part 53 continues to read as follows:

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

■ 2. Section 53.1 is amended as follows:

■ a. In the definition of *disease,* by removing the word ''exotic'',

■ b. By removing the definition of *Exotic Newcastle Disease (END),* and

■ c. By adding, in alphabetical order, a definition of *Newcastle disease.*

The addition reads as follows:

§ 53.1 Definitions.

* * * * *

Newcastle disease. Newcastle disease is an acute, rapidly spreading, and usually fatal viral infection of poultry caused by an avian paramyxovirus serotype 1 that meets one of the following criteria for virulence: The virus has an intracerebral pathogenicity index (ICPI) in day-old chicks (*Gallus gallus*) of 0.7 or greater; or multiple basic amino acids have been demonstrated in the virus (either directly or by deduction) at the C-terminus of the F2 protein and phenylalanine at residue 117, which is the N-terminus of the F1 protein. The term ''multiple basic amino acids'' refers to at least three arginine or lysine residues between residues 113 and 116. In this definition, amino acid residues are numbered from the N-terminus of the amino acid sequence deduced from the nucleotide sequence of the F0 gene; 113–116 corresponds to residues -4 to -1 from the cleavage site. Failure to demonstrate the characteristic pattern of amino acid residues as described above may require characterization of the isolated virus by an ICPI test. A failure to detect a cleavage site that is consistent with virulent strains does not confirm the absence of a virulent virus.

* * * * *

§ 53.2 [Amended]

■ 3. In § 53.2, paragraph (b) is amended by removing the word ''exotic''.

[5] Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0094.* The environmental assessment and finding of no significant impact will appear in the resulting list of supporting documents.

PART 71—GENERAL PROVISIONS

■ 4. The authority citation for part 71 continues to read as follows:

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

§ 71.3 [Amended]

■ 5. In § 71.3, paragraph (b) is amended by removing the words ''European fowl pest'' and adding the words ''highly pathogenic avian influenza'' in their place.

PART 82—NEWCASTLE DISEASE AND CHLAMYDIOSIS

■ 6. The authority citation for part 82 continues to read as follows:

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

■ 7. The heading for part 82 is revised to read as set forth above.

Subpart A—Newcastle Disease

■ 8. In part 82, the heading for subpart A is revised to read as set forth above.

Subpart A [Amended]

■ 9. In subpart A, the word ''END'' is removed each time it appears and the words ''Newcastle disease'' are added in its place.

■ 10. Section 82.1 is amended as follows:

■ a. By removing the definition of *END,* and

■ b. By adding, in alphabetical order, a definition of *Newcastle disease.*

The addition reads as follows:

§ 82.1 Definitions.

* * * * *

Newcastle disease. Newcastle disease is an acute, rapidly spreading, and usually fatal viral infection of poultry caused by an avian paramyxovirus serotype 1 that meets one of the following criteria for virulence: The virus has an intracerebral pathogenicity index (ICPI) in day-old chicks (*Gallus gallus*) of 0.7 or greater; or multiple basic amino acids have been demonstrated in the virus (either directly or by deduction) at the C-terminus of the F2 protein and phenylalanine at residue 117, which is the N-terminus of the F1 protein. The term ''multiple basic amino acids'' refers to at least three arginine or lysine residues between residues 113 and 116. In this definition, amino acid residues are numbered from the N-terminus of the amino acid sequence deduced from the nucleotide sequence of the F0 gene; 113–116 corresponds to residues -4 to -1 from the cleavage site. Failure to demonstrate the characteristic pattern of amino acid residues as described above may require characterization of the isolated virus by an ICPI test. A failure to detect a cleavage site that is consistent with virulent strains does not confirm the absence of a virulent virus.

* * * * *

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

■ 11. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.101 [Amended]

■ 12. Section 93.101 is amended as follows:

■ a. In paragraph (g)(2), by removing the words ''exotic Newcastle disease (END)'' and adding the words ''Newcastle disease'' in their place, and

■ b. In footnote 7 and paragraphs (g)(3) and (g)(4), by removing the word ''END'' each time it appears and adding the words ''Newcastle disease'' in its place.

§ 93.106 [Amended]

■ 13. In § 93.106, paragraph (c)(5)(iii), the Cooperative and Trust Fund Agreement is amended as follows:

■ a. In paragraph (A)(14), second sentence, and (A)(17), first sentence, by removing the word ''exotic'', and

■ b. In paragraphs (B)(4) and (B)(5), by removing the word ''END'' and adding the words ''Newcastle disease'' in its place.

§ 93.205 [Amended]

■ 14. In § 93.205, paragraph (a), the fourth sentence is amended by removing the words ''European fowl pest (fowl plague)'' and adding the words ''highly pathogenic avian influenza'' in their place.

§ 93.209 [Amended]

■ 15. In § 93.209, paragraph (b), the first sentence is amended by removing the word ''exotic''.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, NEWCASTLE DISEASE, HIGHLY PATHOGENIC AVIAN INFLUENZA, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 16. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 17. The heading for part 94 is revised to read as set forth above.

■ 18. Section 94.0 is amended as follows:

■ a. By removing the definition of *Exotic Newcastle Disease (END),* and

■ b. By adding, in alphabetical order, definitions of *APHIS-defined EU Poultry Trade Region, highly pathogenic avian influenza (HPAI),* and *Newcastle disease.*

The additions read as follows:

§ 94.0 Definitions.

* * * * *

APHIS-defined EU Poultry Trade Region. The European Union Member States of Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland).

* * * * *

Highly pathogenic avian influenza (HPAI). Highly pathogenic avian influenza is defined as follows:

(1) Any influenza virus that kills at least 75 percent of eight 4- to 6-week-old susceptible chickens within 10 days following intravenous inoculation with 0.2 mL of a 1:10 dilution of a bacteria-free, infectious allantoic fluid;

(2) Any H5 or H7 virus that does not meet the criteria in paragraph (1) of this definition, but has an amino acid sequence at the haemagglutinin cleavage site that is compatible with highly pathogenic avian influenza viruses; or

(3) Any influenza virus that is not an H5 or H7 subtype and that kills one to five out of eight inoculated chickens and grows in cell culture in the absence of trypsin.

* * * * *

Newcastle disease. Newcastle disease is an acute, rapidly spreading, and usually fatal viral infection of poultry

caused by an avian paramyxovirus serotype 1 that meets one of the following criteria for virulence: The virus has an intracerebral pathogenicity index (ICPI) in day-old chicks (*Gallus gallus*) of 0.7 or greater; or multiple basic amino acids have been demonstrated in the virus (either directly or by deduction) at the C-terminus of the F2 protein and phenylalanine at residue 117, which is the N-terminus of the F1 protein. The term ''multiple basic amino acids'' refers to at least three arginine or lysine residues between residues 113 and 116. In this definition, amino acid residues are numbered from the N-terminus of the amino acid sequence deduced from the nucleotide sequence of the F0 gene; 113–116 corresponds to residues −4 to −1 from the cleavage site. Failure to demonstrate the characteristic pattern of amino acid residues as described above may require characterization of the isolated virus by an ICPI test. A failure to detect a cleavage site that is consistent with virulent strains does not confirm the absence of a virulent virus.

* * * * *

■ 19. Section 94.6 is amended as follows:

■ a. By revising the section heading,

■ b. In paragraph (a) introductory text, by removing the words ''*exotic Newcastle disease (END)*'' and adding the words ''*Newcastle disease*'' in their place,

■ c. By revising paragraph (a)(1)(i), and

■ d. In paragraphs (a), (b), and (c), by removing the word ''END'' each time it appears and adding the words ''Newcastle disease'' in their place.

The revisions read as follows:

§ 94.6 Carcasses, meat, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds; importations from regions where Newcastle disease or highly pathogenic avian influenza is considered to exist.

(a) * * *

(1) * * *

(i) Newcastle disease is considered to exist in all the regions of the world except the following: The APHIS-defined EU Poultry Trade Region, Argentina, Australia, Canada, Chile, Costa Rica, Fiji, Iceland, Mexico (States of Campeche, Quintana Roo, and Yucatan), New Zealand, and Switzerland. APHIS has evaluated these regions for the presence of Newcastle disease. Regions not listed may have Newcastle disease, or may not have been evaluated for Newcastle disease status.

* * * * *

§ 94.23 [Amended]

■ 20. In § 94.23, paragraph (c) and paragraph (e) introductory text are amended by removing the word ''exotic''.

§ 94.26 [Amended]

■ 21. Section 94.26 is amended as follows:

■ a. In the introductory text of the section, first sentence, by removing the words ''exotic Newcastle disease (END)'' and adding the words ''Newcastle disease'' in their place, and

■ b. In the introductory text of the section and in paragraphs (b) and (c), by removing the word ''END'' each time it appears and adding the words ''Newcastle disease'' in its place.

■ 22. A new § 94.28 is added to read as follows:

§ 94.28 Restrictions on the importation of poultry meat and products, and live birds and poultry, from the APHIS-defined EU Poultry Trade Region.

(a) *Poultry meat and products.* In addition to meeting all other applicable provisions of this part, poultry meat and poultry products, including eggs and egg products (other than hatching eggs) imported from the APHIS-defined EU Poultry Trade Region must meet the following conditions:

(1) The poultry meat and products must not have been derived from birds and poultry that were in any of the following regions or zones, unless the birds and poultry were slaughtered after the periods described:

(i) Any region when the region was classified in § 94.6(a)(1)(i) as one in which Newcastle disease is considered to exist, or any region when the region was listed in accordance with § 94.6(a)(2)(i) as one in which HPAI is considered to exist, except for the APHIS-defined EU Poultry Trade Region;

(ii) A restricted zone in the APHIS-defined EU Poultry Trade Region established because of detection of Newcastle disease or HPAI in commercial poultry, from the time of detection until the designation of the zone as a restricted zone is removed by the competent veterinary authority of the Member State or until 3 months (90 days) following depopulation of the poultry on affected premises in the restricted zone and the cleaning and disinfection of the last affected premises in the zone, whichever is later; or

(iii) A restricted zone in the APHIS-defined EU Poultry Trade Region established because of detection of Newcastle disease or HPAI in racing pigeons, backyard flocks, or wild birds, from the time of detection until the designation of the zone as a restricted zone is removed by the competent veterinary authority of the Member State.

(2) The poultry meat and products must not have been commingled with poultry meat and products derived from other birds and poultry that were in any of the regions or zones described in paragraphs (a)(1)(i) through (a)(1)(iii) of this section. Additionally, the poultry meat and products must not have been derived from poultry that were commingled with other poultry that were in any of the regions or zones described in paragraphs (a)(1)(i) through (a)(1)(iii) of this section.

(3) The live birds and poultry from which the poultry meat and products were derived must only originate from within the APHIS-defined EU Poultry Trade Region and the farms of origin must not have received live birds or poultry imported from outside the APHIS-defined EU Poultry Trade Region.

(4) No equipment or materials used in transporting the birds or poultry from which the poultry meat and products were derived from the farm of origin to the slaughtering establishment may have been used previously for transporting live birds or poultry that do not meet the requirements of § 94.28(b), unless the equipment and materials have first been cleaned and disinfected.

(5) The poultry meat and products, including eggs and egg products (other than hatching eggs) must be accompanied by a certificate issued by an official of the competent veterinary authority of the APHIS-defined EU Poultry Trade Region Member State who is authorized to issue the inspection certificate required by § 93.205 of this subchapter, stating that the applicable provisions of paragraphs (a)(1) through (a)(4) of this section have been met. The certification for poultry meat and products may be placed on the foreign meat inspection certificate required by § 381.196 of this title or may be contained in a separate document.

(b) *Live birds and poultry.* In addition to meeting all other applicable provisions of this title, live birds and poultry, except hatching eggs, imported from the APHIS-defined EU Poultry Trade Region must meet the following conditions:

(1) The birds and poultry must not have been in any of the following regions or zones, unless the birds and poultry are exported to the United States after the periods described.

(i) Any region when the region was classified in § 94.6(a)(1)(i) as one in which Newcastle disease is considered to exist, or any region when the region

was listed in accordance with § 94.6(a)(2)(i) as one in which HPAI is considered to exist, except for the APHIS-defined EU Poultry Trade Region;

(ii) A restricted zone in the APHIS-defined EU Poultry Trade Region established because of detection of Newcastle disease or HPAI in commercial poultry, from the time of detection until the designation of the zone as a restricted zone is removed by the competent veterinary authority of the Member State or until 3 months (90 days) following depopulation of the poultry on affected premises in the restricted zone and the cleaning and disinfection of the last affected premises in the zone, whichever is later; or

(iii) A restricted zone in the APHIS-defined EU Poultry Trade Region established because of detection of Newcastle disease or HPAI in racing pigeons, backyard flocks, and wild birds, from the time of detection until the designation of the zone as a restricted zone is removed by the competent veterinary authority of the Member State.

(2) The birds and poultry must not have been commingled with other birds or poultry that have at any time been in any of the regions or zones described in paragraphs (b)(1)(i) through (b)(1)(iii) of this section.

(3) The birds and poultry must only originate from within the APHIS-defined EU Poultry Trade Region and the farms of origin must not have received birds or poultry imported from outside the APHIS-defined EU Poultry Trade Region.

(4) No equipment or materials used in transporting the birds and poultry may have been used previously for transporting birds or poultry that do not meet the requirements of this paragraph, unless the equipment and materials have first been cleaned and disinfected.

(5) The birds and poultry must be accompanied by a certificate issued by an official of the competent veterinary authority of the Member State who is authorized to issue the inspection certificate required by § 93.205 of this subchapter, stating that the applicable provisions of paragraphs (b)(1) through (b)(4) of this section have been met. The certification may be placed on the foreign meat inspection certificate required by § 381.196 of this title or may be contained in a separate document.

(c) *Hatching eggs.* Hatching eggs intended for import from the APHIS-defined EU Poultry Trade Region are subject to all applicable provisions of paragraph (b) of this section, except that such hatching eggs may be moved through zones established because of detection of HPAI within the APHIS-defined EU Poultry Trade Region provided that the hatching eggs are transported under official seal and accompanied by a certificate as indicated in § 94.28(b)(5) stating that the applicable provisions of paragraph (b) have been met. The import permit will require the seal number to be listed on the health certificate that accompanies the shipment and the veterinarian who places the seal will be required to sign his or her name under the seal number. Seals must not be broken until the shipment reaches its U.S. port of entry. Hatching egg shipment with seals that are not intact will be rejected upon inspection at the U.S. port of entry.

(d) *Presentation of certificates.* The certificates required by paragraphs (a)(5), (b)(5), and (c) of this section must be presented by the importer to an authorized inspector at the port of arrival, upon arrival of the birds, poultry, hatching eggs, or poultry meat and products at the port.

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

■ 23. The authority citation for part 95 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 95.5 [Amended]

■ 24. In § 95.5, paragraph (c) is amended by removing the words ''exotic'' and ''subtype H5N1''.

§ 95.6 [Amended]

■ 25. In § 95.6, paragraph (c) is amended by removing the word ''exotic''.

PART 104—PERMITS FOR BIOLOGICAL PRODUCTS

■ 26. The authority citation for part 104 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

§ 104.2 [Amended]

■ 27. In § 104.2, paragraph (b) is amended by removing the words ''fowl pest (fowl plague)'' and adding the words ''highly pathogenic avian influenza'' in their place.

Done in Washington, DC, this 26th day of March 2013.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–07345 Filed 3–28–13; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0150; Directorate Identifier 2011–NM–234–AD; Amendment 39–17399; AD 2013–06–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A318, A319, A320, and A321 series airplanes. This AD was prompted by reports of oil residue between the stator and the rotor parts of the position resolvers of the angle of attack (AOA) vane, which was a result of incorrect removal of the machining oil during the manufacturing process of the AOA resolvers. This AD requires an inspection to determine if certain AOA probes are installed, and replacement of any affected AOA probe. We are issuing this AD to prevent erroneous AOA information and consequent delayed or non-activation of the AOA protection systems, which during flight at a high AOA, could result in reduced control of the airplane.

DATES: This AD becomes effective May 3, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 3, 2013.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a second supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That second SNPRM was published in the **Federal Register** on

December 10, 2012 (77 FR 73340). That second SNPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

> During Airbus Final Assembly Line flight tests, AoA [angle of attack] data from two different aeroplanes were found inaccurate, which was confirmed by flight data analysis.
>
> Investigation conducted by Airbus and Thales on the removed probes revealed oil residue between the stator and the rotor parts of the AoA vane position resolvers. This oil residue was the result of incorrect removal of machining oil during the manufacturing process of the AoA resolvers. At low temperatures, this oil residue becomes viscous (typically in cruise), causing delayed and/or reduced AoA vane movement. Multiple AOA probes could be simultaneously affected, providing incorrect indications of the AoA of the aeroplane.
>
> This condition, if not corrected, could lead to erroneous AoA information and consequent delayed or non-activation of the AoA protection systems which, during flight at a high angle of attack, could result in reduced control of the aeroplane.
>
> For the reasons described above, this [European Aviation Safety Agency (EASA)] AD requires the identification of the serial number (s/n) of each installed Thales Avionics Part Number (P/N) C16291AA AoA probe and the replacement of all suspect units with serviceable ones. This AD also prohibits the (re)installation of these same s/n probes on any aeroplane, unless corrective measures have been accomplished.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request to Update Service Information

Airbus requested that the service information referenced in the second SNPRM (77 FR 73340, December 10, 2012) be updated to include recently added service information. Airbus stated that EASA has issued AD 2012–0236R1, dated December 17, 2012. In addition, Airbus stated that Thales Avionics has issued Service Bulletin C16291A–34–007, Revision 04, dated October 11, 2012.

We partially agree with Airbus' request regarding using the most recent service information. Since the second SNPRM (77 FR 73340, December 10, 2012) was issued, we have reviewed Thales Avionics Service Bulletin C16291A–34–007, Revision 04, dated October 11, 2012. The actions in that service information remain unchanged from the previous service information. We have revised paragraphs (g), (i), and (k) of this AD accordingly to reflect the most current Thales Avionics service information.

In addition, we have reviewed EASA AD 2012–0236, dated November 9, 2012 (corrected November 12, 2012), and EASA AD 2012–0236R1, dated December 17, 2012. We have determined that no subsequent changes are required in this final rule as done to the EASA AD. We have not changed this final rule in this regard.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously– and minor editorial changes. We have determined that these changes:

- Are consistent with the intent that was proposed in the second SNPRM (77 FR 73340, December 10, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM (77 FR 73340, December 10, 2012).

Costs of Compliance

We estimate that this AD will affect 755 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $128,350, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 3 work-hours and require parts costing $0, for a cost of $255 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the second SNPRM (77 FR 73340, December 10, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2013–06–03 Airbus: Amendment 39–17399. Docket No. FAA–2012–0150; Directorate Identifier 2011–NM–234–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 3, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

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

(e) Reason

This AD was prompted by reports of oil residue between the stator and the rotor parts of the position resolvers of the angle of attack (AOA) vane, which was a result of incorrect removal of the machining oil during the manufacturing process of the AOA resolvers. We are issuing this AD to prevent erroneous AOA information and consequent delayed or non-activation of the AOA protection systems, which during flight at a high angle of attack, could result in reduced control of the airplane.

(f) Compliance

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

(g) Inspection

Within 12 months after the effective date of this AD, except as provided by paragraph (h) of this AD: Do the inspections specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Inspect to determine the part number (P/N) and serial number of each Thales Avionics AOA probe, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–34–1452, dated January 29, 2010. If any probe is found having P/N C16291AA and having a serial number listed in Thales Avionics Service Bulletin C16291A–34–007, Revision 04, dated October 11, 2012: Within 12 months after the effective date of this AD, replace the AOA probe, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–34–1452, provided that Thales Avionics Service Bulletin C16291A–34–009, dated September 10, 2009; or Airbus Service Bulletin A320–34–1444, dated October 7, 2009; have not been accomplished. Thales Avionics Service Bulletin C16291A–34–009, dated September 10, 2009; and Airbus Service Bulletin A320–34–1444, dated October 7, 2009; (which are not incorporated by reference in this AD) cannot be used for the installation of AOA probes having P/N C16291AB. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number and serial number of the installed AOA probes can be conclusively determined from that review.

(2) Inspect to determine the part number and serial number of each Thales Avionics AOA probe, in accordance with paragraph 3.C.(1)(a) of the Accomplishment Instructions of Airbus Service Bulletin A320–34–1452, dated January 29, 2010. If any probe is found having P/N C16291AB, on which Thales Avionics Service Bulletin C16291A–34–009, dated September 10, 2009; or Airbus Service Bulletin A320–34–1444, dated October 7, 2009; (which are not incorporated by reference in this AD) has been accomplished: Within 12 months after the effective date of this AD, replace the AOA probe, in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, or European Aviation Safety Agency (EASA) (or its delegated agent). A review of airplane maintenance records is acceptable in lieu of the inspection specified in this paragraph if the part number of the installed AOA probes can be conclusively determined from that review.

Note 1 to paragraph (g)(2) of this AD: Additional guidance for replacing the AOA probes may be found in Task 34–11–19–000–001–A, Removal of the Angle of Attack Sensor, of the Airbus A318/A319/A320/A321 Aircraft Maintenance Manual, which is not incorporated by reference in this AD.

(h) Exception to the Requirements of Paragraph (g) of This AD

For any airplane on which Airbus modification 150006 (installation of Thales Avionics AOA probes P/N C16291AB) or modification 26934 (installation of Goodrich AOA probes P/N 0861ED) has been embodied in production, and on which no AOA probe replacement has been made since first flight: The actions specified in paragraph (g) of this AD are not required.

(i) Parts Installation Limitation and Prohibition

(1) As of the effective date of this AD, no person may install a Thales Avionics AOA probe, P/N C16291AA, having a serial number listed in Thales Avionics Service Bulletin C16291A–34–007, Revision 04, dated October 11, 2012, on any airplane, unless that Thales Avionics probe has been inspected, re-identified, and tested, in accordance with the Accomplishment Instructions of the service information specified in paragraphs (i)(1)(i) through (i)(1)(iv) of this AD.

(i) Thales Avionics Service Bulletin C16291A–34–007, Revision 04, dated October 11, 2012.

(ii) Thales Avionics Service Bulletin C16291A–34–007, Revision 03, dated April 10, 2012.

(iii) Thales Avionics Service Bulletin C16291A–34–007, Revision 02, dated December 16, 2011.

(iv) Thales Avionics Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009.

(2) As of the effective date of this AD, no person may install a Thales Avionics AOA probe, P/N C16291AB, on which Thales Avionics Service Bulletin C16291A–34–009, dated September 10, 2009; or Airbus Service Bulletin A320–34–1444, dated October 7, 2009; (which are not incorporated by reference in this AD) has been incorporated.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(k) Related Information

Refer to MCAI EASA AD 2011–0203, dated October 13, 2011, and the service information specified in paragraphs (k)(1) through (k)(5) of this AD, for related information.

(1) Airbus Service Bulletin A320–34–1452, dated January 29, 2010.

(2) Thales Avionics Service Bulletin C16291A–34–007, Revision 04, dated October 11, 2012.

(3) Thales Avionics Service Bulletin C16291A–34–007, Revision 03, dated April 10, 2012.

(4) Thales Avionics Service Bulletin C16291A–34–007, Revision 02, dated December 16, 2011.

(5) Thales Avionics Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Airbus Service Bulletin A320–34–1452, dated January 29, 2010.

(ii) Thales Avionics Service Bulletin C16291A–34–007, Revision 04, dated October 11, 2012.

(iii) Thales Avionics Service Bulletin C16291A–34–007, Revision 03, dated April 10, 2012. Pages 1, 8, 10, 11, and 13 of this document are identified as Revision 03, dated April 10, 2012. Pages 2, 7, and 12 are identified as Revision 01, dated December 3, 2009. Page 9 is identified as Revision 02, dated December 16, 2011.

(iv) Thales Avionics Service Bulletin C16291A–34–007, Revision 02, dated December 16, 2011. Pages 1, and pages 8 through 10 of this document are identified as Revision 02, dated December 16, 2011; pages 2 through 7, and pages 11 through 13 are identified as Revision 01, dated December 3, 2009.

(v) Thales Avionics Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009.

(3) For Airbus service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* For Thales Avionics service information identified in this AD, contact Thales Avionics, Retrofit Manager, 105, Avenue du Général Eisenhower, BP 63647, 31036 Toulouse Cedex 1, France; telephone +33 5 61 19 76 95; fax +33 5 61 19 68 20; email *retrofit.ata@fr.thalesgroup.com;* Internet *http://www.thalesgroup.com/aerospace.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on March 8, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–06172 Filed 3–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1346; Directorate Identifier 2012–CE–047–AD; Amendment 39–17401; AD 2013–06–04]

RIN 2120–AA64

Airworthiness Directives; REIMS AVIATION S.A. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for REIMS AVIATION S.A. Model F406 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as fretting (wear and/or chafing) found between the elevator pushrod assembly and the horizontal tail structure, which could cause the elevator pushrod to jam and could result in loss of control. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective May 3, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 3, 2013.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact REIMS AVIATION INDUSTRIES, Aérodrome de Reims Prunay, 51360 Prunay, France; telephone: 03.26.48.46.65; fax: 03.26.49.18.57; Internet: *http://www.geciaviation.com/en/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *albert.mercado@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 3, 2013 (78 FR 275). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> During maintenance, fretting has been found between the elevator pushrod assembly and horizontal tail structure on Reims F406 aeroplanes. In addition, bending was found on a pushrod assembly Part Number (P/N) 6015034–1. The investigation has not yet established the exact cause(s) of these occurrences.
>
> This condition, if not detected and corrected, could lead to failure of a pushrod and consequent jamming of the elevator controls, possibly resulting in loss of control of the aeroplane.
>
> For the reasons described above, this AD requires inspection of the pushrods and horizontal tail structure to detect fretting, bending or eccentricity and, depending on findings, replacement with a serviceable pushrod, or repair. This AD also requires the return on replaced pushrods to RAI for investigation.
>
> This AD is considered to be an interim action and further AD action may follow.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 275, January 3, 2013) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 275, January 3, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 275, January 3, 2013).

Costs of Compliance

We estimate that this AD will affect 7 products of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $2,380, or $340 per product.

In addition, we estimate that any necessary follow-on actions will take about 2.5 work-hours and require parts costing $1,900, for a cost of $2,112.50 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (78 FR 275, January 3, 2013), the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2013–06–04 REIMS AVIATION S.A.: Amendment 39–17401; Docket No. FAA–2012–1346; Directorate Identifier 2012–CE–047–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 3, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to REIMS AVIATION S.A. Model F406 airplanes, serial numbers F406–0001 through F406–0096, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted by reports of fretting (wear and/or chafing) found between the elevator pushrod assembly and the horizontal tail structure. We are issuing this AD to detect and correct any discrepancies with the elevator pushrod assembly and the horizontal tail structure, which could cause the elevator pushrod to fail. Failure of the elevator pushrod could cause the flight control to jam, which could result in loss of control.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) Within the next 4 months after May 3, 2013 (the effective date of this AD), inspect the elevator pushrod assemblies, part number (P/N) 6015034–1, and the horizontal tail structure following the Accomplishment Instructions in REIMS AVIATION INDUSTRIES Service Bulletin No. F406–70, dated July 16, 2012.

(2) Before further flight after the inspection required in paragraph (f)(1) of this AD, if fretting is found on the horizontal tail structure, or the clearance between the elevator pushrod assemblies and the horizontal tail structure is found to be insufficient, or looseness at riveted end fittings is found on the elevator pushrods, contact REIMS AVIATION INDUSTRIES at the address specified in paragraph (i)(3) of this AD for a repair scheme and incorporate the repair scheme.

(3) Before further flight after the inspection required in paragraph (f)(1) of this AD, if bending or eccentricity of an elevator pushrod is found that exceeds the allowable limits, replace each affected elevator pushrod with a serviceable part following REIMS AVIATION INDUSTRIES Service Bulletin No. F406–70, dated July 16, 2012.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *albert.mercado@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

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

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2012–0164, dated August 28, 2012, for related information.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) REIMS AVIATION INDUSTRIES Service Bulletin No. F406–70, dated July 16, 2012.

(ii) Reserved.

(3) For REIMS AVIATION INDUSTRIES service information identified in this AD, contact REIMS AVIATION INDUSTRIES, Aérodrome de Reims Prunay, 51360 Prunay, France; telephone: 03.26.48.46.65; fax: 03.26.49.18.57; Internet: *http://www.geciaviation.com/en/.*

(4) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on March 18, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–06590 Filed 3–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1077; Directorate Identifier 2012–NM–146–AD; Amendment 39–17384; AD 2013–05–12]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Embraer S.A. Model ERJ 170 and ERJ 190 airplanes. This AD was prompted by a report that high rate discharge (HRD) bottle explosive cartridges of a cargo compartment fire extinguisher system were swapped between the forward and aft cargo compartments. Additional investigation also revealed the possibility of swapping between the electrical connectors of the HRD and low rate discharge (LRD) bottles, and a rotated installation of the HRD bottle. Improper assembly of the fire extinguishing bottle might cause the extinguishing agent to be discharged toward the unselected cargo compartment rather than toward the cargo compartment with fire. This AD requires an inspection of the HRD bottle for correct installation and to determine if the pressure switch is in the correct position, and re-installation if necessary; an inspection of the HRD and LRD bottle discharge heads to determine the part number, and replacement if necessary; and, for certain airplanes, an inspection to identify the HRD and LRD bottle electrical connectors, and relocation if necessary. We are issuing this AD to prevent the inability of the fire extinguishing system to suppress fire.

DATES: This AD becomes effective May 3, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 3, 2013.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2768; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 16, 2012 (77 FR 63272). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

> It was found during an inspection of the cargo compartment fire extinguisher system that High Rate Discharge (HRD) bottle explosive cartridges were swapped between forward and aft cargo compartments. Additional investigation has also revealed the possibility of swapping between the electrical connectors of the HRD and Low Rate Discharge (LRD) bottles and a rotated installation of the HRD bottle. Such improper assembly of the fire extinguishing bottle may cause the extinguishing agent to be discharged toward the unselected cargo compartment rather than toward the cargo compartment with fire, resulting in an insufficient concentration of fire extinguishing agent in the cargo compartment with fire, and consequent inability of the fire extinguishing system to suppress fire.
>
> * * * * *
>
> Required actions include an inspection of the HRD bottle for correct installation and to determine if the pressure switch is in the correct position, and re-installation if necessary; an inspection of the HRD and LRD bottle discharge heads to determine the part number and replacement if necessary; and, for certain airplanes, an inspection to identify the HRD and LRD bottle electrical connectors, and relocation if necessary. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Refer to Revised Service Information

Embraer requested that we revise the NPRM (77 FR 63272, October 16, 2012) to include the latest revision of the referenced service information. Embraer also requested that we provide credit for actions done using the following service bulletins.

- Embraer Service Bulletin 170–26–0011, Revision 01, dated June 19, 2012.
- Embraer Service Bulletin 190–26–0011, Revision 01, dated June 19, 2012.
- Embraer Service Bulletin 190LIN–26–0006, Revision 01, dated June 19, 2012.

We agree to refer to the following service bulletins in this AD as requested. We have revised paragraphs (c), (g), and (h) of this AD accordingly.

- Embraer Service Bulletin 170–26–0011, Revision 02, dated October 17, 2012.
- Embraer Service Bulletin 190–26–0011, Revision 02, dated October 17, 2012.
- Embraer Service Bulletin 190LIN–26–0006, Revision 02, dated September 28, 2012.

We have also added new paragraph (i) to this AD (and re-identified subsequent paragraphs accordingly) to allow credit for actions done previously using the following service bulletins.

- Embraer Service Bulletin 170–26–0011, Revision 01, dated June 19, 2012.

• Embraer Service Bulletin 190–26–0011, Revision 01, dated June 19, 2012.

• Embraer Service Bulletin 190LIN–26–0006, Revision 01, dated June 19, 2012.

Request To Clarify the Proposed Applicability for Certain Actions

Embraer requested that we clarify the applicability for paragraphs (g), (h), and (i) of the NPRM (77 FR 63272, October 16, 2012), for airplanes subject to Embraer Service Bulletin 190LIN–26–0006, Revision 02, dated September 28, 2012. Embraer stated that Embraer Service Bulletin 190LIN–26–0006, Revision 02, dated September 28, 2012, applies only to Model ERJ 190–100 ECJ airplanes, and requested that we revise paragraphs (g), (h), and (i) of the NPRM, accordingly.

We partially agree. We disagree with revising paragraph (i) of the NPRM (77 FR 63272, October 16, 2012). Paragraph (i) of the NPRM—now paragraph (j) of this AD—has no reference to Embraer Service Bulletin 190LIN–26–0006, Revision 02, dated September 28, 2012; therefore, we have made no change to that paragraph.

We agree that Embraer Service Bulletin 190LIN–26–0006, Revision 02, dated September 28, 2012, affects only Model ERJ 190–100 ECJ airplanes. Embraer Service Bulletin 190–26–0011, Revision 02, dated October 17, 2012, does not affect Model ERJ 190–100 ECJ airplanes. We have revised paragraphs (c), (g), and (h) of this AD accordingly.

Request To Clarify Inspection Requirement

Embraer requested that we clarify that the inspection is for proper identification of the electrical connectors, rather than for specific electrical connector part numbers, as specified in the NPRM (77 FR 63272, October 16, 2012). Embraer stated that the electrical connector identification is not the same as the part number.

We agree to clarify the inspection requirement as requested. We have revised paragraph (g)(3) of this AD to require the inspection to identify the HRD and LRD bottle electrical connectors.

Additional Change to NPRM

We have also revised paragraphs (g)(2) and (h)(2) of this AD to clarify the replacement part.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously and minor editorial changes. We have determined that these changes:

• Are consistent with the intent that was proposed in the NPRM (77 FR 63272, October 16, 2012) for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 63272, October 16, 2012).

Costs of Compliance

We estimate that this AD will affect 163 products of U.S. registry. We also estimate that it will take about 7 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $96,985, or $595 per product.

In addition, we estimate that any necessary follow-on actions would take about 1 work-hour and require parts costing $68,588, for a cost of $68,673 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 63272, October 16, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2013–05–12 Embraer S.A.: Amendment 39–17384. Docket No. FAA–2012–1077; Directorate Identifier 2012–NM–146–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 3, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes; certificated in any category; as identified in Embraer Service

Bulletin 170–26–0011, Revision 02, dated October 17, 2012.

(2) Embraer S.A. Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes; certificated in any category; as identified in Embraer Service Bulletin 190–26–0011, Revision 02, dated October 17, 2012.

(3) Embraer S.A. Model ERJ 190–100 ECJ airplanes, certificated in any category, as identified in Embraer Service Bulletin 190LIN–26–0006, Revision 02, dated September 28, 2012.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire Protection.

(e) Reason

This AD was prompted by a report that high rate discharge (HRD) bottle explosive cartridges of a cargo compartment fire extinguisher system were swapped between the forward and aft cargo compartments. Additional investigation also revealed the possibility of swapping between the electrical connectors of the HRD and low rate discharge (LRD) bottles, and a rotated installation of the HRD bottle. We are issuing this AD to prevent the inability of the fire extinguishing system to suppress fire.

(f) Compliance

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

(g) Inspections and Corrective Actions for Group 1 Airplanes

For airplanes on which Embraer Service Bulletin 170–26–0011, dated December 1, 2011 (for Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes); Embraer Service Bulletin 190–26–0011, dated December 1, 2011 (for Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes); or Embraer Service Bulletin 190LIN–26–0006, dated December 1, 2011 (for Model ERJ 190–100 ECJ airplanes); has not been accomplished as of the effective date of this AD: Within 3,000 flight hours after the effective date of this AD, do the actions specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD. All actions must be done in accordance with Part I and Part II, as applicable, of the Accomplishment Instructions of Embraer Service Bulletin 170–26–0011, Revision 02, dated October 17, 2012 (for Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes); Embraer Service Bulletin 190–26–0011, Revision 02, dated October 17, 2012 (for Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes); or Embraer Service Bulletin 190LIN–26–0006, Revision 02, dated September 28, 2012 (for Model ERJ 190–100 ECJ airplanes).

(1) Do a general visual inspection of the HRD bottle to determine if it is correctly installed and if the pressure switch is in the correct position. If the bottle is not correctly installed or the pressure switch is in the incorrect position, before further flight, remove and re-install the HRD bottle.

(2) Inspect the HRD and LRD bottle discharge heads to determine the part number. If the part number of the discharge heads is not the part number specified in Figure 3 of Embraer Service Bulletin 170–26–0011, Revision 02, dated October 17, 2012 (for Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes); Embraer Service Bulletin 190–26–0011, Revision 02, dated October 17, 2012 (for Model ERJ 190–100 STD, –100LR, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes); or Embraer Service Bulletin 190LIN–26–0006, Revision 02, dated September 28, 2012 (for Model ERJ 190–100 ECJ airplanes): Before further flight, replace the discharge bottle with a discharge bottle of the same part number that has a correct discharge head part number, as shown in Figure 3 of Embraer Service Bulletin 170–26–0011, Revision 02, dated October 17, 2012 (for Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes); Embraer Service Bulletin 190–26–0011, Revision 02, dated October 17, 2012 (for Model ERJ 190–100 STD, –100LR, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes); or Embraer Service Bulletin 190LIN–26–0006, Revision 02, dated September 28, 2012 (for Model ERJ 190–100 ECJ airplanes), as applicable.

(3) Inspect to identify the HRD and LRD bottle electrical connectors. If the identification of the HRD or LRD bottle electrical connectors is not specified in Figure 1 of Embraer Service Bulletin 170–26–0011, Revision 02, dated October 17, 2012 (for Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes); Embraer Service Bulletin 190–26–0011, Revision 02, dated October 17, 2012 (for Model ERJ 190–100 STD, –100LR, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes); or Embraer Service Bulletin 190LIN–26–0006, Revision 02, dated September 28, 2012 (for Model ERJ 190–100 ECJ airplanes): Before further flight, relocate the HRD or LRD bottle electrical connectors by re-routing the electrical harness.

(h) Inspections and Corrective Actions for Group 2 Airplanes

For airplanes on which Embraer Service Bulletin 170–26–0011, dated December 1, 2011 (for Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes); Embraer Service Bulletin 190–26–0011, dated December 1, 2011 (for Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes); or Embraer Service Bulletin 190LIN–26–0006, dated December 1, 2011 (for Model ERJ 190–100 ECJ airplanes); has been accomplished as of the effective date of this AD: Within 3,000 flight hours after the effective date of this AD, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD. All actions must be done in accordance with Part III of the Accomplishment Instructions of Embraer Service Bulletin 170–26–0011, Revision 02, dated October 17, 2012 (for Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; and Model ERJ 170–200LR, –200 SU, and –200 STD airplanes); Embraer Service Bulletin 190–26–0011, Revision 02, dated October 17, 2012 (for Model ERJ 190–100 STD, –100LR, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes); or Embraer Service Bulletin 190LIN–26–0006, Revision 02, dated September 28, 2012 (for Model ERJ 190–100 ECJ airplanes).

(1) Do a general visual inspection of the HRD bottle to determine if it is correctly installed and if the pressure switch is in the correct position. If the bottle is not correctly installed or the pressure switch is in the incorrect position, before further flight, remove and re-install the HRD bottle.

(2) Inspect the HRD and LRD bottle discharge heads to determine the part number. If the part number of the discharge heads is not the part number specified in Figure 3 of Embraer Service Bulletin 170–26–0011, Revision 02, dated October 17, 2012 (for Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes); Embraer Service Bulletin 190–26–0011, Revision 02, dated October 17, 2012 (for Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes); or Embraer Service Bulletin 190LIN–26–0006, Revision 02, dated September 28, 2012 (for Model ERJ 190–100 ECJ airplanes); before further flight, replace the discharge bottle with a discharge bottle of the same part number that has a correct discharge head part number, as shown in Figure 3 of Embraer Service Bulletin 170–26–0011, Revision 02, dated October 17, 2012 (for Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes); Embraer Service Bulletin 190–26–0011, Revision 02, dated October 17, 2012 (for Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes); or Embraer Service Bulletin 190LIN–26–0006, Revision 02, dated September 28, 2012 (for Model ERJ 190–100 ECJ airplanes), as applicable.

(i) Credit for Previous Actions

This paragraph provides credit for the applicable actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using the applicable service bulletins specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD.

(1) For Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes: Embraer Service Bulletin 170–26–0011, Revision 01, dated June 19, 2012.

(2) For Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes: Embraer Service Bulletin 190–26–0011, Revision 01, dated June 19, 2012.

(3) For Model ERJ 190–100 ECJ airplanes: Embraer Service Bulletin 190LIN–26–0006, Revision 01, dated June 19, 2012.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2768; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(k) Related Information

Refer to MCAI Brazilian Airworthiness Directives 2012–07–01 and 2012–07–02, both effective July 30, 2012, and the service bulletins identified in paragraphs (k)(1), (k)(2), and (k)(3) of this AD, for related information.

(1) Embraer Service Bulletin 170–26–0011, Revision 02, dated October 17, 2012.

(2) Embraer Service Bulletin 190–26–0011, Revision 02, dated October 17, 2012.

(3) Embraer Service Bulletin 190LIN–26–0006, Revision 02, dated September 28, 2012.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Embraer Service Bulletin 170–26–0011, Revision 02, October 17, 2012.

(ii) Embraer Service Bulletin 190–26–0011, Revision 02, dated October 17, 2012.

(iii) Embraer Service Bulletin 190LIN–26–0006, Revision 02, dated September 28, 2012.

(3) For service information identified in this AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br*; Internet *http://www.flyembraer.com*.

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on March 6, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–05839 Filed 3–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1417; Directorate Identifier 2011–NM–159–AD; Amendment 39–17382; AD 2013–05–10]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777 airplanes. This AD was prompted by reports that escape slides/rafts did not deploy due to galvanic corrosion of the door-mounted slide/raft packboard release mechanisms. This AD requires doing a general visual inspection of the housing assembly of the packboard release mechanism to determine if its surface treatment has been sealed, and if the surface of the housing assembly is unsealed, replacing the housing assembly with a new or serviceable housing assembly. We are issuing this AD to detect and correct corrosion of the packboard release mechanisms, which could interfere with escape slide/raft deployment, prohibit doors from opening in the armed mode, and cause consequent delay and injury during evacuation of passengers and crew from the cabin in the event of an emergency.

DATES: This AD is effective May 3, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 3, 2013.

ADDRESSES: For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. For Air Cruisers service information identified in this AD, contact Air Cruisers Company, 1747 State Route 34, Wall, NJ 07727–3935; telephone: 732–681–3527; fax: 732–681–9163; email: *Aircruisers@zodiacaerospace.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ana Martinez Hueto, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6592; fax: 425–917–6591; email: *ana.m.hueto@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on January 19, 2012 (77 FR 2666). That NPRM proposed to require doing a general visual inspection of the housing assembly of the packboard release mechanism to determine if its surface treatment has been sealed, and if unsealed, replacing the housing assembly with a new or serviceable housing assembly.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 2666, January 19, 2012), and the FAA's response to each comment. Boeing supported the NPRM. American Airlines stated that it has incorporated the requirements of the NPRM into its maintenance program and will continue to do so. United Airlines (United) did not object to the proposed compliance time.

Request To Allow Verification of Stencil

United requested that we revise the NPRM (77 FR 2666, January 19, 2012) to provide instructions for inspecting for the accomplishment of Air Cruisers Service Bulletin 777 107–25–30, dated September 30, 2010, by verifying the stencil of the ''Inspected and/or Mod per S.B. 777 107–25–30'' on the girt assembly and upper lacing cover. United also requested that we revise the NPRM to permit operators to demonstrate compliance by means of a technical records review for the accomplishment of Air Cruisers Service Bulletin 777 107–25–30, dated September 30, 2010.

We agree because, if the modification has been accomplished before the issuance of the AD, there is no need to duplicate it. We have revised paragraph (g) of this final rule to specify only slides/rafts that have not been modified using Air Cruisers Service Bulletin 777 107–25–30, dated September 30, 2010, require the replacement of the housing assembly. We also have added a new paragraph (h) to this final rule (and re-identified subsequent paragraphs accordingly) to state that verifying the stencil or a review of technical or maintenance records is acceptable for determining if the modification has been accomplished.

Request To Revise Service Information

Delta Airlines (Delta) requested that we revise the NPRM (77 FR 2666, January 19, 2012) to provide instructions stating how to inspect for discrepant unsealed components. Delta stated that the instructions are referenced within a note in Air Cruisers Service Bulletin 777 107–25–30, dated September 30, 2010. (Boeing Special Attention Service Bulletin 777–25–0507, dated June 30, 2011, references Air Cruisers Service Bulletin 777 107–25–30, dated September 30, 2010, as an additional source of guidance for inspecting and installing a new housing assembly of the door-mounted slide/raft packboard release mechanism.) Delta stated that it is not recommended to have important instructions listed only within a note.

We disagree with the commenter's request to revise the AD to provide inspection instructions. We reference the Air Cruisers Service Bulletin as an additional source of guidance for accomplishing the actions. To delay this AD so manufacturer service information could be revised would be inappropriate, in light of the identified unsafe condition. We have not changed the AD in this regard.

Request To Extend Compliance Time

Delta expressed concern that the 42-month compliance time would be difficult to meet if replacement part kits were not available upon the issuance of the AD. We infer from this comment that Delta is requesting that the 42-month compliance time be extended to allow the part supplier adequate time to make part kits available.

We disagree with the request to extend the compliance time because we have confirmed that the supplier has prepared to have parts available and also to support the compliance time of the AD. If adequate parts are not available as planned approaching the end of the compliance period, paragraph (j) of this AD provides operators the opportunity to request approval of an alternative compliance time if data are presented that prove that the alternative compliance time will provide an acceptable level of safety. We have not changed this AD regarding this issue.

Request To Provide Credit for Previous Actions

United requested that we allow credit for work done prior to the effective date of the AD using Air Cruisers Service Bulletin 777 107–25–30, dated September 30, 2010, since Air Cruisers Service Bulletin 777 107–25–30 is now at Revision 1.

We find that no change is necessary because this AD requires that actions be done in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–25–0507, dated June 30, 2011, which references Air Cruisers Service Bulletin 777 107–25–30, dated September 30, 2010, as an additional source of guidance for inspecting and installing a new housing assembly of the door-mounted slide/raft packboard release mechanism. Boeing has not revised its service bulletin and, therefore, this AD references the original issue of Air Cruisers Service Bulletin 777 107–25–30, dated September 30, 2010. We have not changed this AD in this regard.

Explanation of Change Made to This Final Rule

We have changed Note 1 to paragraph (g) of the NPRM (77 FR 2666, January 19, 2012), which defined a general visual inspection, to new paragraph (i) in the regulatory text of this AD, and re-identified subsequent paragraphs and notes accordingly.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously—and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 2666, January 19, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 2666, January 19, 2012).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 161 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	Between 4 and 16 work-hours × $85 per hour = Between $340 and $1,360.	$0	Between $340 and $1,360.	Between $54,740 and $218,960.

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	1 work-hour × $85 per hour = $85	$137	$222

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–05–10 The Boeing Company: Amendment 39–17382; Docket No. FAA–2011–1417; Directorate Identifier 2011–NM–159–AD.

(a) Effective Date

This AD is effective May 3, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 777–25–0507, dated June 30, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by reports that escape slides/rafts did not deploy due to galvanic corrosion of the door-mounted slide/raft packboard release mechanisms. We are issuing this AD to detect and correct corrosion in the packboard release mechanisms, which could interfere with escape slide/raft deployment, prohibit doors from opening in the armed mode, and cause consequent delay and injury during evacuation of passengers and crew from the cabin in the event of an emergency.

(f) Compliance

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

(g) Inspection and Replacement

Within 42 months after the effective date of this AD, at the applicable passenger/crew entry doors identified in Boeing Special Attention Service Bulletin 777–25–0507, dated June 30, 2011, that have not been modified as specified in Air Cruisers Service Bulletin 777 107–25–30, dated September 30, 2010 (which is not incorporated by reference in this AD): Do a general visual inspection of the housing assembly of the packboard release mechanism to determine if its surface treatment has been sealed; and if unsealed, before further flight, replace the housing assembly with a new or serviceable housing assembly; in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–25–0507, dated June 30, 2011.

Note 1 to paragraph (g) of this AD: Boeing Special Attention Service Bulletin 777–25–0507, dated June 30, 2011, refers to Air Cruisers Service Bulletin 777 107–25–30, dated September 30, 2010 (which is not incorporated by reference in this AD), as an additional source of guidance for inspecting and installing a new housing assembly of the door-mounted slide/raft packboard release mechanism.

(h) Optional Terminating Action

Verifying the housing assembly has been replaced with a new or serviceable housing assembly by inspecting for a stencil to verify that there is a stencil marked ''Inspected and/ or Mod per S.B. 777 107–25–30'' on the girt assembly and upper lacing cover on the housing assembly of the packboard release mechanism; or by reviewing technical or maintenance records, if it can be conclusively determined that the modification specified in Air Cruisers Service Bulletin 777 107–25–30, dated September 30, 2010, (which is not incorporated by reference in this AD), as specified in Boeing Special Attention Service Bulletin 777–25–0507, dated June 30, 2011, has been accomplished; terminates the requirements of paragraph (g) of this AD.

(i) Definition of a General Visual Inspection

For the purposes of this AD, a general visual inspection is: A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(k) Related Information

(1) For more information about this AD, contact Ana Martinez Hueto, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6592; fax: 425–917–6591; email: *ana.m.hueto@faa.gov.*

(2) For Air Cruisers service information identified in this AD, contact Air Cruisers Company, 1747 State Route 34, Wall, NJ 07727–3935; telephone: 732 681–3527; fax: 732 681–9163; email: *Aircruisers@zodiacaerospace.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Special Attention Service Bulletin 777–25–0507, dated June 30, 2011.

(ii) Reserved.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(4) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on March 5, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–05871 Filed 3–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0651; Airspace Docket No. 12–AGL–7]

Amendment of Class E Airspace; Middletown, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Middletown, OH. Additional controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Middletown Regional/ Hook Field Airport. The airport's non-directional beacon's (NDB) geographic coordinates are also updated, as well as the airport name. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, June 27, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

SUPPLEMENTARY INFORMATION:

History

On November 30, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Middletown, OH, area, creating additional controlled airspace at Middletown Regional/Hook Field Airport (77 FR 71364) Docket No. FAA–2012–0651. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface to ensure that required controlled airspace exists from the 6.5-mile radius of the airport to 12.3 miles northeast of the airport, 11.2 miles southwest of the airport, and 7 miles southwest of the Hook Field NDB navigation aid, to contain aircraft executing new standard instrument approach procedures at Middletown Regional/Hook Field Airport, Middletown, OH. This action enhances the safety and management of IFR operations at the airport. The geographic coordinates of the Middletown Regional/Hook Field airport, formerly known as Hook Field Airport, and the Hook Field NDB are also updated to coincide with the FAA's aeronautical database.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends

controlled airspace at Middletown Regional/Hook Field Airport, Middletown, OH.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

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

* * * * *

AGL OH E5 Middletown, OH [Amended]

Middletown Regional/Hook Field Airport, OH
(Lat. 39°31′55″ N., long. 84°23′47″ W.)
Hook Field NDB
(Lat. 39°29′56″ N., long. 84°26′51″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Middletown Regional/Hook Field Airport, and within 2 miles each side of the 050° bearing from the airport extending from the 6.5-mile radius to 12.3 miles northeast of the airport, and within 2 miles each side of the 229° bearing from the airport extending from the 6.5-mile radius to 11.2 miles southwest of the airport, and within 2 miles each side of the 234° bearing from the Hook Field NDB extending from the 6.5-mile radius to 7 miles southwest of the NDB.

Issued in Fort Worth, Texas, on March 15, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–06954 Filed 3–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0771; Airspace Docket No. 12–ASW–7]

Establishment of Class E Airspace; Round Mountain, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Round Mountain, TX. Controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at West Ranch Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, June 27, 2013. The Director of the **Federal Register** approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

SUPPLEMENTARY INFORMATION:

History

On November 30, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace for the West Ranch Airport, Round Mountain, TX (77 FR 71367) Docket No. FAA–2012–0771. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface to ensure that required controlled airspace exists for departing aircraft under instrument flight rules, and arriving aircraft utilizing new standard instrument approach procedures at West Ranch Airport, Round Mountain, TX. This action enhances the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at West Ranch Airport, Round Mountain, TX.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist

that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

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

* * * * *

ASW TX E5 Round Mountain, TX [New]

Round Mountain, West Ranch Airport, TX (Lat. 30°27′23″ N., long. 98°29′23″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of West Ranch Airport, and within 2 miles each side of the 308° bearing from the airport extending from the 7.4-mile radius to 11.1 miles northwest of the airport, and within 2 miles each side of the 128° bearing from the airport extending from the 7.4-mile radius to 10.9 miles southeast of the airport.

Issued in Fort Worth, Texas, on March 15, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–06956 Filed 3–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB61

Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program; Delay of Effective Date

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule; delay of effective date.

SUMMARY: The Department of Labor is delaying the effective date of the Wage Methodology for the Temporary Non-agricultural Employment H–2B Program final rule (the Wage Rule), in order to address legislation that prohibits any funds from being used to implement the Wage Rule for the remainder of fiscal year (FY) 2013. The Wage Rule revised the methodology by which the Department calculates the prevailing wages to be paid to H–2B workers and United States (U.S.) workers recruited in connection with a temporary labor certification for use in petitioning the Department of Homeland Security to employ a nonimmigrant worker in H–2B status.

DATES: The effective date of the rule amending 20 CFR part 655, published at 76 FR 3452 (January 19, 2011), originally effective January 1, 2012, and which was previously made effective September 30, 2011, at 76 FR 45667 (August 1, 2011); delayed to November 30, 2011, at 76 FR 59896 (September 28, 2011); to January 1, 2012, at 76 FR 73508 (November 29, 2011); to October 1, 2012, at 76 FR 82115 (December 30, 2011); and to March 27, 2013, at 77 FR 60040 (October 2, 2012), is now delayed until October 1, 2013.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (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).

SUPPLEMENTARY INFORMATION: The Department of Labor (the Department) published the Wage Methodology for the Temporary Non-agricultural Employment H–2B Program final rule (the Wage Rule) on January 19, 2011, 76 FR 3452. The Wage Rule revised the methodology by which the Department calculates the prevailing wages to be paid to H–2B workers and United States (U.S.) workers recruited in connection with a temporary labor certification for use in petitioning the Department of Homeland Security to employ a nonimmigrant worker in H–2B status. The Department originally set the effective date of the Wage Rule for January 1, 2012. However, as a result of litigation and following notice-and-comment rulemaking, we issued a final rule, 76 FR 45667 (Aug. 1, 2011), revising the effective date of the Wage Rule to September 30, 2011, and a second final rule, 76 FR 59896 (Sept. 28, 2011), further revising the effective date of the Wage Rule to November 30, 2011.

Thereafter, the Department extended the effective date of the Wage Rule until January 1, 2012, in light of the enactment on November 18, 2011 of the Consolidated and Further Continuing Appropriations Act, 2012, which provided that ''[n]one of the funds made available by this or any other Act for fiscal year 2012 may be used to implement, administer, or enforce, prior to January 1, 2012 the [Wage Rule].'' Public Law 112–55, 125 Stat. 552, Div. B, Title V, § 546 (Nov. 18, 2011) (the November 2011 Appropriations Act). In delaying the Wage Rule's effective date, the Department stated that although the November 2011 Appropriations Act ''prevent[ed] the expenditure of funds to implement, administer, or enforce the Wage Rule before January 1, 2012, it [did] not prohibit the Wage Rule from going into effect, which [was] scheduled to occur on November 30, 2011. When the Wage Rule goes into effect, it will supersede and make null the prevailing wage provisions at 20 CFR 655.10(b) of the Department's existing H–2B regulations, which were promulgated under Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H–2B Workers), and Other Technical Changes; Final Rule, 73 FR 78020, Dec. 19, 2008 (the H–2B 2008 Rule).'' 76 FR 73508, 73509 (Nov. 29, 2011).

Accordingly, the Department determined that it was necessary in light of the November 2011 Appropriations Act to delay the effective date of the Wage Rule in order to avoid the replacement of the H–2B 2008 Rule with a new rule that the Department lacked appropriated funds to implement. As a result, the Department issued a final rule, 76 FR 73508, that delayed the effective date of the Wage Rule until January 1, 2012. Subsequent

appropriations legislation[1] containing the same restriction prohibiting the Department's use of appropriated funds to implement, administer, or enforce the Wage Rule necessitated subsequent extensions of the effective date of that rule. *See* 76 FR 82115 (Dec. 30, 2011) (extending the effective date to Oct. 1, 2012); 77 FR 60040 (Oct. 2, 2012) (extending the effective date to Mar. 27, 2013).

In light of the anticipated enactment of the Consolidated and Further Continuing Appropriations Act, 2013, which establishes the Department's appropriations through September 30, 2013, and also continues the prohibition of the expenditure of the Department's appropriated funds to implement, administer, or enforce the Wage Rule through September 30, 2013, *see* Sec. 1101, the Department again must delay the effective date of the Wage Rule. Delaying the effective date of the Wage Rule will ensure an orderly transition and prevent further disruption in light of the U.S. District Court for the Eastern District of Pennsylvania's March 21, 2013 ruling in *Comite de Apoyo a los Trabajadores Agricolas et al.* v. *Solis,* 09-cv-00240, 2013 WL 1163426 (E.D. Pa. Mar. 21, 2013), in which the court vacated and granted a permanent injunction against the operation of one provision of the H–2B 2008 Rule, 20 CFR 655.10(b)(2). Under the now-vacated provision, prevailing wage determinations issued by the Department for a job opportunity for which the employer seeks H–2B workers must be based on the arithmetic mean of the wages of workers similarly employed *at the skill level* in the area of intended employment. Pursuant to that now-vacated regulation, the Department established a four-tier wage structure by dividing the Bureau of Labor Statistics Occupational Employment Statistics Survey (OES survey) wage applicable to the occupation in question into four tiers. The court vacated 20 CFR 655.10(b)(2) and remanded to the Department, giving the Department thirty days to come into compliance with the court's order.

As a result of the court's order, if a prevailing wage determination is sought based on the OES survey, the Department currently is unable to issue a prevailing wage determination under the now-vacated wage provision of the 2008 rule because the court has held invalid the four-tiered OES wage. Most of the Department's prevailing wage determinations in the H–2B program are based on the invalidated four-tiered OES wage. However, if an employer's request for a prevailing wage determination is covered by a collective bargaining agreement, the Department still may issue that prevailing wage determination because the issuance of such determinations is unaffected by the court's order. *See* 20 CFR 655.10(b)(1). Similarly, the Department still may issue prevailing wage determinations based on the employer's submission of a private wage survey (if approved by the Department), or its voluntary use of wages set under the Davis-Bacon Act, 40 U.S.C. 276a *et seq.,* 29 CFR part 1, or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 *et seq. See* 20 CFR 655(b)(4), (b)(5). These alternative methodologies would be barred, however, were the 2011 Wage Rule to take effect.

Consistent with the court's ruling and order, the Department intends to promulgate a revised wage rule within 30 days of the date of that ruling that complies with the court's interpretation of what the statutory and regulatory framework require. Doing so will allow the Department to resume the normal operation of the H–2B program. Were the 2011 Wage Rule to take effect in this short time period during which DOL is preparing a revised wage rule, not only would it prevent the Department from continuing to issue the small but meaningful percentage of H–2B labor certifications that are not based on the vacated portion of the 2008 rule, but it would lead to disruption and confusion about the governing regulatory framework, as the 2011 rule would be in place and govern submissions made to the Department, but the Department would lack funds to implement that governing structure. Therefore, we are again postponing the effective date of the 2011 Wage Rule, which the Department is unable to implement as a result of Congressional action and which, if permitted to become effective, would further limit the Department's current ability to issue prevailing wage determinations.

The Department considers this situation an emergency warranting the publication of a final rule under the good cause exception of the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(B), (d)(3). We are currently experiencing a significant suspension in program operations as a result of the court's order and until we promulgate a new regulation, which we intend to do in short order. In order to avoid a complete operational suspension of the H–2B program while we promulgate a new regulation (due to the continued defunding of the 2011 Wage Rule), as well as the confusion and disruption that would result from the 2011 Wage Rule briefly taking legal effect pending that new regulation, the Department finds good cause to adopt this rule, effective immediately, and without prior notice and comment. *See* 5 U.S.C. 553(b)(B), (d)(3). Any delay in promulgating this extension of the Wage Rule's effective date as the result of notice-and-comment rulemaking would significantly disrupt the program.

Signed: At Washington, DC this 26th day of March, 2013.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2013–07431 Filed 3–26–13; 5:00 pm]

BILLING CODE 4510–FP–P

[1] These include the Consolidated Appropriations Act of 2012, Pub. L. No. 112–74, 125 Stat. 786, which was enacted on December 23, 2011; Continuing Appropriations Resolution, 2013, Public Law 112–175, 126 Stat. 1313, which was enacted on September 28, 2012.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 162

RIN 1076–AE73

Residential, Business, and Wind and Solar Resource Leases on Indian Land

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; correction.

SUMMARY: The Bureau of Indian Affairs (BIA) published a rule in the **Federal Register** of December 5, 2012, announcing the revisions to regulations addressing non-agricultural surface leasing of Indian land. This notice makes some minor corrections to include the proper indefinite article for the term ''agricultural lease'' and clarifies two provisions for wind energy evaluation leases (WEELs).

DATES: This correction is effective on March 29, 2013.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Acting Director, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *elizabeth.appel@bia.gov.*

SUPPLEMENTARY INFORMATION:

Need for Corrections

The final regulations addressing non-agricultural surface leasing of Indian land, and redesignating certain sections related to agricultural leases, failed to direct changes to the indefinite article preceding ''agricultural lease,'' resulting in the regulatory language now stating ''a agricultural lease'' rather than ''an agricultural lease'' in several instances. The final regulations also inadvertently

omitted insurance as a mandatory provision for WEELs and the standard language that BIA may treat any provision of a lease document that violates Federal law as a violation of the lease. This document corrects those errors.

List of Subjects in 25 CFR Part 162

Indians—lands.

Accordingly, 25 CFR part 162 is corrected by making the following correcting amendments:

PART 162—LEASES and PERMITS

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

Authority: 5 U.S.C. 301, R.S. 463 and 465; 25 U.S.C. 2 and 9. Interpret or apply sec. 3, 26 Stat. 795, sec. 1, 28 Stat. 305, secs. 1, 2, 31 Stat. 229, 246, secs. 7, 12, 34 Stat. 545, 34 Stat. 1015, 1034, 35 Stat. 70, 95, 97, sec. 4, 36 Stat. 856, sec. 1, 39 Stat. 128, 41 Stat. 415, as amended, 751, 1232, sec. 17, 43 Stat. 636, 641, 44 Stat. 658, as amended, 894, 1365, as amended, 47 Stat. 1417, sec. 17, 48 Stat. 984, 988, 49 Stat. 115, 1135, sec. 55, 49 Stat. 781, sec. 3, 49 Stat. 1967, 54 Stat. 745, 1057, 60 Stat. 308, secs. 1, 2, 60 Stat. 962, sec. 5, 64 Stat. 46, secs. 1, 2, 4, 5, 6, 64 Stat. 470, 69 Stat. 539, 540, 72 Stat. 968, 107 Stat. 2011, 108 Stat. 4572, March 20, 1996, 110 Stat. 4016; 25 U.S.C. 380, 393, 393a, 394, 395, 397, 402, 402a, 403, 403a, 403b, 403c, 409a, 413, 415, 415a, 415b, 415c, 415d, 416, 477, 635, 2201 et seq., 3701, 3702, 3703, 3712, 3713, 3714, 3715, 3731, 3733, 4211; 44 U.S.C. 3101 et seq.

§ 162.105 [Amended]

■ 2. In § 162.105, paragraph (a), remove the words ''a agricultural lease'' and add, in their place, the words ''an agricultural lease.''

§ 162.106 [Amended]

■ 3. In § 162.106, paragraph (a), remove the words ''a lease'' wherever they appear and add, in their place, the words ''an agricultural lease.''

■ 4. In § 162.513, revise paragraph (a) introductory text, paragraphs (a)(6) and (a)(7), and add paragraphs (a)(8) and (e) to read as follows:

§ 162.513 Are there mandatory provisions a WEEL must contain?

(a) All WEELs must identify:

* * * * *

(6) Payment requirements and late payment charges, including interest;

(7) Due diligence requirements, under § 162.517; and

(8) Insurance requirements, under § 162.527.

* * * * *

(e) We may treat any provision of a lease document that violates Federal law as a violation of the lease.

Dated: March 7, 2013.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2013–07225 Filed 3–28–13; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9612]

RIN 1545–BA53

Noncompensatory Partnership Options

Correction

In rule document 2013–2259 appearing on pages 7997–8016 in the issue of Tuesday, February 5, 2013, make the following correction:

§ 1.704–1 [Corrected]

In § 1.704–1, on page 8012, the second table should appear as follows:

	Basis	Value
Assets:		
Property D	$24,000	$33,000
Cash	$12,000	$12,000
Total	$36,000	$45,000
Liabilities and Capital:		
K	$13,000	$15,000
L	$13,000	$15,000
M	$10,000	$15,000
	$36,000	$45,000

[FR Doc. C1–2013–02259 Filed 3–29–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

Employment Taxes and Collection of Income Tax at Source

CFR Correction

In Title 26 of the Code of Federal Regulations, Parts 30 to 39, revised as of April 1, 2012, on page 301, in § 31.3406(b)(3)–2, in paragraph (b)(5), the language ''§ 5f.6045–1(c)(3)(x)'' is removed and ''§ 1.6045–1(c)(3)(x)'' is added in its place.

[FR Doc. 2013–07509 Filed 3–28–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Surface Mining Reclamation and Enforcement

30 CFR Part 1206

Product Valuation

CFR Correction

In Title 30 of the Code of Federal Regulations, Parts 700 to End, revised as of July 1, 2012, on page 742, in § 1206.57(d)(3) the reference to ''§ 1218.54'' is corrected to read ''§ 1218.56'', and on page 761, in § 1206.117(a), the reference to ''§ 218.54'' is corrected to read ''§ 1218.54''.

[FR Doc. 2013–07512 Filed 3–28–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0081]

RIN 1625–AA08

Special Local Regulations; Charleston Race Week, Charleston Harbor; Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the waters of Charleston Harbor in Charleston, South Carolina during Charleston Race Week, a series of sailboat races. From Thursday, April 18, 2013, until Sunday, April 21, 2013, approximately 300 sailboats are anticipated to participate in these races, and approximately 15 spectator vessels are expected to watch the event. A special local regulation is necessary to provide for the safety of life on the navigable waters of the United States during the races. This special local regulation consists of three race areas. Except for those persons and vessels participating in the sailboat races, persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the race areas unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective from 7:30 a.m. on April 18, 2013, until 5 p.m. on April 21, 2013. This rule will be enforced daily from 7:30 a.m. until 5:30

p.m. on April 18, 2013, through April 21, 2013.

ADDRESSES: Documents indicated in this preamble are part of docket USCG–2013–0081. To view 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Warrant Officer Christopher Ruleman, telephone (843) 740–3184, email *Christopher.L.Ruleman@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive necessary information about the event until February 11, 2013. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the event. Immediate action is needed to minimize potential danger to the race participants, participant vessels, spectators and the general public.

Under 5 U.S.C. 553(d)(3), for the same reasons mentioned above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because immediate action is needed to minimize potential danger to the race participants, participant vessels, spectators and the general public.

B. Basis and Purpose

From April 18, 2013, until April 21, 2013, Charleston Ocean Racing Association will host three sailboat races on Charleston Harbor in Charleston, South Carolina during Charleston Race Week. Approximately 300 sailboats will be participating in the three races. It is anticipated that at least 15 spectator vessels will be present during the races.

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life on navigable waters of the United States during three Charleston Race Week sailboat races.

C. Discussion of the Final Rule

The rule establishes a special local regulation on certain waters of Charleston Harbor in Charleston, South Carolina. The special local regulation will be enforced daily from 7:30 a.m. until 5:30 p.m. on April 18, 2013, through April 21, 2013. The special local regulation consists of the following three race areas.

1. *Race Area #1.* All waters encompassed within an 800 yard radius of position 32°46′39″ N, 79°55′10″ W.
2. *Race Area #2.* All waters encompassed within a 900 yard radius of position 32°45′48″ N, 79°54′46″ W.
3. *Race Area #3.* All waters encompassed within a 900 yard radius of position 32°45′44″ N, 79°53′32″ W.

Except for those persons and vessels participating in the sailboat races, persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the race areas unless specifically authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the race areas may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the race areas is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The economic impact of this rule is not significant for the following reasons: (1) Although persons and vessels will not be able to enter, transit through, anchor in, or remain within the regulated areas without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement periods; (2) persons and vessels may still enter, transit through, anchor in, or remain within the regulated areas if authorized by the Captain of the Port Charleston or a designated representative; and (3) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within the

waters of Charleston Harbor encompassed within the three regulated areas between 7:30 a.m. and 5:30 p.m., from April 18, 2013, until April 21, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. 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 rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

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

6. 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.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation issued in conjunction with a regatta or marine parade. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.T07–0081 to read as follows:

§ 100.T07–0081 Special Local Regulation; Charleston Race Week, Charleston Harbor; Charleston, SC.

(a) *Regulated Areas.* The following regulated areas are established as a special local regulation. All coordinates are North American Datum 1983.

(1) *Race Area #1.* All waters encompassed within an 800 yard radius of position 32°46′39″ N, 79°55′10″ W.

(2) *Race Area #2.* All waters encompassed within a 900 yard radius of position 32°45′48″ N, 79°54′46″ W.

(3) *Race Area #3.* All waters encompassed within a 900 yard radius of position 32°45′44″ N, 79°53′32″ W.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.*

(1) Except for those person and vessels participating in the sailboat

races, all persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the three regulated areas unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the regulated areas may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within any of the regulated areas is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Period.* This rule will be enforced from 7:30 a.m. until 5:30 p.m. each day from April 18, 2013 through April 21, 2013.

Dated: March 19, 2013.

Michael F. White, Jr.,

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

[FR Doc. 2013–07287 Filed 3–28–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0166]

RIN 1625–AA00

Safety Zone; Spanish Navy School Ship San Sebastian El Cano Escort; Bahia de San Juan; San Juan, PR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone on the waters of Bahia de San Juan during the transit of the Spanish Navy School Ship San Sebastian El Cano, a public vessel, and during their 21 gun salute in accordance with the military tradition of vessel proving that it is unarmed upon entrance into a foreign country. The safety zone is necessary to protect the public from the hazards associated with the 21 gun salute near the Bar Channel entrance, and to protect the high ranking officials on board the Spanish Navy School Ship San Sebastian El Cano. The inbound escort is scheduled to take place on Saturday, April 6, 2013, and will entail an escort of the Spanish Navy School Ship San Sebastian El Cano and 21 gun salute. The outbound escort is scheduled to take place on Wednesday, April 10, 2013. The safety zone is necessary to ensure the safety of high ranking officials, commercial traffic, spectators, and the general public on the navigable waters of the United States during the transit and salute. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port San Juan or a designated representative.

DATES: This rule is effective from 8 a.m. on April 6, 2013, until 10 a.m. on April 10, 2013. This rule will be enforced from 8 a.m. until 9:30 a.m. on April 6, 2013, and from 8 a.m. until 10 a.m. on April 10, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0166]. To view 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Warrant Officer Anthony Cassisa, Sector San Juan Prevention Department, U.S. Coast Guard; telephone (787) 289–2073, email *Anthony.J.Cassisa@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive the request for an escort and safety zone nor a confirmed itinerary, from the Office of Puerto Rican Secretary of State with sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be impracticable because immediate action is needed to minimize potential danger to high ranking officials and the general public.

Under 5 U.S.C. 553(d)(3), for the same reasons as above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

B. Basis and Purpose

On April 6, 2013, the Spanish Navy School Ship San Sebastian El Cano, a public vessel will be transiting in with high ranking officials to honor and return the remains of Captain Ramon Power y Giralt, a famous and respected Puerto Rican Navy Captain. The escort will be held on the waters of Bahia de San Juan, San Juan, Puerto Rico of the Spanish Navy School Ship San Sebastian El Cano, and will include a 21 gun salute near the Bar Channel entrance.

The purpose of the rule is to protect high ranking officials on board the Spanish Navy School Ship San Sebastian El Cano and the public from the hazards associated with the 21 gun salute over navigable waters of the United States.

The legal basis for the rule is the U. S. Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

C. Discussion of the Final Rule

The safety zone encompasses certain waters of Bahia de San Juan, San Juan, Puerto Rico. The safety zone will be enforced from 8 a.m. to 9:30 a.m. on April 6, 2013, and from 8 a.m. to 10 a.m. on April 10, 2013.

Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port San Juan or a designated representative. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the safety zone by contacting the Captain of the Port San Juan by telephone at (787) 289–2041, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative. The U. S. Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The economic impact of this rule is not significant for the following reasons: (1) The special local regulation will be enforced for only one and a half hours on the first day, and two hours four days later; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port San Juan or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone during the enforcement period if authorized by the Captain of the Port San Juan or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Bahia de San Juan encompassed within the safety zone from 8 a.m. until 9:30 a.m. on April 6, 2013, and from 8 a.m. until 10 a.m. on April 10, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. 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 rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

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

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will be enforced for a maximum of three and a half hours. This rule is categorically excluded, under, paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T07–0166 to read as follows:

§ 165.T07–0166 Safety Zone, Spanish Navy School Ship San Sebastian El Cano escort, Bahia de San Juan; San Juan, PR.

(a) *Regulated Areas.* The following regulated area is established as a safety zone. All coordinates are North American Datum 1983.

(1) *Regulated Area.* All waters within a 200 yard radius of the vessel Spanish Navy School Ship San Sebastian El Cano while the vessel is transiting within 1.5 nautical miles from the entrance of Bar Channel on approach or departure from San Juan Harbor. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port San Juan.

(b) *Definition.* The term ''designated representative'' means U.S. Coast Guard Patrol Commanders, including U.S. Coast Guard coxswains, petty officers, and other officers operating U.S. Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port San Juan in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone, unless authorized by the Captain of the Port San Juan.

(2) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port San Juan by telephone at (787) 289–2041, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

(3) The U. S. Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Date.* This rule will be enforced from 8 a.m. until 9:30 a.m. on April 6, 2013 and from 8 a.m. until 10:00 a.m. on April 10, 2013.

Dated: March 19, 2013.

D. W. Pearson,

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

[FR Doc. 2013–07283 Filed 3–28–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

RIN 2135–AA32

Tariff of Tolls

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC is revising its regulations to reflect the fees and charges currently being levied by the SLSMC in Canada. The changes affect the tolls for commercial vessels and are applicable only in Canada. For consistency, because these are under international agreement joint regulations, and to avoid confusion among users of the Seaway, the SLSDC finds that there is good cause to make the U.S. version of the amendments effective upon publication. (See **SUPPLEMENTARY INFORMATION.**)

DATES: This rule is effective on March 29, 2013.

FOR FURTHER INFORMATION CONTACT: Carrie Mann Lavigne, Chief Counsel, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662; 315/764–3200.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls (Schedule of Fees and Charges in Canada) in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the

SLSDC and the SLSMC. The SLSDC is revising 33 CFR 402.10, ''Schedule of tolls'', to reflect the fees and charges levied by the SLSMC in Canada. The changes affect the tolls for commercial vessels and are applicable only in Canada. The collection of tolls by the SLSDC on commercial vessels transiting the U.S. locks is waived by law (33 U.S.C. 988a(a)). Accordingly, no notice or comment is necessary on these amendments.

Regulatory Notices

Privacy Act: 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.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478) or you may visit *www.regulations.gov.*

Regulatory Evaluation

This regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

I certify this regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, et seq.) because it is not a major federal action significantly affecting the quality of the human environment.

Federalism

The Corporation has analyzed this rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation is amending 33 CFR part 402, Tariff of Tolls, as follows:

PART 402—TARIFF OF TOLLS

■ 1. The authority citation for Part 402 continues to read as follows:

Authority: 33 U.S.C. 983(a), 984(a)(4) and 988, as amended; 49 CFR 1.52.

■ 2. In § 402.3, the definition of *Containerized cargo* is revised to read as follows:

§ 402.3 Interpretation.

* * * * *

Containerized cargo means cargo shipped in a container. Containers are used to transport freight in multiple modes; ship, rail, and truck. There are many configurations: Dry, insulated or thermal, refrigerated or reefer, flat racks and platforms, open top and tank. Usual dimensions: Width 8 feet, height 8 foot 6 inches or 9 foot 6 inches, lengths 20 foot or 40 foot. Less common lengths include, for example, 24, 28, 44, 45, 46, 48, 53, and 56 feet.

* * * * *

■ 3. In § 402.5 paragraph (b) is revised to read as follows:

§ 402.5 New business incentive program.

* * * * *

(b) Containerized cargo, whatever the origin or destination, moved by a vessel in the Seaway at any time in the current navigation season qualifies as New Business.

* * * * *

■ 4. Section 402.10 is revised to read as follows:

§ 402.10 Schedule of tolls.

Item	Column 1	Column 2	Column 3
	Description of Charges	Rate ($) Montreal to or from Lake Ontario (5 locks)	Rate ($) Welland Canal—Lake Ontario to or from Lake Erie (8 locks)
1.	Subject to item 3, for complete transit of the Seaway, a composite toll, comprising:		
	(1) a charge per gross registered ton of the ship, applicable whether the ship is wholly or partially laden, or is in ballast, and the gross registered tonnage being calculated according to prescribed rules for measurement or under the International Convention on Tonnage Measurement of Ships, 1969, as amended from time to time [1]	0.0995	0.1592
	(2) a charge per metric ton of cargo as certified on the ship's manifest or other document, as follows:		
	(*a*) bulk cargo	1.0312	0.7039
	(*b*) general cargo	2.4848	1.1264
	(*c*) steel slab	2.2488	0.8064
	(*d*) containerized cargo	1.0312	0.7039
	(*e*) government aid cargo	n/a	n/a
	(*f*) grain	0.6336	0.7039
	(*g*) coal	0.6336	0.7039
	(3) a charge per passenger per lock	1.5450	1.5450

Item	Column 1	Column 2	Column 3
	Description of Charges	Rate ($) Montreal to or from Lake Ontario (5 locks)	Rate ($) Welland Canal—Lake Ontario to or from Lake Erie (8 locks)
	(4) a lockage charge per Gross Registered Ton of the vessel, as defined in tem 1(1), applicable whether the ship is wholly or partially laden, or is in ballast, for transit of the Welland Canal in either direction by cargo ships,	n/a	0.2652
	Up to a maximum charge per vessel	n/a	3,708.00
2.	Subject to item 3, for partial transit of the Seaway	20 per cent per lock of the applicable charge under items 1(1), 1(2) and 1(4) plus the applicable charge under items 1(3)	13 per cent per lock of the applicable charge under items 1(1), 1(2) and 1(4) plus the applicable charge under items 1(3)
3.	Minimum charge per vessel per lock transited for full or partial transit of the Seaway	25.75	25.75
4.	A charge per pleasure craft per lock transited for full or partial transit of the Seaway, including applicable federal taxes [2]	30.00 [3]	30.00
6.	Under the New Business Initiative Program, for cargo accepted as New Business, a percentage rebate on the applicable cargo charges for the approved period	20%	20%
7.	Under the Volume Rebate Incentive program, a retroactive percentage rebate on cargo tolls on the incremental volume calculated based on the pre-approved maximum volume	10%	10%

Issued at Washington, DC, on March 25, 2013. Saint Lawrence Seaway Development Corporation.

Craig H. Middlebrook,

Acting Administrator.

[FR Doc. 2013–07350 Filed 3–28–13; 8:45 am]

BILLING CODE 4910–61–P

[1] Or under the US GRT for vessels prescribed prior to 2002.

[2] The applicable charge at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) for pleasure craft is $30 U.S. or $30 Canadian per lock. The collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)).

[3] $5.00 discount per lock applicable on ticket purchased for Canadian locks via paypal.

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS–R7–SM–2011–0015; FXFR13350700640–134–FF07J00000]

RIN 1018–AX64

Subsistence Management Regulations for Public Lands in Alaska—2013–14 and 2014–15 Subsistence Taking of Fish Regulations

AGENCY: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes regulations for seasons, harvest limits, methods, and means related to taking of fish for subsistence uses in Alaska during the 2013–2014 and 2014–2015 regulatory years. The Federal Subsistence Board (Board) completes the biennial process of revising subsistence hunting and trapping regulations in even-numbered years and subsistence fishing and shellfish regulations in odd-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable biennial cycle. This rulemaking replaces the fish taking regulations that expire on March 31, 2013.

DATES: This rule is effective April 1, 2013.

ADDRESSES: The Board meeting transcripts are available for review at the Office of Subsistence Management, 1011 East Tudor Road, Mail Stop 121, Anchorage, AK 99503, or on the Office of Subsistence Management Web site (*http://alaska.fws.gov/asm/index.cfml*).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Kathleen M. O'Reilly-Doyle, Office of Subsistence Management; (907) 786–3888 or *subsistence@fws.gov.* For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Leader, USDA, Forest Service, Alaska Region, (907) 743–9461 or *skessler@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Secretaries published temporary regulations to carry out this program in the **Federal Register** on June 29, 1990 (55 FR 27114), and published final regulations in the **Federal Register** on May 29, 1992 (57 FR 22940). The Program has subsequently amended these regulations a number of times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, ''Parks, Forests, and Public Property,'' and Title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–242.28 and 50 CFR 100.1–100.28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management

Program. The Board is currently made up of:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, U.S. National Park Service;
- The Alaska State Director, U.S. Bureau of Land Management;
- The Alaska Regional Director, U.S. Bureau of Indian Affairs; and
- The Alaska Regional Forester, U.S. Forest Service.

Through the Board, these agencies participate in the development of regulations for subparts C and D, which, among other things, set forth program eligibility and specific harvest seasons and limits.

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Regional Advisory Council. The Regional Advisory Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

The Board addresses customary and traditional use determinations during the applicable biennial cycle. Section ____.24 (customary and traditional use determinations) was originally published in the **Federal Register** on May 29, 1992 (57 FR 22940). The regulations at 36 CFR 242.4 and 50 CFR 100.4 define ''customary and traditional use'' as ''a long-established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation * * *.'' Since 1992, the Board has made a number of customary and traditional use determinations at the request of affected subsistence users. Those modifications, along with some administrative corrections, were published in the **Federal Register** as follows:

MODIFICATIONS TO § ____.24

Federal Register citation	Date of publication	Rule made changes to the following provisions of ____.24
59 FR 27462	May 27, 1994	Wildlife and Fish/Shellfish.
59 FR 51855	October 13, 1994	Wildlife and Fish/Shellfish.
60 FR 10317	February 24, 1995	Wildlife and Fish/Shellfish.
61 FR 39698	July 30, 1996	Wildlife and Fish/Shellfish.
62 FR 29016	May 29, 1997	Wildlife and Fish/Shellfish.
63 FR 35332	June 29, 1998	Wildlife and Fish/Shellfish.
63 FR 46148	August 28, 1998	Wildlife and Fish/Shellfish.
64 FR 1276	January 8, 1999	Fish/Shellfish.
64 FR 35776	July 1, 1999	Wildlife.
65 FR 40730	June 30, 2000	Wildlife.
66 FR 10142	February 13, 2001	Fish/Shellfish.
66 FR 33744	June 25, 2001	Wildlife.
67 FR 5890	February 7, 2002	Fish/Shellfish.
67 FR 43710	June 28, 2002	Wildlife.
68 FR 7276	February 12, 2003	Fish/Shellfish.
Note: The Board met May 20–22, 2003, but did not make any additional customary and traditional use determinations.		
69 FR 5018	February 3, 2004	Fish/Shellfish.
69 FR 40174	July 1, 2004	Wildlife.
70 FR 13377	March 21, 2005	Fish/Shellfish.
70 FR 36268	June 22, 2005	Wildlife.
71 FR 15569	March 29, 2006	Fish/Shellfish.
71 FR 37642	June 30, 2006	Wildlife.
72 FR 12676	March 16, 2007	Fish/Shellfish.
Note: The Board met December 11–13, 2007, but did not make any additional customary and traditional use determinations.		
72 FR 73426	December 27, 2007	Wildlife/Fish.
73 FR 35726	June 26, 2008	Wildlife.
74 FR 14049	March 30, 2009	Fish/Shellfish.
75 FR 37918	June 30, 2010	Wildlife.
76 FR 12564	March 8, 2011	Fish/Shellfish.
77 FR 35482	June 13, 2012	Wildlife.

Current Rule

The Departments published a proposed rule on February 2, 2012 (77 FR 5204), to amend the fish section of subparts C and D of 36 CFR part 242 and 50 CFR part 100. The proposed rule opened a comment period, which closed on March 30, 2012. The Departments advertised the proposed rule by mail, radio, and newspaper. During that period, the Regional Councils met and, in addition to other Regional Council business, received suggestions for proposals from the public. The Board received a total of 25 proposals for changes to subparts C and D; this included 3 proposals that the Board had deferred from previous regulatory cycles. After the comment period closed, the Board prepared a booklet describing the proposals and distributed it to the public. The proposals were also available online. The public then had an additional 30 days in which to comment on the proposals for changes to the regulations.

The 10 Regional Advisory Councils met again, received public comments, and formulated their recommendations

to the Board on proposals for their respective regions. The Regional Advisory Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, a Council Chair, or a designated representative, presented each Council's recommendations at the Board meeting of January 22–24, 2013. These final regulations reflect Board review and consideration of Regional Advisory Council recommendations and public comments. The public received extensive opportunity to review and comment on all changes.

Of the 25 proposals, 21 were on the Board's regular agenda and 4 were on the consensus agenda. The consensus agenda is made up of proposals for which there is agreement among the affected Subsistence Regional Advisory Councils, a majority of the Interagency Staff Committee members, and the Alaska Department of Fish and Game concerning a proposed regulatory action. Any Board member may request that the Board remove a proposal from the consensus agenda and place it on the non-consensus (regular) agenda. The Board votes en masse on the consensus agenda after deliberation and action on all other proposals. Of the proposals on the consensus agenda, the Board adopted one and rejected three. Analysis and justification for each action are available for review at the Office of Subsistence Management, 1011 East Tudor Road, Mail Stop 121, Anchorage, AK 99503, or on the Office of Subsistence Management Web site (*http://alaska.fws.gov/asm/index.cfml*). Of the proposals on the regular agenda, the Board adopted two; adopted five with modification; rejected six; deferred two; and took no action on six.

Summary of Non-Consensus Proposals Not Adopted by the Board

The Board rejected, deferred, or took no action on 14 non-consensus proposals. The rejected proposals were recommended for rejection by one or more of the Regional Advisory Councils unless noted below.

Yukon-Northern Area

The Board rejected a proposal to establish harvest and possession limits for northern pike in a section of the Yukon River. This action would have been unnecessarily restrictive to subsistence users and there are no conservation concerns to warrant harvest/possession limits. This action was supported by two Councils and contrary to the recommendations of two Councils.

The Board took no action on six proposals dealing with customary trade in the Yukon-Northern Area. This decision was based on its earlier action on a customary trade proposal and to allow time to review the results of this action. The Board encouraged the Regional Advisory Councils and the public to continue to participate and work toward a solution on this important issue and is open to future proposals on this matter.

Kodiak

The Board deferred a proposal to revise the definitions of king and Tanner crab pots, marking requirements, and crab pot limits per vessel in the Kodiak area. This action allows additional time for the Council and State to address new data and work to clarify and define affected areas.

Southeastern Alaska Area

The Board rejected a proposal to reduce household limits for steelhead on the Klawock River in the Southeast Alaska Area based on its action on a similar proposal.

The Board rejected a proposal to restrict designated fishers on the Klawock River in Southeast Alaska. This proposal was unnecessarily restrictive to subsistence users.

The Board deferred a proposal, until January 2014, to eliminate the subsistence sockeye salmon annual guideline harvest level on the Stikine River in Southeast Alaska pending consideration by the Transboundary River Panel and the Pacific Salmon Commission.

The Board rejected a proposal limiting gear types for eulachon in Southeast Alaska. This proposal was unnecessarily restrictive to subsistence users.

The Board rejected a proposal establishing an annual harvest limit for eulachon in Southeast Alaska. This proposal was unnecessarily restrictive to subsistence users.

The Board rejected a proposal to close Federal public waters to non-Federally qualified users in the Makhnati Island area to the harvest of herring and herring spawn. This closure was unnecessary for conservation concerns or to protect Federally qualified users.

Summary of Non-Consensus Proposals Adopted by the Board

The Board adopted or adopted with modification seven non-consensus proposals. Modifications were suggested by the affected Regional Council(s), developed during the analysis process, or developed during the Board's public deliberations. All of the adopted proposals were recommended for adoption by at least one of the Regional Councils unless noted below.

Yukon Northern Area

The Board adopted a proposal to rescind the permit requirement for Chinook salmon in the drift gillnet fishery within the Yukon River subdistricts 4B and 4C. This action was less restrictive to subsistence users and would align with other remote (non-road accessible) subsistence fisheries along the Yukon River.

The Board adopted a proposal with modification to limit customary trade for Yukon River Chinook salmon. This action will restrict customary trade so that transactions may only occur between Federally qualified rural residents who have customary and traditional use of that resource as defined in Federal regulations (see 36 CFR 242.4 and 50 CFR 100.4). This action only affects customary trade within this region. These modifications responded to recommendations made by a subcommittee composed of members of each of the three Councils that submitted proposals. Four Councils made recommendations on this proposal; two supported; one opposed; and one took no action.

Chignik Area

The Board adopted with modification a proposal to revise the gear types, open areas, and require a Federal permit on the Chignik River. This action differed in approach, yet met the intent of the Council's recommendation.

Cook Inlet Area

The Board adopted a proposal to rescind the expiration date for the Ninilchik community fish wheel fishery on the Kasilof River. This action provided additional opportunity for subsistence users.

Yakutat and Southeastern Alaska Area

The Board adopted a proposal with modification to rescind the requirement to remove the tail fins of subsistence caught salmon in the Southeastern Alaska Area, but retained the requirement to clip fins in the Yakutat Area. This action was taken to reduce the burden on subsistence users.

Southeastern Alaska Area

The Board adopted with modification a proposal limiting harvest on individual streams for steelhead within the Prince of Wales/Kosciusko Islands. This action was based on conservation concerns.

The Board adopted a proposal with modification to expand the permit requirements for the harvest of eulachon to all of District 1. This action was taken to better track the harvest of eulachon.

These final regulations reflect Board review and consideration of Regional Council recommendations and public and Tribal comments. Because this rule concerns public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Conformance With Statutory and Regulatory Authorities

Administrative Procedure Act Compliance

The Board has provided extensive opportunity for public input and involvement in compliance with Administrative Procedure Act requirements, including publishing a proposed rule in the **Federal Register**, participation in multiple Regional Council meetings, additional public review and comment on all proposals for regulatory change, and opportunity for additional public comment during the Board meeting prior to deliberation. Additionally, an administrative mechanism exists (and has been used by the public) to request reconsideration of the Board's decision on any particular proposal for regulatory change (36 CFR 242.20 and 50 CFR 100.20). Therefore, the Board believes that sufficient public notice and opportunity for involvement have been given to affected persons regarding Board decisions.

In the more than 20 years the Program has been operating, no benefit to the public has been demonstrated by delaying the effective date of the subsistence regulations. A lapse in regulatory control could affect the continued viability of fish or wildlife populations and future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(d)(3) to make this rule effective upon the date set forth in **DATES** to ensure continued operation of the subsistence program.

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analyses and examined the environmental consequences of four alternatives. Proposed regulations (subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for a regulatory cycle regarding subsistence hunting and fishing regulations (subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comments received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture–Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of a regulatory cycle for subsistence hunting and fishing regulations. The final rule for subsistence management regulations for public lands in Alaska, subparts A, B, and C, implemented the Federal Subsistence Management Program and included a framework for a regulatory cycle for the subsistence taking of wildlife and fish. The following **Federal Register** documents pertain to this rulemaking:

SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A, B, AND C: FEDERAL REGISTER DOCUMENTS PERTAINING TO THE FINAL RULE

Federal Register citation	Date of publication	Category	Details
57 FR 22940	May 29, 1992	Final Rule	''Subsistence Management Regulations for Public Lands in Alaska; Final Rule'' was published in the FEDERAL REGISTER.
64 FR 1276	January 8, 1999	Final Rule	Amended the regulations to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. Extended the Federal Subsistence Board's management to all Federal lands selected under the Alaska Native Claims Settlement Act and the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or to an Alaska Native Corporation. Specified and clarified the Secretaries' authority to determine when hunting, fishing, or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority.
66 FR 31533	June 12, 2001	Interim Rule	Expanded the authority that the Board may delegate to agency field officials and clarified the procedures for enacting emergency or temporary restrictions, closures, or openings.
67 FR 30559	May 7, 2002	Final Rule	Amended the operating regulations in response to comments on the June 12, 2001, interim rule. Also corrected some inadvertent errors and oversights of previous rules.

SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A, B, AND C: FEDERAL REGISTER DOCUMENTS PERTAINING TO THE FINAL RULE—Continued

Federal Register citation	Date of publication	Category	Details
68 FR 7703	February 18, 2003	Direct Final Rule	Clarified how old a person must be to receive certain subsistence use permits and removed the requirement that Regional Councils must have an odd number of members.
68 FR 23035	April 30, 2003	Affirmation of Direct Final Rule.	Because no adverse comments were received on the direct final rule (67 FR 30559), the direct final rule was adopted.
69 FR 60957	October 14, 2004	Final Rule	Clarified the membership qualifications for Regional Advisory Council membership and relocated the definition of ''regulatory year'' from subpart A to subpart D of the regulations.
70 FR 76400	December 27, 2005	Final Rule	Revised jurisdiction in marine waters and clarified jurisdiction relative to military lands.
71 FR 49997	August 24, 2006	Final Rule	Revised the jurisdiction of the subsistence program by adding submerged lands and waters in the area of Makhnati Island, near Sitka, AK. This allowed subsistence users to harvest marine resources in this area under seasons, harvest limits, and methods specified in the regulations.
72 FR 25688	May 7, 2007	Final Rule	Revised nonrural determinations.
75 FR 63088	October 14, 2010	Final Rule	Amended the regulations for accepting and addressing special action requests and the role of the Regional Advisory Councils in the process.
76 FR 56109	September 12, 2011	Final Rule	Revised the composition of the Federal Subsistence Board by expanding the Board by two public members who possess personal knowledge of and direct experience with subsistence uses in rural Alaska.
77 FR 12477	March 1, 2012	Final Rule	Extended the compliance date for the final rule (72 FR 25688) that revised nonrural determinations until the Secretarial program review is complete or in 5 years, whichever comes first.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available from the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was conducted in accordance with section 810. That evaluation also supported the Secretaries' determination that the rule will not reach the ''may significantly restrict'' threshold that would require notice and hearings under ANILCA section 810(a).

Paperwork Reduction Act

An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule does not contain any new collections of information that require OMB approval. OMB has reviewed and approved the following collections of information associated with the subsistence regulations at 36 CFR part 242 and 50 CFR part 100: Subsistence hunting and fishing applications, permits, and reports, Federal Subsistence Regional Advisory Council Membership Application/Nomination and Interview Forms (OMB Control No. 1018–0075).

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget 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

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, this amount would equate to about $6 million in food value Statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this Program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

The Alaska National Interest Lands Conservation Act, Title VIII, does not provide specific rights to tribes for the subsistence taking of wildlife, fish, and shellfish. However, the Board will provide Federally recognized Tribes and Alaska Native corporations an opportunity to consult on this rule. Consultation with Alaska Native corporations are based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: ''The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.''

The Secretaries, through the Board, will provide a variety of opportunities for consultation: Commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

On January 22, 2013, the Board provided Federally recognized Tribes and Alaska Native Corporations a specific opportunity to consult on this rule prior to the start of its public regulatory meeting. Federally recognized Tribes and Alaska Native Corporations were notified by mail and telephone and were given the opportunity to attend in person or via teleconference.

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Kathleen M. O'Reilly-Doyle of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jerry Berg and Jack Lorrigan, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Steve Kessler, Alaska Regional Office, U.S. Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, the Federal Subsistence Board amends title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart D—Subsistence Taking of Fish and Wildlife

■ 4. In subpart D of 36 CFR part 242 and 50 CFR part 100, § ____.27 is revised to read as follows:

§ __.27 Subsistence taking of fish.

(a) *Applicability.* (1) Regulations in this section apply to the taking of fish or their parts for subsistence uses.

(2) You may take fish for subsistence uses at any time by any method unless you are restricted by the subsistence

fishing regulations found in this section. The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative, except as modified by regulations in paragraph (e) of this section. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional fish of that species under any other harvest limit specified for a State season.

(3) You may not possess, transport, give, receive, or barter subsistence-taken fish or their parts that have been taken contrary to Federal law or regulation or State law or regulation (unless superseded by regulations in this part).

(b) *Methods, means, and general restrictions.* (1) Unless otherwise specified in this section or under terms of a required subsistence fishing permit (as may be modified by regulations in this section), you may use the following legal types of gear for subsistence fishing:

(i) A set gillnet;
(ii) A drift gillnet;
(iii) A purse seine;
(iv) A hand purse seine;
(v) A beach seine;
(vi) Troll gear;
(vii) A fish wheel;
(viii) A trawl;
(ix) A pot;
(x) A longline;
(xi) A fyke net;
(xii) A lead;
(xiii) A herring pound;
(xiv) A dip net;
(xv) Jigging gear;
(xvi) A mechanical jigging machine;
(xvii) A handline;
(xviii) A cast net;
(xix) A rod and reel; and
(xx) A spear.

(2) You must include an escape mechanism on all pots used to take fish or shellfish. The escape mechanisms are as follows:

(i) A sidewall, which may include the tunnel, of all shellfish and bottomfish pots must contain an opening equal to or exceeding 18 inches in length, except that in shrimp pots the opening must be a minimum of 6 inches in length. The opening must be laced, sewn, or secured together by a single length of untreated, 100 percent cotton twine, no larger than 30 thread. The cotton twine may be knotted at each end only. The opening must be within 6 inches of the bottom of the pot and must be parallel with it. The cotton twine may not be tied or looped around the web bars. Dungeness crab pots may have the pot lid tie-down straps secured to the pot at one end by a single loop of untreated, 100 percent cotton twine no larger than 60 thread, or the pot lid must be secured so that, when the twine degrades, the lid will no longer be securely closed.

(ii) All king crab, Tanner crab, shrimp, miscellaneous shellfish and bottomfish pots may, instead of complying with paragraph (b)(2)(i) of this section, satisfy the following: a sidewall, which may include the tunnel, must contain an opening at least 18 inches in length, except that shrimp pots must contain an opening at least 6 inches in length. The opening must be laced, sewn, or secured together by a single length of treated or untreated twine, no larger than 36 thread. A galvanic timed-release device, designed to release in no more than 30 days in saltwater, must be integral to the length of twine so that, when the device releases, the twine will no longer secure or obstruct the opening of the pot. The twine may be knotted only at each end and at the attachment points on the galvanic timed-release device. The opening must be within 6 inches of the bottom of the pot and must be parallel with it. The twine may not be tied or looped around the web bars.

(3) For subsistence fishing for salmon, you may not use a gillnet exceeding 50 fathoms in length, unless otherwise specified in this section. The gillnet web must contain at least 30 filaments of equal diameter or at least 6 filaments, each of which must be at least 0.20 millimeter in diameter.

(4) Except as otherwise provided for in this section, you may not obstruct more than one-half the width of any stream with any gear used to take fish for subsistence uses.

(5) You may not use live nonindigenous fish as bait.

(6) You must have your first initial, last name, and address plainly and legibly inscribed on the side of your fish wheel facing midstream of the river.

(7) You may use kegs or buoys of any color but red on any permitted gear, except in the following areas where kegs or buoys of any color, including red, may be used:

(i) Yukon–Northern Area; and
(ii) Kuskokwim Area.

(8) You must have your first initial, last name, and address plainly and legibly inscribed on each keg, buoy, stakes attached to gillnets, stakes identifying gear fished under the ice, and any other unattended fishing gear which you use to take fish for subsistence uses.

(9) You may not use explosives or chemicals to take fish for subsistence uses.

(10) You may not take fish for subsistence uses within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction, unless otherwise indicated.

(11) *Transactions between rural residents.* Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from other rural residents. The Board may recognize regional differences and regulates customary trade differently for separate regions of the State.

(i) Bristol Bay Fishery Management Area—The total cash value per household of salmon taken within Federal jurisdiction in the Bristol Bay Fishery Management Area and exchanged in customary trade to rural residents may not exceed $500.00 annually.

(ii) Upper Copper River District—The total number of salmon per household taken within the Upper Copper River District and exchanged in customary trade to rural residents may not exceed 50 percent of the annual harvest of salmon by the household. No more than 50 percent of the annual household limit may be sold under paragraphs (b)(11) and (12) of this section when taken together. These customary trade sales must be immediately recorded on a customary trade recordkeeping form. The recording requirement and the responsibility to ensure the household limit is not exceeded rests with the seller.

(iii) Customary trade of Yukon River Chinook salmon may only occur between Federally qualified rural residents with a current customary and traditional use determination for Yukon River Chinook salmon.

(12) *Transactions between a rural resident and others.* In customary trade, a rural resident may exchange fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from individuals other than rural residents if the individual who purchases the fish, their parts, or their eggs uses them for personal or family consumption. If you are not a rural resident, you may not sell fish, their parts, or their eggs taken under the regulations in this part. The Board may recognize regional differences and regulates customary trade differently for separate regions of the State.

(i) Bristol Bay Fishery Management Area—The total cash value per household of salmon taken within Federal jurisdiction in the Bristol Bay Fishery Management Area and exchanged in customary trade between rural residents and individuals other

than rural residents may not exceed $400.00 annually. These customary trade sales must be immediately recorded on a customary trade recordkeeping form. The recording requirement and the responsibility to ensure the household limit is not exceeded rest with the seller.

(ii) Upper Copper River District—The total cash value of salmon per household taken within the Upper Copper River District and exchanged in customary trade between rural residents and individuals other than rural residents may not exceed $500.00 annually. No more than 50 percent of the annual household limit may be sold under paragraphs (b)(11) and (12) of this section when taken together. These customary trade sales must be immediately recorded on a customary trade recordkeeping form. The recording requirement and the responsibility to ensure the household limit is not exceeded rest with the seller.

(iii) Customary trade of Yukon River Chinook salmon may only occur between Federally qualified rural residents with a current customary and traditional use determination for Yukon River Chinook salmon.

(13) *No sale to, nor purchase by, fisheries businesses.* (i) You may not sell fish, their parts, or their eggs taken under the regulations in this part to any individual, business, or organization required to be licensed as a fisheries business under Alaska Statute AS 43.75.011 (commercial limited-entry permit or crew license holders excluded) or to any other business as defined under Alaska Statute 43.70.110(1) as part of its business transactions.

(ii) If you are required to be licensed as a fisheries business under Alaska Statute AS 43.75.011 (commercial limited-entry permit or crew license holders excluded) or are a business as defined under Alaska Statute 43.70.110(1), you may not purchase, receive, or sell fish, their parts, or their eggs taken under the regulations in this part as part of your business transactions.

(14) Except as provided elsewhere in this section, you may not take rainbow/steelhead trout.

(15) You may not use fish taken for subsistence use or under subsistence regulations in this part as bait for commercial or sport fishing purposes.

(16) Unless specified otherwise in this section, you may use a rod and reel to take fish without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) If you are required to obtain a subsistence fishing permit for an area, that permit is required to take fish for subsistence uses with rod and reel in that area. The harvest and possession limits for taking fish with a rod and reel in those areas are the same as indicated on the permit issued for subsistence fishing with other gear types.

(ii) Except as otherwise provided for in this section, if you are not required to obtain a subsistence fishing permit for an area, the harvest and possession limits for taking fish for subsistence uses with a rod and reel are the same as for taking fish under State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season and/or harvest limit for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.

(17) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish for subsistence uses at any time.

(18) Provisions on ADF&G subsistence fishing permits that are more restrictive or in conflict with the provisions contained in this section do not apply to Federal subsistence users.

(19) You may not intentionally waste or destroy any subsistence-caught fish or shellfish; however, you may use for bait or other purposes, whitefish, herring, and species for which harvest limits, seasons, or other regulatory methods and means are not provided in this section, as well as the head, tail, fins, and viscera of legally taken subsistence fish.

(20) The taking of fish from waters within Federal jurisdiction is authorized outside of published open seasons or harvest limits if the harvested fish will be used for food in traditional or religious ceremonies that are part of funerary or mortuary cycles, including memorial potlatches, provided that:

(i) Prior to attempting to take fish, the person (or designee) or Tribal Government organizing the ceremony contacts the appropriate Federal fisheries manager to provide the nature of the ceremony, the parties and/or clans involved, the species and the number of fish to be taken, and the Federal waters from which the harvest will occur;

(ii) The taking does not violate recognized principles of fisheries conservation, and uses the methods and means allowable for the particular species published in the applicable Federal regulations (the Federal fisheries manager will establish the number, species, or place of taking if necessary for conservation purposes);

(iii) Each person who takes fish under this section must, as soon as practical, and not more than 15 days after the harvest, submit a written report to the appropriate Federal fisheries manager, specifying the harvester's name and address, the number and species of fish taken, and the date and locations of the taking; and

(iv) No permit is required for taking under this section; however, the harvester must be eligible to harvest the resource under Federal regulations.

(c) *Fishing permits and reports.* (1) You may take salmon only under the authority of a subsistence fishing permit, unless a permit is specifically not required in a particular area by the subsistence regulations in this part, or unless you are retaining salmon from your commercial catch consistent with paragraph (d) of this section.

(2) If a subsistence fishing permit is required by this section, the following permit conditions apply unless otherwise specified in this section:

(i) You may not take more fish for subsistence use than the limits set out in the permit;

(ii) You must obtain the permit prior to fishing;

(iii) You must have the permit in your possession and readily available for inspection while fishing or transporting subsistence-taken fish;

(iv) If specified on the permit, you must record, prior to leaving the fishing site, daily records of the catch, showing the number of fish taken by species, location and date of catch, and other such information as may be required for management or conservation purposes; and

(v) If the return of catch information necessary for management and conservation purposes is required by a fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances. You must also return any tags or transmitters that have been attached to fish for management and conservation purposes.

(d) *Relation to commercial fishing activities.* (1) If you are a Federally qualified subsistence user who also commercial fishes, you may retain fish for subsistence purposes from your lawfully-taken commercial catch.

(2) When participating in a commercial and subsistence fishery at the same time, you may not use an

amount of combined fishing gear in excess of that allowed under the appropriate commercial fishing regulations.

(e) *Fishery management area restrictions.* (1) *Kotzebue Area.* The Kotzebue Area includes all waters of Alaska between the latitude of the westernmost tip of Point Hope and the latitude of the westernmost tip of Cape Prince of Wales, including those waters draining into the Chukchi Sea.

(i) You may take fish for subsistence purposes without a permit.

(ii) You may take salmon only by gillnets, beach seines, or a rod and reel.

(iii) In the Kotzebue District, you may take sheefish with gillnets that are not more than 50 fathoms in length, nor more than 12 meshes in depth, nor have a stretched-mesh size larger than 7 inches.

(iv) You may not obstruct more than one-half the width of a stream, creek, or slough with any gear used to take fish for subsistence uses, except from May 15 to July 15 and August 15 to October 31 when taking whitefish or pike in streams, creeks, or sloughs within the Kobuk River drainage and from May 15 to October 31 in the Selawik River drainage. Only one gillnet 100 feet or less in length with a stretched-mesh size from 2½ to 4½ inches may be used per site. You must check your net at least once in every 24-hour period.

(2) *Norton Sound–Port Clarence Area.* The Norton Sound–Port Clarence Area includes all waters of Alaska between the latitude of the westernmost tip of Cape Prince of Wales and the latitude of Point Romanof, including those waters of Alaska surrounding St. Lawrence Island and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you may take fish at any time in the Port Clarence District.

(ii) In the Norton Sound District, you may take fish at any time except as follows:

(A) In Subdistricts 2 through 6, if you are a commercial fishermen, you may not fish for subsistence purposes during the weekly closures of the State commercial salmon fishing season, except that from July 15 through August 1, you may take salmon for subsistence purposes 7 days per week in the Unalakleet and Shaktoolik River drainages with gillnets which have a stretched-mesh size that does not exceed 4½ inches, and with beach seines;

(B) In the Unalakleet River from June 1 through July 15, you may take salmon only from 8:00 a.m. Monday until 8:00 p.m. Saturday.

(C) Federal public waters of the Unalakleet River, upstream from the mouth of the Chirosky River, are closed to the taking of Chinook salmon from July 1 to July 31, by all users. The BLM field manager is authorized to open the closed area to Federally qualified subsistence users or to all users when run strength warrants.

(iii) You may take salmon only by gillnets, beach seines, fish wheel, or a rod and reel.

(iv) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, jigging gear, spear, lead, or a rod and reel.

(v) In the Unalakleet River from June 1 through July 15, you may not operate more than 25 fathoms of gillnet in the aggregate nor may you operate an unanchored gillnet.

(3) *Yukon–Northern Area.* The Yukon–Northern Area includes all waters of Alaska between the latitude of Point Romanof and the latitude of the westernmost point of the Naskonat Peninsula, including those waters draining into the Bering Sea, and all waters of Alaska north of the latitude of the westernmost tip of Point Hope and west of 141° West longitude, including those waters draining into the Arctic Ocean and the Chukchi Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Yukon–Northern Area at any time. In those locations where subsistence fishing permits are required, only one subsistence fishing permit will be issued to each household per year. You may subsistence fish for salmon with rod and reel in the Yukon River drainage 24 hours per day, 7 days per week, unless rod and reel are specifically otherwise restricted in paragraph (e)(3) of this section.

(ii) For the Yukon River drainage, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action.

(iii) In the following locations, you may take salmon during the open weekly fishing periods of the State commercial salmon fishing season and may not take them for 24 hours before the opening of the State commercial salmon fishing season:

(A) In District 4, excluding the Koyukuk River drainage;

(B) In Subdistricts 4B and 4C from June 15 through September 30, salmon may be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday;

(C) In District 6, excluding the Kantishna River drainage, salmon may be taken from 6:00 p.m. Friday until 6:00 p.m. Wednesday.

(iv) During any State commercial salmon fishing season closure of greater than 5 days in duration, you may not take salmon during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk River drainage, salmon may not be taken from 6:00 p.m. Friday until 6:00 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5D, salmon may not be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday.

(v) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than salmon at any time.

(vi) In Districts 1, 2, 3, and Subdistrict 4A, excluding the Koyukuk and Innoko River drainages, you may not take salmon for subsistence purposes during the 24 hours immediately before the opening of the State commercial salmon fishing season.

(vii) In Districts 1, 2, and 3:

(A) After the opening of the State commercial salmon fishing season through July 15, you may not take salmon for subsistence for 18 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period;

(B) After July 15, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period.

(viii) In Subdistrict 4A after the opening of the State commercial salmon fishing season, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period; however, you may take Chinook salmon during the State commercial fishing season, with drift gillnet gear only, from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday.

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

(A) Kanuti River upstream from a point 5 miles downstream of the State highway crossing;

(B) Bonanza Creek;

(C) Jim River including Prospect and Douglas Creeks.

(x) You may not subsistence fish in the Delta River.

(xi) In Beaver Creek downstream from the confluence of Moose Creek, a gillnet with mesh size not to exceed 3-inches

stretch-measure may be used from June 15 through September 15. You may subsistence fish for all non-salmon species but may not target salmon during this time period (retention of salmon taken incidentally to non-salmon directed fisheries is allowed). From the mouth of Nome Creek downstream to the confluence of Moose Creek, only rod and reel may be used. From the mouth of Nome Creek downstream to the confluence of O'Brien Creek, the daily harvest and possession limit is 5 grayling; from the mouth of O'Brien Creek downstream to the confluence of Moose Creek, the daily harvest and possession limit is 10 grayling. The Nome Creek drainage of Beaver Creek is closed to subsistence fishing for grayling.

(xii) You may not subsistence fish in the Toklat River drainage from August 15 through May 15.

(xiii) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(A) In the Yukon River drainage, you may not take salmon for subsistence fishing using gillnets with stretched mesh larger than 7.5 inches.

(B) [Reserved]

(xiv) In District 4, if you are a commercial fisherman, you may not take salmon for subsistence purposes during the State commercial salmon fishing season using gillnets with stretched-mesh larger than 6 inches after a date specified by ADF&G emergency order issued between July 10 and July 31.

(xv) In Districts 4, 5, and 6, you may not take salmon for subsistence purposes by drift gillnets, except as follows:

(A) In Subdistrict 4A upstream from the mouth of Stink Creek, you may take Chinook salmon by drift gillnets less than 150 feet in length from June 10 through July 14, and chum salmon by drift gillnets after August 2;

(B) In Subdistrict 4A downstream from the mouth of Stink Creek, you may take Chinook salmon by drift gillnets less than 150 feet in length from June 10 through July 14;

(C) In the Yukon River mainstem, Subdistricts 4B and 4C you may take Chinook salmon during the weekly subsistence fishing opening(s) by drift gillnets no more than 150 feet long and no more than 35 meshes deep, from June 10 through July 14.

(xvi) Unless otherwise specified in this section, you may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the State commercial salmon fishing season, if you are a commercial fisherman, you may not operate more than one type of gear at a time, for commercial, personal use, and subsistence purposes.

(B) You may not use an aggregate length of set gillnet in excess of 150 fathoms and each drift gillnet may not exceed 50 fathoms in length.

(C) In Districts 4, 5, and 6, you may not set subsistence fishing gear within 200 feet of other operating commercial use, personal use, or subsistence fishing gear except that, at the site approximately 1 mile upstream from Ruby on the south bank of the Yukon River between ADF&G regulatory markers containing the area known locally as the ''Slide,'' you may set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear, and in District 4, from Old Paradise Village upstream to a point 4 miles upstream from Anvik, there is no minimum distance requirement between fish wheels.

(D) During the State commercial salmon fishing season, within the Yukon River and the Tanana River below the confluence of the Wood River, you may use drift gillnets and fish wheels only during open subsistence salmon fishing periods.

(E) In Birch Creek, gillnet mesh size may not exceed 3-inches stretch-measure from June 15 through September 15.

(xvii) In District 4, from September 21 through May 15, you may use jigging gear from shore ice.

(xviii) You must possess a subsistence fishing permit for the following locations:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from the upstream mouth of 22 Mile Slough to the U.S.-Canada border;

(C) Only for salmon in the Tanana River drainage above the mouth of the Wood River.

(xix) Only one subsistence fishing permit will be issued to each household per year.

(xx) In Districts 1, 2, and 3, from June 1 through July 15, you may not possess Chinook salmon taken for subsistence purposes unless both tips (lobes) of the tail fin have been removed before the person conceals the salmon from plain view or transfers the salmon from the fishing site.

(xxi) In the Yukon River drainage, Chinook salmon must be used primarily for human consumption and may not be targeted for dog food. Dried Chinook salmon may not be used for dog food anywhere in the Yukon River drainage. Whole fish unfit for human consumption (due to disease, deterioration, deformities), scraps, and small fish (16 inches or less) may be fed to dogs. Also, whole Chinook salmon caught incidentally during a subsistence chum salmon fishery in the following time periods and locations may be fed to dogs:

(A) After July 10 in the Koyukuk River drainage;

(B) After August 10, in Subdistrict 5D, upstream of Circle City.

(4) *Kuskokwim Area.* The Kuskokwim Area consists of all waters of Alaska between the latitude of the westernmost point of Naskonat Peninsula and the latitude of the southernmost tip of Cape Newenham, including the waters of Alaska surrounding Nunivak and St. Matthew Islands and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Kuskokwim Area at any time without a subsistence fishing permit.

(ii) For the Kuskokwim area, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action.

(iii) In District 1, Kuskokuak Slough, from June 1 through July 31 only, you may not take salmon for 16 hours before and during each State open commercial salmon fishing period in the district.

(iv) In Districts 4 and 5, from June 1 through September 8, you may not take salmon for 16 hours before or during, and for 6 hours after each State open commercial salmon fishing period in each district.

(v) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, from June 1 through September 8 you may not take salmon by net gear or fish wheel for 16 hours before or during, and for 6 hours after each open commercial salmon fishing period in the district. You may subsistence fish for salmon with rod and reel 24 hours per day, 7 days per week, unless rod and reel are specifically restricted by paragraph (e)(4) of this section.

(vi) You may not take subsistence fish by nets in the Goodnews River east of a line between ADF&G regulatory markers placed near the mouth of the Ufigag River and an ADF&G regulatory marker placed near the mouth of the Tunulik River 16 hours before or during,

and for 6 hours after each State open commercial salmon fishing period.

(vii) You may not take subsistence fish by nets in the Kanektok River upstream of ADF&G regulatory markers placed near the mouth 16 hours before or during, and for 6 hours after each State open commercial salmon fishing period.

(viii) You may not take subsistence fish by nets in the Arolik River upstream of ADF&G regulatory markers placed near the mouth 16 hours before or during, and for 6 hours after each State open commercial salmon fishing period.

(ix) You may only take salmon by gillnet, beach seine, fish wheel, or rod and reel subject to the restrictions set out in this section, except that you may also take salmon by spear in the Kanektok, and Arolik River drainages, and in the drainage of Goodnews Bay.

(x) You may not use an aggregate length of set gillnets or drift gillnets in excess of 50 fathoms for taking salmon.

(xi) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, dip net, jigging gear, spear, lead, handline, or rod and reel.

(xii) You must attach to the bank each subsistence gillnet operated in tributaries of the Kuskokwim River and fish it substantially perpendicular to the bank and in a substantially straight line.

(xiii) Within a tributary to the Kuskokwim River in that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, you may not set or operate any part of a set gillnet within 150 feet of any part of another set gillnet.

(xiv) The maximum depth of gillnets is as follows:

(A) Gillnets with 6-inch or smaller stretched-mesh may not be more than 45 meshes in depth;

(B) Gillnets with greater than 6-inch stretched-mesh may not be more than 35 meshes in depth.

(xv) You may not use subsistence set and drift gillnets exceeding 15 fathoms in length in Whitefish Lake in the Ophir Creek drainage. You may not operate more than one subsistence set or drift gillnet at a time in Whitefish Lake in the Ophir Creek drainage. You must check the net at least once every 24 hours.

(xvi) You may take rainbow trout only in accordance with the following restrictions:

(A) You may take rainbow trout only by the use of gillnets, dip nets, fyke nets, handline, spear, rod and reel, or jigging through the ice;

(B) You may not use gillnets, dip nets, or fyke nets for targeting rainbow trout from March 15 through June 15;

(C) If you take rainbow trout incidentally in other subsistence net fisheries and through the ice, you may retain them for subsistence purposes;

(D) There are no harvest limits with handline, spear, rod and reel, or jigging.

(5) *Bristol Bay Area.* The Bristol Bay Area includes all waters of Bristol Bay, including drainages enclosed by a line from Cape Newenham to Cape Menshikof.

(i) Unless restricted in this section, or unless under the terms of a subsistence fishing permit, you may take fish at any time in the Bristol Bay area.

(ii) In all State commercial salmon districts, from May 1 through May 31 and October 1 through October 31, you may subsistence fish for salmon only from 9:00 a.m. Monday until 9:00 a.m. Friday. From June 1 through September 30, within the waters of a commercial salmon district, you may take salmon only during State open commercial salmon fishing periods.

(iii) In the Egegik River from 9:00 a.m. June 23 through 9:00 a.m. July 17, you may take salmon only during the following times: from 9:00 a.m. Tuesday to 9:00 a.m. Wednesday and from 9:00 a.m. Saturday to 9:00 a.m. Sunday.

(iv) You may not take fish from waters within 300 feet of a stream mouth used by salmon.

(v) You may not subsistence fish with nets in the Tazimina River and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14.

(vi) Within any district, you may take salmon, herring, and capelin by set gillnets only.

(vii) Outside the boundaries of any district, unless otherwise specified, you may take salmon by set gillnet only.

(A) You may also take salmon by spear in the Togiak River, excluding its tributaries.

(B) You may also use drift gillnets not greater than 10 fathoms in length to take salmon in the Togiak River in the first two river miles upstream from the mouth of the Togiak River to the ADF&G regulatory markers.

(C) You may also take salmon without a permit in Lake Clark and its tributaries by snagging (by handline or rod and reel), using a spear, bow and arrow, or capturing by bare hand.

(D) You may also take salmon by beach seines not exceeding 25 fathoms in length in Lake Clark, excluding its tributaries.

(E) You may also take fish (except rainbow trout) with a fyke net and lead in tributaries of Lake Clark and the tributaries of Sixmile Lake within and adjacent to the exterior boundaries of Lake Clark National Park and Preserve unless otherwise prohibited.

(1) You may use a fyke net and lead only with a permit issued by the Federal in-season manager.

(2) All fyke nets and leads must be attended at all times while in use.

(3) All materials used to construct the fyke net and lead must be made of wood and be removed from the water when the fyke net and lead is no longer in use.

(viii) The maximum lengths for set gillnets used to take salmon are as follows:

(A) You may not use set gillnets exceeding 10 fathoms in length in the Egegik River;

(B) In the remaining waters of the area, you may not use set gillnets exceeding 25 fathoms in length.

(ix) You may not operate any part of a set gillnet within 300 feet of any part of another set gillnet.

(x) You must stake and buoy each set gillnet. Instead of having the identifying information on a keg or buoy attached to the gillnet, you may plainly and legibly inscribe your first initial, last name, and subsistence permit number on a sign at or near the set gillnet.

(xi) You may not operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(xii) During State closed commercial herring fishing periods, you may not use gillnets exceeding 25 fathoms in length for the subsistence taking of herring or capelin.

(xiii) You may take fish other than salmon, herring and capelin by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(xiv) You may take salmon only under authority of a State subsistence salmon permit (permits are issued by ADF&G) except when using a Federal permit for fyke net and lead.

(xv) Only one State subsistence fishing permit for salmon and one Federal permit for use of a fyke net and lead for all fish (except rainbow trout) may be issued to each household per year.

(xvi) In the Togiak River section and the Togiak River drainage:

(A) You may not possess coho salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.

(B) You may not possess salmon taken with a drift gillnet under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.

(xvii) You may take rainbow trout only by rod and reel or jigging gear. Rainbow trout daily harvest and possession limits are two per day/two in possession with no size limit from April 10 through October 31 and five per day/five in possession with no size limit from November 1 through April 9.

(xviii) If you take rainbow trout incidentally in other subsistence net fisheries, or through the ice, you may retain them for subsistence purposes.

(6) *Aleutian Islands Area.* The Aleutian Islands Area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172° East longitude, and south of 54°36′ North latitude.

(i) You may take fish other than salmon, rainbow/steelhead trout, or char at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) In the Unalaska District, you may take salmon for subsistence purposes from 6:00 a.m. until 9:00 p.m. from January 1 through December 31, except as may be specified on a subsistence fishing permit.

(iii) In the Adak, Akutan, Atka–Amlia, and Umnak Districts, you may take salmon at any time.

(iv) You may not subsistence fish for salmon in the following waters:

(A) The waters of Unalaska Lake, its tributaries and outlet stream;

(B) The waters of Summers and Morris Lakes and their tributaries and outlet streams;

(C) All streams supporting anadromous fish runs that flow into Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point;

(D) Waters of McLees Lake and its tributaries and outlet stream;

(E) All fresh water on Adak Island and Kagalaska Island in the Adak District.

(v) You may take salmon by seine and gillnet, or with gear specified on a subsistence fishing permit.

(vi) In the Unalaska District, if you fish with a net, you must be physically present at the net at all times when the net is being used.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon, trout, and char only under the terms of a subsistence fishing permit, except that you do not need a permit in the Akutan, Umnak, and Atka–Amlia Islands Districts.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit, except that in the Unalaska and Adak Districts, you may take no more than 25 salmon plus an additional 25 salmon for each member of your household listed on the permit. You may obtain an additional permit.

(x) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(7) *Alaska Peninsula Area.* The Alaska Peninsula Area includes all waters of Alaska on the north side of the Alaska peninsula southwest of a line from Cape Menshikof (57°28.34′ North latitude, 157°55.84′ West longitude) to Cape Newenham (58°39.00' North latitude, 162° West longitude) and east of the longitude of Cape Sarichef Light (164°55.70′ West longitude) and on the south side of the Alaska Peninsula from a line extending from Scotch Cape through the easternmost tip of Ugamak Island to a line extending 135° southeast from Kupreanof Point (55°33.98′ North latitude, 159°35.88′ West longitude).

(i) You may take fish, other than salmon, rainbow/steelhead trout, or char, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries or through the ice, you may retain them for subsistence purposes.

(ii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(iii) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(iv) You may take salmon at any time, except in those districts and sections open to commercial salmon fishing where salmon may not be taken during the 24 hours before and 12 hours following each State open weekly commercial salmon fishing period, or as may be specified on a subsistence fishing permit.

(v) You may not subsistence fish for salmon in the following waters:

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

(B) Trout Creek and within 500 yards outside its mouth.

(vi) You may take salmon by seine, gillnet, rod and reel, or with gear specified on a subsistence fishing permit. You may also take salmon without a permit by snagging (by handline or rod and reel), using a spear, bow and arrow, or capturing by bare hand.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may not use a set gillnet exceeding 100 fathoms in length.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on your subsistence fishing permit.

(8) *Chignik Area.* The Chignik Area includes all waters of Alaska on the south side of the Alaska Peninsula bounded by a line extending 135° southeast for 3 miles from a point near Kilokak Rocks at 57°10.34′ North latitude, 156°20.22′ West longitude (the longitude of the southern entrance to Imuya Bay) then due south, and a line extending 135° southeast from Kupreanof Point at 55°33.98′ North latitude, 159°35.88′ West longitude.

(i) You may take fish other than salmon, rainbow/steelhead trout, or char at any time, except as may be specified by a subsistence fishing permit. For salmon, Federal subsistence fishing openings, closings and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action. Within the Chignik Area, depending upon the area that you may fish, in addition to a State subsistence fishing permit, you may be required to also have a Federal subsistence permit.

If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may take salmon in the Chignik River, with rod and reel, from a point 300 feet upstream of the ADF&G weir to Chignik Lake from January 1 through August 9, with no daily harvest or possession limit under the authority of a Federal subsistence fishing permit. You may take salmon by gillnet in Black Lake or any tributary to Black or Chignik Lakes with a Federal subsistence fishing permit. You may take salmon in the waters of Clark River and Home Creek from their confluence with Chignik Lake upstream 1 mile. In the open waters of Clark River and Home Creek you may take salmon by snagging (handline or rod and reel), spear, bow and arrow, or capture by hand without a permit. The daily harvest and possession limits using these methods are five per day and five in possession.

(iii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit unless

otherwise indicated in this section or as noted in the permit conditions.

(iv) You must keep a record on your permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than the due date listed on the permit.

(v) If you hold a commercial fishing license, you may only subsistence fish for salmon as specified on a subsistence fishing permit.

(vi) You may take salmon by seines, gillnets, rod and reel, or with gear specified on a subsistence fishing permit, except that in Chignik Lake, you may not use purse seines. You may also take salmon without a permit by snagging (by handline or rod and reel), using a spear, bow and arrow, or capturing by bare hand.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(9) *Kodiak Area.* The Kodiak Area includes all waters of Alaska south of a line extending east from Cape Douglas (58°51.10′ North latitude), west of 150° West longitude, north of 55°30.00′ North latitude, and north and east of a line extending 135° southeast for three miles from a point near Kilokak Rocks at 57°10.34′ North latitude, 156°20.22′ West longitude (the longitude of the southern entrance of Imuya Bay), then due south.

(i) You may take fish other than salmon, rainbow/steelhead trout, char, bottomfish, or herring at any time unless restricted by the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may take salmon for subsistence purposes 24 hours a day from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, you may not use salmon seine vessels to take subsistence salmon for 24 hours before or during, and for 24 hours after any State open commercial salmon fishing period. The use of skiffs from any type of vessel is allowed.

(B) From June 1 through September 15, you may use purse seine vessels to take salmon only with gillnets, and you may have no other type of salmon gear on board the vessel.

(iii) You may not subsistence fish for salmon in the following locations:

(A) Womens Bay closed waters—All waters inside a line from the tip of the Nyman Peninsula (57°43.23′ North latitude, 152°31.51′ West longitude), to the northeastern tip of Mary's Island (57°42.40′ North latitude, 152°32.00′ West longitude), to the southeastern shore of Womens Bay at 57°41.95′ North latitude, 152°31.50′ West longitude.

(B) Buskin River closed waters—All waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80′ North latitude, 152°28.38′ West longitude, to a point offshore at 57°45.35′ North latitude, 152°28.15′ West longitude, to a marker located onshore south of the river mouth at approximately 57°45.15′ North latitude, 152°28.65′ West longitude.

(C) All waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek.

(D) In Afognak Bay north and west of a line from the tip of Last Point to the tip of River Mouth Point.

(E) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek.

(F) All fresh water systems of Afognak Island.

(iv) You must have a subsistence fishing permit for taking salmon, trout, and char for subsistence purposes. You must have a subsistence fishing permit for taking herring and bottomfish for subsistence purposes during the State commercial herring sac roe season from April 15 through June 30.

(v) The annual limit for a subsistence salmon fishing permit holder is as follows:

(A) In the Federal public waters of Kodiak Island, east of the line from Crag Point south to the westernmost point of Saltery Cove, including the waters of Woody and Long Islands, and the salt waters bordering this area within 1 mile of Kodiak Island, excluding the waters bordering Spruce Island, 25 salmon for the permit holder plus an additional 25 salmon for each member of the same household whose names are listed on the permit: an additional permit may be obtained upon request.

(B) In the remainder of the Kodiak Area not described in paragraph (e)(9)(v)(A) of this section, there is no annual harvest limit for a subsistence salmon fishing permit holder.

(vi) You must record on your subsistence permit the number of subsistence fish taken. You must record all harvested fish prior to leaving the fishing site, and must return the permit by the due date marked on permit.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon only by gillnet, rod and reel, or seine.

(ix) You must be physically present at the net when the net is being fished.

(10) *Cook Inlet Area.* The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58°51.10′ N. Lat.) and a line extending south from Cape Fairfield (148°50.25′ W. Long.).

(i) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Cook Inlet Area. If you take rainbow/steelhead trout incidentally in subsistence net fisheries, you may retain them for subsistence purposes, unless otherwise prohibited or provided for in this section. With jigging gear through the ice or rod and reel gear in open waters there is an annual limit of two rainbow/steelhead trout 20 inches or longer, taken from Kenai Peninsula fresh waters.

(ii) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit (as may be modified by this section). For all fish that must be marked and recorded on a permit in this section, they must be marked and recorded prior to leaving the fishing site. The fishing site includes the particular Federal public waters and/or adjacent shoreline from which the fish were harvested.

(iii) You may not take grayling or burbot for subsistence purposes.

(iv) You may take only salmon, trout, Dolly Varden, and other char under authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein. Additionally for Federally managed waters of the Kasilof and Kenai River drainages:

(A) Residents of Ninilchik may take sockeye, Chinook, coho, and pink salmon through a dip net and a rod and reel fishery on the upper mainstem of the Kasilof River from a Federal regulatory marker on the river below the outlet of Tustumena Lake downstream to a marker on the river approximately 2.8 miles below the Tustumena Lake boat ramp. Residents using rod and reel gear may fish with up to two baited single or treble hooks. Other species incidentally caught during the dip net and rod and reel fishery may be retained for subsistence uses, including up to 200 rainbow/steelhead trout taken through August 15. After 200 rainbow/steelhead trout have been taken in this

fishery or after August 15, all rainbow/steelhead trout must be released unless otherwise provided for in this section. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing site.

(1) Fishing for sockeye and Chinook salmon will be allowed June 16–August 15.

(2) Fishing for coho and pink salmon will be allowed June 16–October 31.

(3) Fishing for sockeye, Chinook, coho, or pink salmon will end prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.

(4) Each household may harvest their annual sockeye, Chinook, coho, or pink salmon limits in one or more days, and each household member may fish with a dip net or a rod and reel during this time. Salmon taken in the Kenai River system dip net and rod and reel fishery will be included as part of each household's annual limit for the Kasilof River.

(i) For sockeye salmon—annual total harvest limit of 4,000; annual household limits of 25 for each permit holder and 5 additional for each household member;

(ii) For Chinook salmon—annual harvest limit of 500; annual household limit of 10 for each permit holder and 2 additional for each household member;

(iii) For coho salmon—annual total harvest limit of 500; annual household limits of 10 for each permit holder and 2 additional for each household member; and

(iv) For pink salmon—annual total harvest limit of 500; annual household limits of 10 for each permit holder and 2 additional for each household member.

(B) In addition to the dip net and rod and reel fishery on the upper mainstem of the Kasilof River described under paragraph (e)(10)(iv)(A) of this section, residents of Ninilchik may also take coho and pink salmon through a rod and reel fishery in Tustumena Lake. Before leaving the fishing site, all retained salmon must be recorded on the permit and marked by removing the dorsal fin. Seasons, areas, harvest and possession limits, and methods and means for take are the same as for the taking of these species under Alaska sport fishing regulations (5 AAC 56), except for the following methods and means, and harvest and possession limits:

(1) Fishing will be allowed with up to two baited single or treble hooks.

(2) For coho salmon 16 inches and longer, the daily harvest and possession limits are four per day and four in possession.

(3) For pink salmon 16 inches and longer, daily harvest and possession limits are six per day and six in possession.

(C) Resident fish species including lake trout, rainbow/steelhead trout, and Dolly Varden/Arctic char may be harvested in Federally managed waters of the Kasilof River drainage. Resident fish species harvested in the Kasilof River drainage under the conditions of a Federal subsistence permit must be marked by removing the dorsal fin immediately after harvest and recorded on the permit prior to leaving the fishing site.

(1) Lake trout may be harvested with rod and reel gear the entire year. For fish 20 inches or longer, daily harvest and possession limits are four per day and four in possession. For fish less than 20 inches, daily harvest and possession limits are 15 per day and 15 in possession.

(2) Dolly Varden/Arctic char may be harvested with rod and reel gear the entire year. In flowing waters, daily harvest and possession limits are four per day and four in possession. In lakes and ponds, daily harvest and possession limits are 10 fish per day and 10 in possession.

(3) Rainbow trout may be harvested with rod and reel gear the entire year for fish less than 20 inches in length. In flowing waters, daily harvest and possession limits are two per day and two in possession. In lakes and ponds, daily harvest and possession limits are five per day and five in possession.

(4) You may fish in Tustumena Lake with a gillnet, no longer than 10 fathoms, fished under the ice or jigging gear used through the ice under authority of a Federal subsistence fishing permit. The total annual harvest quota for this fishery is 200 lake trout, 200 rainbow trout, and 500 Dolly Varden/Arctic char. The use of a gillnet will be prohibited by special action after the harvest quota of any species has been met. For the jig fishery, annual household limits are 30 fish in any combination of lake trout, rainbow trout or Dolly Varden/Arctic char.

(i) You may harvest fish under the ice only in Tustumena Lake. Gillnets are not allowed within a ¼ mile radius of the mouth of any tributary to Tustumena Lake, or the outlet of Tustumena Lake.

(ii) Permits will be issued by the Federal fisheries manager or designated representative, and will be valid for the winter season, unless the season is closed by special action.

(iii) All harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing site. Reported information must include number of each species caught; number of each species retained; length, depth (number of meshes deep) and mesh size of gillnet fished; fishing site; and total hours fished. Harvest data on the permit must be filled out before transporting fish from the fishing site.

(iv) The gillnet must be checked at least once in every 48-hour period.

(v) For unattended gear, the permittee's name and address must be plainly and legibly inscribed on a stake at one end of the gillnet.

(vi) Incidentally caught fish may be retained and must be recorded on the permit before transporting fish from the fishing site.

(vii) Failure to return the completed harvest permit by May 31 may result in issuance of a violation notice and/or denial of a future subsistence permit.

(D) Residents of Hope, Cooper Landing, and Ninilchik may take only sockeye salmon through a dip net and a rod and reel fishery at one specified site on the Russian River, and sockeye, late-run Chinook, coho, and pink salmon through a dip net/rod and reel fishery at two specified sites on the Kenai River below Skilak Lake and as provided in this section. For Ninilchik residents, salmon taken in the Kasilof River Federal subsistence fish wheel, and dip net/rod and reel fishery will be included as part of each household's annual limit for the Kenai and Russian Rivers' dip net and rod and reel fishery. For both Kenai River fishing sites below Skilak Lake, incidentally caught fish may be retained for subsistence uses, except for early-run Chinook salmon (unless otherwise provided for), rainbow trout 18 inches or longer, and Dolly Varden 18 inches or longer, which must be released. For the Russian River fishing site, incidentally caught fish may be retained for subsistence uses, except for early- and late-run Chinook salmon, coho salmon, rainbow trout, and Dolly Varden, which must be released. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing site, and permits must be returned to the manager by the due date listed on the permit. Chum salmon that are retained are to be included within the annual limit for sockeye salmon. Only residents of Cooper Landing, Hope, and Ninilchik

may retain incidentally caught resident species.

(1) The household dip net and rod and reel gear fishery is limited to three sites:

(i) At the Kenai River Moose Range Meadows site, dip netting is allowed only from a boat from a Federal regulatory marker on the Kenai River at about river mile 29 downstream approximately 2.5 miles to another marker on the Kenai River at about river mile 26.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to two baited single or treble hooks June 15–August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56 and 5 AAC 57 and 5 AAC 77.540).

(ii) At the Kenai River Mile 48 site, dip netting is allowed while either standing in the river or from a boat, from Federal regulatory markers on both sides of the Kenai River at about river mile 48 (approximately 2 miles below the outlet of Skilak Lake) downstream approximately 2.5 miles to a marker on the Kenai River at about river mile 45.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to two baited single or treble hooks June 15–August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56, 5 AAC 57, and 5 AAC 77.540).

(iii) At the Russian River Falls site, dip netting is allowed from a Federal regulatory marker near the upstream end of the fish ladder at Russian River Falls downstream to a Federal regulatory marker approximately 600 yards below Russian River Falls. Residents using rod and reel gear at this fishery site may not fish with bait at any time.

(2) Fishing seasons are as follows:

(i) For sockeye salmon at all fishery sites: June 15–August 15;

(ii) For late-run Chinook, pink, and coho salmon at both Kenai River fishery sites only: July 16–September 30; and

(iii) Fishing for sockeye, late-run Chinook, coho, or pink salmon will close by special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.

(3) Each household may harvest their annual sockeye, late-run Chinook, coho, or pink salmon limits in one or more days, and each household member may fish with a dip net or rod and reel during this time. Salmon taken in the Kenai River system dip net and rod and reel fishery by Ninilchik households will be included as part of those household's annual limits for the Kasilof River.

(i) For sockeye salmon—annual total harvest limit of 4,000 (including any retained chum salmon); annual household limits of 25 for each permit holder and 5 additional for each household member;

(ii) For late-run Chinook salmon—annual total harvest limit of 1,000; annual household limits of 10 for each permit holder and 2 additional for each household member;

(iii) For coho salmon—annual total harvest limit of 3,000; annual household limits of 20 for each permit holder and 5 additional for each household member; and

(iv) For pink salmon—annual total harvest limit of 2,000; annual household limits of 15 for each permit holder and 5 additional for each household member.

(E) For Federally managed waters of the Kenai River and its tributaries, in addition to the dip net and rod and reel fisheries on the Kenai and Russian rivers described under paragraph (e)(10)(iv)(D) of this section, residents of Hope, Cooper Landing, and Ninilchik may take sockeye, Chinook, coho, pink, and chum salmon through a separate rod and reel fishery in the Kenai River drainage. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Permits must be returned to the Federal fisheries manager by the due date listed on the permit. Incidentally caught fish, other than salmon, are subject to regulations found in paragraphs (e)(10)(iv)(F) and (G) of this section. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means (including motor boat restrictions) for take are the same as for the taking of these salmon species under State of Alaska fishing regulations (5 AAC 56, 5 AAC 57 and 5 AAC 77.54), except for the following harvest and possession limits:

(1) In the Kenai River below Skilak Lake, fishing is allowed with up to two baited single or treble hooks June 15–August 31.

(2) For early-run Chinook salmon less than 46 inches or 55 inches or longer, daily harvest and possession limits are two per day and two in possession.

(3) For late-run Chinook salmon 20 inches and longer, daily harvest and possession limits are two per day and two in possession.

(4) Annual harvest limits for any combination of early- and late-run Chinook salmon are four for each permit holder.

(5) For other salmon 16 inches and longer, the combined daily harvest and possession limits are six per day and six in possession, of which no more than four per day and four in possession may be coho salmon, except for the Sanctuary Area and Russian River, for which no more than two per day and two in possession may be coho salmon.

(F) For Federally managed waters of the Kenai River and its tributaries below Skilak Lake outlet at river mile 50, residents of Cooper Landing, Hope, and Ninilchik may take resident fish species including lake trout, rainbow trout, and Dolly Varden/Arctic char with jigging gear through the ice or rod and reel gear in open waters. Resident fish species harvested in the Kenai River drainage under the conditions of a Federal subsistence permit must be marked by removal of the dorsal fin immediately after harvest and recorded on the permit prior to leaving the fishing site. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means (including motor boat restrictions) for take are the same as for the taking of these resident species under State of Alaska fishing regulations (5 AAC 56, 5 AAC 57, and 5 AAC 77.54), except for the following harvest and possession limits:

(1) For lake trout 20 inches or longer, daily harvest and possession limits are four per day and four in possession. For fish less than 20 inches, daily harvest and possession limits are 15 per day and 15 in possession.

(2) In flowing waters, daily harvest and possession limits for Dolly Varden/Arctic char less than 18 inches in length are one per day and one in possession. In lakes and ponds, daily harvest and possession limits are two per day and two in possession. Only one of these fish can be 20 inches or longer.

(3) In flowing waters, daily harvest and possession limits for rainbow/steelhead trout are one per day and one in possession and must be less than 18 inches in length. In lakes and ponds, daily harvest and possession limits are two per day and two in possession of which only one fish 20 inches or longer may be harvested daily.

(G) For Federally managed waters of the upper Kenai River and its tributaries above Skilak Lake outlet at river mile 50, residents of Cooper Landing, Hope, and Ninilchik may take resident fish species including lake trout, rainbow trout, and Dolly Varden/Arctic char with jigging gear through the ice or rod and reel gear in open waters. Resident fish species harvested in the Kenai River drainage under the conditions of a Federal subsistence permit must be marked by removal of the dorsal fin

immediately after harvest and recorded on the permit prior to leaving the fishing site. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means (including motor boat restrictions) for take are the same as for the taking of these resident species under Alaska fishing regulations (5 AAC 56, 5 AAC 57, 5 AAC 77.54), except for the following harvest and possession limits:

(1) For lake trout 20 inches or longer, daily harvest and possession limits are four per day and four in possession. For fish less than 20 inches, daily harvest and possession limits are 15 fish per day and 15 in possession. For Hidden Lake, daily harvest and possession limits are two per day and two in possession regardless of size.

(2) In flowing waters, daily harvest and possession limits for Dolly Varden/Arctic char less than 16 inches are one per day and one in possession. In lakes and ponds, daily harvest and possession limits are two per day and two in possession of which only one fish 20 inches or longer may be harvested daily.

(3) In flowing waters, daily harvest and possession limits for rainbow/steelhead trout are one per day and one in possession and it must be less than 16 inches in length. In lakes and ponds, daily harvest and possession limits are two per day and two in possession of which only one fish 20 inches or longer may be harvested daily.

(H) Residents of Ninilchik may harvest sockeye, Chinook, coho, and pink salmon through a fish wheel fishery in the Federal public waters of the upper mainstem of the Kasilof River. Residents of Ninilchik may retain other species incidentally caught in the Kasilof River except for rainbow/steelhead trout, which must be released and returned unharmed to the water.

(1) Only one fish wheel can be operated on the Kasilof River. The fish wheel must have a live box, must be monitored when fishing, must be stopped from fishing when it is not being monitored or used, and must be installed and operated in compliance with any regulations and restrictions for its use within the Kenai National Wildlife Refuge.

(2) One registration permit will be available and will be awarded by the Federal in-season fishery manager, in consultation with the Kenai National Wildlife Refuge manager, based on the merits of the operation plan. The registration permit will be issued to an organization that, as the fish wheel owner, will be responsible for its construction, installation, operation, use, and removal in consultation with the Federal fishery manager. The owner may not rent or lease the fish wheel for personal gain. As part of the permit, the organization must:

(i) Prior to the season, provide a written operation plan to the Federal fishery manager including a description of how fishing time and fish will be offered and distributed among households and residents of Ninilchik;

(ii) During the season, mark the fish wheel with a wood, metal, or plastic plate at least 12 inches high by 12 inches wide that is permanently affixed and plainly visible, and that contains the following information in letters and numerals at least 1 inch high: registration permit number; organization's name and address; and primary contact person name and telephone number;

(iii) After the season, provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, person or households operating the gear, hours of operation, and number of each species caught and retained or released.

(3) People operating the fish wheel must:

(i) Have a valid Federal subsistence fishing permit in their possession;

(ii) If they are not the fish wheel owner, attach an additional wood, metal, or plastic plate at least 12 inches high by 12 inches wide to the fish wheel that is plainly visible, and that contains their fishing permit number, name, and address in letters and numerals at least 1 inch high;

(iii) Remain on site to monitor the fish wheel and remove all fish at least every hour;

(iv) Before leaving the site, mark all retained fish by removing their dorsal fin and record all retained fish on their fishing permit; and

(v) Within 72 hours of leaving the site, report their harvest to the Federal fisheries manager.

(4) The fish wheel owner (organization) may operate the fish wheel for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:

(i) Identifies a person who will be responsible for operating the fish wheel;

(ii) Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.

(5) Fishing will be allowed from June 16 through October 31 on the Kasilof River unless closed or otherwise restricted by Federal special action.

(6) Salmon taken in the fish wheel fishery will be included as part of dip net/rod and reel fishery annual total harvest limits for the Kasilof River and as part of dip net/rod and reel household annual limits of participating households.

(7) Fishing for each salmon species will end and the fishery will be closed by Federal special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.

(8) You may take smelt with dip nets in fresh water only from April 1–June 15. There are no harvest or possession limits for smelt.

(9) Gillnets may not be used in fresh water, except for the taking of whitefish in the Tyone River drainage and as otherwise provided for in this Cook Inlet section.

(11) *Prince William Sound Area.* The Prince William Sound Area includes all waters and drainages of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(i) You may take fish, other than rainbow/steelhead trout, in the Prince William Sound Area only under authority of a subsistence fishing permit, except that a permit is not required to take eulachon. You make not take rainbow/steelhead trout, except as otherwise provided for in paragraph (e)(11) of this section.

(A) In the Prince William Sound Area within Chugach National Forest and in the Copper River drainage downstream of Haley Creek you may accumulate Federal subsistence fishing harvest limits with harvest limits under State of Alaska sport fishing regulations provided that accumulation of fishing harvest limits does not occur during the same day.

(B) You may accumulate harvest limits of salmon authorized for the Copper River drainage upstream from Haley Creek with harvest limits for salmon authorized under State of Alaska sport fishing regulations.

(ii) You may take fish by gear listed in paragraph (b)(1) of this section unless restricted in this section or under the terms of a subsistence fishing permit.

(iii) If you catch rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes, unless restricted in this section.

(iv) In the Copper River drainage, you may take salmon only in the waters of the Upper Copper River District, or in the vicinity of the Native Village of Batzulnetas.

(v) In the Upper Copper River District, you may take salmon only by fish wheels, rod and reel, or dip nets.

(vi) Rainbow/steelhead trout and other freshwater fish caught incidentally to salmon by fish wheel in the Upper Copper River District may be retained.

(vii) Freshwater fish other than rainbow/steelhead trout caught incidentally to salmon by dip net in the Upper Copper River District may be retained. Rainbow/steelhead trout caught incidentally to salmon by dip net in the Upper Copper River District must be released unharmed to the water.

(viii) You may not possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit, or rainbow/steelhead trout caught incidentally to salmon by fish wheel, unless the anal fin has been immediately removed from the fish. You must immediately record all retained fish on the subsistence permit. Immediately means prior to concealing the fish from plain view or transporting the fish more than 50 feet from where the fish was removed from the water.

(ix) You may take salmon in the Upper Copper River District from May 15 through September 30 only.

(x) The total annual harvest limit for subsistence salmon fishing permits in combination for the Glennallen Subdistrict and the Chitina Subdistrict is as follows:

(A) For a household with 1 person, 30 salmon, of which no more than 5 may be Chinook salmon taken by dip net and no more than 5 Chinook taken by rod and reel;

(B) For a household with 2 persons, 60 salmon, of which no more than 5 may be Chinook salmon taken by dip net and no more than 5 Chinook taken by rod and reel, plus 10 salmon for each additional person in a household over 2 persons, except that the household's limit for Chinook salmon taken by dip net or rod and reel does not increase;

(C) Upon request, permits for additional salmon will be issued for no more than a total of 200 salmon for a permit issued to a household with 1 person, of which no more than 5 may be Chinook salmon taken by dip net and no more than 5 Chinook taken by rod and reel, or no more than a total of 500 salmon for a permit issued to a household with 2 or more persons, of which no more than 5 may be Chinook salmon taken by dip net and no more than 5 Chinook taken by rod and reel.

(xi) The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) Only one subsistence fishing permit per subdistrict will be issued to each household per year. If a household has been issued permits for both subdistricts in the same year, both permits must be in your possession and readily available for inspection while fishing or transporting subsistence-taken fish in either subdistrict. A qualified household may also be issued a Batzulnetas salmon fishery permit in the same year;

(B) Multiple types of gear may be specified on a permit, although only one unit of gear may be operated at any one time;

(C) You must return your permit no later than October 31 of the year in which the permit is issued, or you may be denied a permit for the following year;

(D) A fish wheel may be operated only by one permit holder at one time; that permit holder must have the fish wheel marked as required by paragraph (e)(11) of this section and during fishing operations;

(E) Only the permit holder and the authorized member(s) of the household listed on the subsistence permit may take salmon;

(F) You must personally operate your fish wheel or dip net;

(G) You may not loan or transfer a subsistence fish wheel or dip net permit except as permitted.

(xii) If you are a fish wheel owner:

(A) You must register your fish wheel with ADF&G or the Federal Subsistence Board;

(B) Your registration number and a wood, metal, or plastic plate at least 12 inches high by 12 inches wide bearing either your name and address, or your Alaska driver's license number, or your Alaska State identification card number in letters and numerals at least 1 inch high, must be permanently affixed and plainly visible on the fish wheel when the fish wheel is in the water;

(C) Only the current year's registration number may be affixed to the fish wheel; you must remove any other registration number from the fish wheel;

(D) You must check your fish wheel at least once every 10 hours and remove all fish;

(E) You are responsible for the fish wheel; you must remove the fish wheel from the water at the end of the permit period;

(F) You may not rent, lease, or otherwise use your fish wheel used for subsistence fishing for personal gain.

(xiii) If you are operating a fish wheel:

(A) You may operate only one fish wheel at any one time;

(B) You may not set or operate a fish wheel within 75 feet of another fish wheel;

(C) No fish wheel may have more than two baskets;

(D) If you are a permittee other than the owner, you must attach an additional wood, metal, or plastic plate at least 12 inches high by 12 inches wide, bearing your name and address in letters and numerals at least 1 inch high, to the fish wheel so that the name and address are plainly visible.

(xiv) A subsistence fishing permit may be issued to a village council, or other similarly qualified organization whose members operate fish wheels for subsistence purposes in the Upper Copper River District, to operate fish wheels on behalf of members of its village or organization. The following additional provisions apply to subsistence fishing permits issued under this paragraph (e)(11)(xiv) of this section:

(A) The permit will list all households and household members for whom the fish wheel is being operated. The permit will identify a person who will be responsible for each fish wheel in a similar manner to a fish wheel owner as described in paragraph (e)(11)(xii) of this section;

(B) The allowable harvest may not exceed the combined seasonal limits for the households listed on the permit; the permittee will notify the ADF&G or Federal Subsistence Board when households are added to the list, and the seasonal limit may be adjusted accordingly;

(C) Members of households listed on a permit issued to a village council or other similarly qualified organization are not eligible for a separate household subsistence fishing permit for the Upper Copper River District;

(D) The permit will include provisions for recording daily catches for each fish wheel; location and number of fish wheels; full legal name of the individual responsible for the lawful operation of each fish wheel as described in paragraph (e)(11)(xii) of this section; and other information determined to be necessary for effective resource management.

(xv) You may take salmon in the vicinity of the former Native village of Batzulnetas only under the authority of a Batzulnetas subsistence salmon fishing permit available from the National Park Service under the following conditions:

(A) You may take salmon only in those waters of the Copper River between National Park Service regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between National Park Service regulatory markers identifying the open waters of the creek;

(B) You may use only fish wheels, dip nets, and rod and reel on the Copper River and only dip nets, spears, fyke

nets, and rod and reel in Tanada Creek. One fyke net and associated lead may be used in Tanada Creek upstream of the National Park Service weir;

(C) You may take salmon only from May 15 through September 30 or until the season is closed by special action;

(D) You may retain Chinook salmon taken in a fish wheel in the Copper River. You must return to the water unharmed any Chinook salmon caught in Tanada Creek;

(E) You must return the permit to the National Park Service no later than October 15 of the year the permit was issued;

(F) You may only use a fyke net after consultation with the in-season manager. You must be present when the fyke net is actively fishing. You may take no more than 1,000 sockeye salmon in Tanada Creek with a fyke net;

(xvi) You may take pink salmon for subsistence purposes from fresh water with a dip net from May 15 through September 30, 7 days per week, with no harvest or possession limits in the following areas:

(A) Green Island, Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island, and adjacent islands, and the mainland waters from the outer point of Granite Bay located in Knight Island Passage to Cape Fairfield;

(B) Waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.

(12) *Yakutat Area.* The Yakutat Area includes all waters and drainages of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Yakutat Area.

(ii) You may take salmon, trout (other than steelhead), and char only under authority of a subsistence fishing permit. You may take steelhead trout only in the Situk and Ahrnklin Rivers and only under authority of a Federal subsistence fishing permit.

(iii) If you take salmon, trout, or char incidentally by gear operated under the terms of a subsistence permit for salmon, you may retain them for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(iv) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit. In areas where use of rod and reel is allowed, you may use artificial fly, lure, or bait when fishing with rod and reel, unless restricted by Federal permit. If you use bait, you must retain all Federally regulated fish species caught, and they apply to your applicable daily and annual harvest limits for that species. For streams with steelhead, once your daily or annual limit of steelhead is harvested, you may no longer fish with bait for any species.

(v) In the Situk River, each subsistence salmon fishing permit holder shall attend his or her gillnet at all times when it is being used to take salmon.

(vi) You may block up to two-thirds of a stream with a gillnet or seine used for subsistence fishing.

(vii) You must immediately remove both lobes of the caudal (tail) fin from subsistence-caught salmon when taken.

(viii) You may not possess subsistence-taken and sport-taken salmon on the same day.

(ix) You must possess a subsistence fishing permit to take Dolly Varden. The daily harvest and possession limit is 10 Dolly Varden of any size.

(13) *Southeastern Alaska Area.* The Southeastern Alaska Area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(i) Unless restricted in this section or under the terms of a subsistence fishing permit, you may take fish other than salmon, trout, grayling, and char in the Southeastern Alaska Area at any time.

(ii) You must possess a subsistence fishing permit to take salmon, trout, grayling, or char. You must possess a subsistence fishing permit to take eulachon from any freshwater stream flowing into fishing District 1.

(iii) In the Southeastern Alaska Area, a rainbow trout is defined as a fish of the species *Oncorhyncus mykiss* less than 22 inches in overall length. A steelhead is defined as a rainbow trout with an overall length of 22 inches or larger.

(iv) In areas where use of rod and reel is allowed, you may use artificial fly, lure, or bait when fishing with rod and reel, unless restricted by Federal permit. If you use bait, you must retain all Federally regulated fish species caught, and they apply to your applicable daily, seasonal, and annual harvest limits for that species.

(A) For streams with steelhead, once your daily, seasonal, or annual limit of steelhead is harvested, you may no longer fish with bait for any species.

(B) Unless otherwise specified in this paragraph (e)(13) of this section, allowable gear for salmon or steelhead is restricted to gaffs, spears, gillnets, seines, dip nets, cast nets, handlines, or rod and reel.

(v) Unless otherwise specified in this paragraph (e)(13) of this section, you may use a handline for snagging salmon or steelhead.

(vi) You may fish with a rod and reel within 300 feet of a fish ladder unless the site is otherwise posted by the USDA Forest Service. You may not fish from, on, or in a fish ladder.

(vii) You may not accumulate Federal subsistence harvest limits authorized for the Southeastern Alaska Area with any harvest limits authorized under any State of Alaska fishery with the following exception: Annual or seasonal Federal subsistence harvest limits may be accumulated with State sport fishing harvest limits provided that accumulation of harvest limits does not occur during the same day.

(viii) If you take salmon, trout, or char incidentally with gear operated under terms of a subsistence permit for other salmon, they may be kept for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your subsistence fishing permit.

(ix) No permits for the use of nets will be issued for the salmon streams flowing across or adjacent to the road systems within the city limits of Petersburg, Wrangell, and Sitka.

(x) You may not possess subsistence-taken and sport-taken fish of a given species on the same day.

(xi) If a harvest limit is not otherwise listed for sockeye in paragraph (e)(13) of this section, the harvest limit for sockeye salmon is the same as provided for in adjacent State subsistence or personal use fisheries. If a harvest limit is not established for the State subsistence or personal use fisheries, the possession limit is 10 sockeye and the annual harvest limit is 20 sockeye per household for that stream.

(xii) The Sarkar River system above the bridge is closed to the use of all nets by both Federally qualified and non-Federally qualified users.

(xiii) You may take Chinook, sockeye, and coho salmon in the mainstem of the Stikine River only under the authority of a Federal subsistence fishing permit. Each Stikine River permit will be issued to a household. Only dip nets, spears, gaffs, rod and reel, beach seine, or gillnets not exceeding 15 fathoms in length may be used. The maximum gillnet mesh size is 5½ inches, except during the Chinook season when the maximum gillnet mesh size is 8 inches.

(A) You may take Chinook salmon from May 15 through June 20. The annual limit is 5 Chinook salmon per household.

(B) You may take sockeye salmon from June 21 through July 31. The annual limit is 40 sockeye salmon per household.

(C) You may take coho salmon from August 1 through October 1. The annual limit is 20 coho salmon per household.

(D) You may retain other salmon taken incidentally by gear operated under terms of this permit. The incidentally taken salmon must be reported on your permit calendar.

(E) The total annual guideline harvest level for the Stikine River fishery is 125 Chinook, 600 sockeye, and 400 coho salmon. All salmon harvested, including incidentally taken salmon, will count against the guideline for that species.

(xiv) You may take coho salmon with a Federal salmon fishing permit. There is no closed season. The daily harvest limit is 20 coho salmon per household. Only dip nets, spears, gaffs, handlines, and rod and reel may be used. There are specific rules to harvest any salmon on the Stikine River, and you must have a separate Stikine River subsistence salmon fishing permit to take salmon on the Stikine River.

(xv) Unless noted on a Federal subsistence harvest permit, there are no harvest limits for pink or chum salmon.

(xvi) Unless otherwise specified in paragraph (e)(13) of this section, you may take steelhead under the terms of a subsistence fishing permit. The open season is January 1 through May 31. The daily household harvest and possession limit is one with an annual household limit of two. You may only use a dip net, gaff, handline, spear, or rod and reel. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xvii) You may take steelhead trout on Prince of Wales and Kosciusko Islands under the terms of Federal subsistence fishing permits. You must obtain a separate permit for the winter and spring seasons.

(A) The winter season is December 1 through the last day of February, with a harvest limit of two fish per household, however, only 1 steelhead may be harvested by a household from a particular drainage. You may use only a dip net, handline, spear, or rod and reel. You must return your winter season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(B) The spring season is March 1 through May 31, with a harvest limit of five fish per household, however, only 2 steelhead may be harvested by a household from a particular drainage. You may use only a dip net, handline, spear, or rod and reel. You must return your spring season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xviii) In addition to the requirement for a Federal subsistence fishing permit, the following restrictions for the harvest of Dolly Varden, brook trout, grayling, cutthroat, and rainbow trout apply:

(A) The daily household harvest and possession limit is 20 Dolly Varden; there is no closed season or size limit;

(B) The daily household harvest and possession limit is 20 brook trout; there is no closed season or size limit;

(C) The daily household harvest and possession limit is 20 grayling; there is no closed season or size limit;

(D) The daily household harvest limit is 6 and the household possession limit is 12 cutthroat or rainbow trout in combination; there is no closed season or size limit;

(E) You may only use a rod and reel;

(F) The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xix) There is no subsistence fishery for any salmon on the Taku River.

Dated: March 13. 2013.

Kathleen M. O'Reilly-Doyle,

Acting, Assistant Regional Director, U.S. Fish and Wildlife Service, Acting Chair, Federal Subsistence Board.

Dated: March 15. 2013.

Steve Kessler,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 2013–07198 Filed 3–28–13; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0036; FRL–9284–4]

Approval and Disapproval and Promulgation of Air Quality Implementation Plans; Colorado; Revision to Definitions; Common Provisions Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving State Implementation Plan (SIP) revisions submitted by the State of Colorado on June 20, 2003. The intended effect of this final rule is to approve and make federally enforceable those portions of the revisions to Colorado's Common Provisions that are consistent with the Clean Air Act (CAA). Primarily, the revisions involved changes designed to fix ambiguous language, to make the definitions more readable or to delete obsolete definitions. In addition, a number of definitions were revised to reflect developments in federal law or were deleted to eliminate duplicative provisions that appear in other Colorado regulations. EPA is approving portions of the revision that delete duplicative or obsolete definitions, or that clarify existing definitions in a manner consistent with the CAA. In addition, EPA is disapproving those portions of the rule revisions that EPA determined are inconsistent with the CAA. This action is being taken under section 110 of the CAA.

DATES: *Effective Date:* This final rule is effective April 29, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2011–0036. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy

of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Komp, Air Program, U.S. Environmental Protection Agency, Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number (303) 312–6022, fax number (303) 312–6064, *komp.mark@epa.gov.*

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or Colorado mean the State of Colorado, unless the context indicates otherwise.

(v) The initials *AQCC* mean or refer to Air Quality Control Commission.

(vi) The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

(vii) The initials *BACT* mean or refer to Best Available Control Technology, and the initials *LAER* means or refers to Lowest Achievable Emission Rate.

(viii) The initials *ASTM* means or refers to the American Society for Testing and Materials.

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I. Background Information

On June 20, 2003, the State of Colorado submitted revisions to its SIP that changed or deleted numerous definitions in its Common Provisions. Colorado's Common Provisions provide definitions, statement of intent and general provisions that are applicable to all emission control regulations adopted by the State. Primarily, this revision involved changes designed to fix ambiguous language, to make the definitions more readable or to delete obsolete definitions. In addition, a number of definitions were revised to reflect developments in federal law or deleted to eliminate duplicative provisions that appear in other Colorado regulations.

Definitions deleted include: Actual emissions, allowable emissions, best available control technology (BACT), lowest achievable emission rate (LAER) and the modification of a source. These definitions were deleted from the Common Provisions because the State placed these definitions in their Regulation 3.

Revisions to the Common Provisions also include grammatical, formatting and stylistic changes designed to make the regulation more readable. The State made these revisions to achieve consistency in the language used in the State's air quality regulations. These revisions do not change the applicability of any of the air quality regulation requirements. The State also added a number of abbreviations to the existing list.

The State clarified when fuel burning equipment would be considered part of a manufacturing process. The revisions to the Common Provisions change the definition of fuel burning and added a definition for manufacturing process equipment. The result was to clarify that fuel burning emissions are counted as manufacturing process emissions when they are vented through a common stack with other emissions from the manufacturing process. When fuel burning emissions are vented separately, the emissions are subject to regulations unique to fuel burning equipment.

The definition of construction was changed to clarify the distinction between the State's definition and the definition in federal programs. The clarification acknowledges that federal programs may utilize different definitions of construction and, in cases where enforceability of federal programs are involved, the federal program definitions apply. The State also added or modified the definitions of the following terms: continuous monitoring system, day, emergency power generator, enforceable, federally enforceable, and volatile organic compounds.

The State determined that many of its definitions in Section I of the Common Provisions were either obsolete or found in other State air quality regulations. In those cases, the State eliminated the definitions from the Common Provisions. The State revised the provision for Affirmative Defense for excess emissions during start up, shutdown and malfunctions of equipment and moved the provision from Section II.E to Section II.J. The State added language to Section II.I regarding credible evidence in submitting compliance certifications. Finally, the State deleted Sections III and IV of the Common Provisions because the State determined the requirements in these Sections are duplicated in other State regulations. Section III refers to smoking gasoline powered motor vehicles. Section IV addresses conflict of interest by AQCC members.

II. Response to Comments

EPA did not receive comments regarding our proposed rule for Colorado's Common Provisions revisions.

III. Section 110(l) of the CAA

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment of the NAAQS or any other applicable requirement of the Act. The Colorado SIP revisions being approved that are the subject of this document do not interfere with attainment of the NAAQS or any other applicable requirement of the Act. In regard to the June 20, 2003 submittal, EPA proposes to approve several portions of the revisions to the State's Common Provisions. These portions do not relax the stringency of the Colorado SIP. Therefore, the portions of the revisions proposed for approval satisfy section 110(l).

IV. Final Action

We are approving and disapproving revisions to the Common Provisions as submitted on June 20, 2003. EPA is approving specific definitions that were added or modified with the June 20, 2003 Common Provisions submittal. These include the definitions for continuous monitoring system, emergency power generator, enforceable, federally enforceable, fuel burning, manufacturing process or process equipment, and volatile organic compounds.

Changes that correct numerous grammatical, stylistic and formatting errors, duplicative and obsolete provisions, and the addition of several abbreviations within the Common Provisions are also approved by EPA. This includes the deletion of Section III of the Common Provisions regarding smoking gasoline powered motor vehicles. EPA is also approving the deletion of several definitions—actual emissions, allowable emissions, BACT, LAER and modification—that have been moved to Regulation No. 3.

For reasons discussed in the notice of our proposed action, 76 FR 4268, EPA is disapproving the modified definitions of ''construction'' and ''day.'' The additional language added to Section II.I regarding credible evidence in

submitting compliance certifications is disapproved. Finally, EPA is disapproving the deletion of Section IV of the Common Provisions.

EPA will not act on Sections II.E and II.J, defining the provision of Affirmative Defense for excess emissions during start up, shutdown and malfunction of equipment. The State in subsequent revisions sent to EPA modified the Affirmative Defense provision. EPA acted on these subsequent revisions, which supersede the revisions acted on here, in 2008 (40 CFR 52.320(c)(113)).

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 28, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

List of Subjects in 40 CFR Part 52

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

Dated: March 14, 2011.

Carol Rushin,

Acting Regional Administrator, Region 8.

PART 52 [AMENDED]

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

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

Subpart G—Colorado

■ 2. Section 52.320 is amended by adding paragraph (c)(59)(ii) and adding paragraph (c)(118) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(59) * * *

(ii) Common Provisions Regulation, 5 CCR 1001–2, Section III., Smoking Gasoline Powered Motor Vehicle Control Region, is deleted without replacement, effective September 30, 2002, as described in (c)(118) below.

* * * * *

(118) On June 20, 2003, the State of Colorado submitted revisions to Colorado's Common Provisions Regulation, 5 CCR 1001–2, that revised the definitions of continuous monitoring system, emergency power generator, enforceable, federally enforceable, manufacturing process or process equipment, and volatile organic compounds. Deleted definitions included but were not limited to actual emissions, Best Available Control Technology (BACT), Lowest Achievable Emission Rate (LAER), and what conditions determine the modification of a source. These definitions were deleted in the Common Provisions because they appear in Colorado's Regulation 3. The State clarified that fuel burning equipment emissions are considered a part of the manufacturing process emissions when the emissions are vented through a common stack.

However, fuel burning equipment emissions vented from a separate stack are subject to regulations unique to fuel burning equipment. In addition, the State deleted and reserved Section III of the Common Provisions regarding smoking gasoline powered motor vehicles. The provisions regarding smoking gasoline powered motor vehicles were considered by the State to be obsolete. The revisions to the Common Provisions also included minor changes designed to fix ambiguous language, to make the definitions more readable or to delete obsolete or duplicative definitions.

(i) Incorporation by reference.

(A) 5 CCR 1001–2, COMMON PROVISIONS REGULATION, Section 1.,

Definitions, Statement of Intent, and General Provisions Applicable to all Emission Control Regulations Adopted by the Colorado Air Quality Control Commission, except I.G, the definitions for ''Construction'' and ''Day''; Section II, General, except II.E, II.I, and II.J; effective on September 30, 2002.

[FR Doc. 2013–07250 Filed 3–28–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0088; FRL–9783–5]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Particulate Matter Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to convert a conditional approval of specified provisions of the Ohio state implementation plan (SIP) to a full approval. Ohio submitted a request to approve revised particulate matter (PM) rules on February 23, 2012. The PM rule revisions being approved establish work practices for coating operations, add a section clarifying that sources can be subject to both stationary source and fugitive source PM restrictions, and add a PM emission limitation exemption for jet engine testing. Pursuant to a state commitment underlying a previous conditional approval of this rule, the revised rule provides that any exemption from the work practice requirements that the state grants to large coating sources must be submitted to EPA for approval.

DATES: This direct final rule will be effective May 28, 2013, unless EPA receives adverse comments by April 29, 2013. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0088, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakely.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakely, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakely, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2012–0088. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What is the background for this action?
II. What is EPA's analysis of the revision?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is the background for this action?

Ohio sought SIP approval of its revision of Ohio Administrative Code (OAC) Chapter 3745–17 to clarify and amend its PM rules in an August 22, 2008, submission. EPA approved nine sections, partially approved another section, and approved the rescission of another section of the OAC 3745–17 PM rules in an October 26, 2010, direct final rule (75 FR 65567). EPA conditionally approved OAC 3745–17–11 in the October 26, 2010, rule, conditioned on Ohio making specified revisions to the rule. The rule that EPA conditionally approved established work practice requirements for coating sources in lieu of PM emission limits. As written when submitted on August 22, 2008, OAC 3745–17–11 would have authorized Ohio to exempt coating sources that are too large to meet the work practice requirements of the rule from complying with those requirements. No EPA approval of the exemption was required, thus the state could have unilaterally exempted coating sources from the work practice requirements. EPA conditionally approved OAC 3745–17–11 based on a commitment by Ohio to revise the rule to require that any exemption of large coating sources from the work practice requirements be submitted to EPA as a request for revision to the SIP.

Pursuant to its commitment, Ohio revised OAC 3475–17–11, Restrictions on Particulate Emissions from Industrial Sources, on December 13, 2011. The revised rule was effective on December 23, 2011. Ohio revised OAC 3745–17–11 (A)(1)(l) to provide that any exemption from the surface coating PM work

practice requirements for sources coating large size items, which the state may grant when emission control would be technically infeasible, economically unreasonable, or both, must be submitted to EPA for SIP approval. The added language makes clear that state action to grant such an exemption does not exempt the source from Federal enforcement of the work practice requirements in the SIP unless and until EPA approves the exemption.

The version of OAC 3745–17–11 that EPA conditionally approved included other revisions from the PM rules EPA approved into the Ohio SIP on November 8, 2006 (71 FR 65417). Section (A)(5) states that sources can be subject to both fugitive dust and stationary source PM restrictions if that facility emits PM through its stacks as well as emits fugitive dust. Section (A)(1)(m) exempts jet engine test stands from the PM emission limits.

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

EPA finds the revisions to OAC 3745–17–11 submitted on February 23, 2012, to be approvable.

Although the primary emissions of concern from surface coating are the volatile organic compound emissions that arise from solvent evaporation, OAC 3745–17–11 establishes a particulate emission limit for coating operations simply because OAC 3745–17–11 establishes generic emission limits for any process handling material such as coatings and objects being coated. However, testing of particulate emissions from coating operations is difficult, making it difficult to determine whether particular control measures provide for compliance. Therefore, Ohio exempted surface coating operations from the generic emission limits in OAC 3745–17–11 and subjected these sources instead to a set of rules requiring a specific set of work practices that will limit the emissions as well as an emission limit. The exemptions for surface coaters are provided in OAC 3745–17–11 (A)(1)(h) to (l).

As noted in Section I., Ohio revised OAC 3745–17–11 (A)(1)(l) to require EPA approval, as a SIP revision, for all large item exemptions. This satisfies EPA's concerns with director's discretion previously expressed to Ohio regarding the August 22, 2008, submission. Therefore, EPA is now approving OAC 3745–17–11 (A)(1)(l), as submitted on February 23, 2012, into the Ohio SIP.

OAC 3745–17–11 (A)(1)(m) grants an exemption from the rule's PM emission limits for jet engine testing. PM emissions resulting from this exemption are expected to be small given that a small number of engines will be tested at once and only for a limited time. Ohio stated that the maximum PM emissions rate resulting from this exemption will be 10 pounds per hour. EPA finds that this exemption will have de minimis impact and thus finds OAC 3745–17–11 (A)(1)(m) approvable.

Another addition to OAC 3745–17–11 is section (A)(5), which states that source can be subject to both OAC 3745–17–08 and OAC 3745–17–11. This section applies to a source that is a fugitive dust source, as defined by OAC 3745–17–01 (B)(7), and emits PM through one or more stacks. Restrictions on emissions of fugitive dust are given in OAC 3745–17–08. It is logical that a source emitting PM as fugitive dust and also through stack emissions would be subject to the PM emission restrictions for both fugitive sources and for stationary sources. Thus, EPA is approving this addition to the Ohio SIP.

A final important element of Ohio's submittal is OAC 3745–17–11 (C), the requirements for surface coating processes that are exempt under OAC 3745–17–11 (A)(1)(h) to (l). Surface coating processes are required by OAC 3745–17–11 (C)(1) to use a dry particulate filter, waterwash, or equivalent control device to limit PM emission. Subject facilities must follow the work practice requirements given in OAC 3745–17–11 (C)(2) including maintaining documentation, properly operating the control device, and conducting periodic inspections of the control device. This section also requires a surface coating source to comply with any PM emission limits given in a facility's permit instead of the previous listed requirement of OAC 3745–17–11 (C)(1) and (2). EPA finds these requirements to be a suitable equivalent to subjecting these sources to the generic emission limit in Ohio's process weight rate rule.

III. What action is EPA taking?

EPA is converting its prior conditional approval to full approval because Ohio submitted revisions to OAC 3745–17–11 that satisfy the conditions listed in EPA's conditional approval. EPA is approving all of OAC 3745–17–11, as effective on December 23, 2011, into the Ohio SIP.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective May 28, 2013 without further notice unless we receive relevant adverse written comments by April 29, 2013. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective May 28, 2013.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 28, 2013. 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 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 11, 2013.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.1870 is amended by adding paragraph (c)(157) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(157) On February 23, 2012, Ohio submitted revisions to Ohio Administrative Code Chapter 3745–17, Rule 3745–17–11. The revisions contain particulate matter restriction for industrial sources in the State of Ohio necessary to attain and maintain the 2006 24-hour $PM_{2.5}$, annual $PM_{2.5}$, and 24-hour PM_{10} NAAQS.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rule 3745–17–11 ''Restrictions on particulate emissions from industrial processes'', effective December 23, 2011.

(B) December 13, 2011, ''Director's Final Findings and Orders'', signed by Scott J. Nally, Director, Ohio Environmental Protection Agency.

§ 52.1919 [Amended]

■ 3. Section 52.1919 is amended by removing paragraph (c).

[FR Doc. 2013–07259 Filed 3–28–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0860; FRL–9378–6]

Clothianidin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of clothianidin in or on tea, dried and increases the tolerance level for pepper to support a shorter pre-harvest interval (PHI). These tolerances were requested by Interregional Research Project Number 4 (IR–4) and Valent U.S.A. Corporation, respectively, under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 29, 2013. Objections and requests for hearings must be received on or before May 28, 2013, 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: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0860, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; email address: *jackson.sidney@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. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0860 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 May 28, 2013. 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 (excluding any Confidential Business Information (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 the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0860, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of December 8, 2011 (76 FR 76674) (FRL–9328–8) and September 28, 2012 (77 FR 59578) (FRL–9364–6), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions ((PP) 1E7923 and 2F8008) by IR–4, IR–4 Headquarters, 500 College Road East, Suite 201 W, Princeton, NJ 08540 and Valent U.S.A. Corporation, P.O. Box 8025, Walnut Creek, CA 94596, respectively. The petitions requested that 40 CFR 180.586 be amended by establishing tolerances for residues of the insecticide clothianidin, (E)-1-(2-chloro-1,3-thiazol-5-ylmethyl)-3-methyl-2-nitroguanidine, in or on fruit, citrus, group 10–10; citrus, dried pulp; pistachio; strawberry and tea, fresh at 0.60, 1.0, 0.01, 1.50 and 70 parts per million (ppm), respectively, 1E7923; and vegetable, fruiting group 8–10, except pepper/eggplant, subgroup 8–10B; and pepper/eggplant subgroup 8–10B at 0.20, and 0.7 ppm, respectively, 2F8008. In addition, PP 2F8008 requested that 40 CFR 180.586(a) be amended by deleting the tolerance for residues of clothianidin in or on the vegetable, fruiting group 8 at 0.2 ppm, upon approval of vegetables, fruiting, group 8–10, except pepper/eggplant subgroup 8–10B at 0.2 ppm; and replacing the tolerance for residues of clothianidin in or on fruit, pome at 1.0 ppm with fruit, pome group 11–10 at 1.0 ppm due to EPA expansion of the crop group. The above-mentioned **Federal Register** documents referenced a summary of the petition prepared by Valent U.S.A. Corporation, P.O. Box 8025, Walnut Creek, CA 94596, the registrant, which is available in the docket, *http://www.regulations.gov.* One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

At this time, EPA is only establishing tolerances for tea, dried and is increasing the tolerance level for pepper to support PHI for an existing registration. In addition, EPA is re-defining the crop group tolerance expression ''vegetable, fruiting, group 8'' as ''vegetable, fruiting, group 8, except pepper.'' EPA is not prepared to establish tolerances for the remaining petitioned-for clothianidin tolerances until the potential ecological and environmental risks can be assessed. EPA will make a final determination on the other petitioned-for tolerances at a later date. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

EPA considered the toxicity of clothianidin as well as several metabolites and degradates in conducting this risk assessment. EPA assumed that clothianidin's metabolites/degradates that are similar in structure to clothianidin are toxicologically equivalent to clothianidin with respect to the endpoints being used for risk assessment.

The available data indicate that there are no consistent target organs in mammals; however, some effects noted in the liver, hematopoietic system and kidney are similar to effects from other neonicotinoid insecticides. In

subchronic oral studies, the dog seemed to be more sensitive to clothianidin than the rat. In addition to decreases in body weight and body weight gains observed in both animals, dogs also displayed decreased white blood cells, albumin and total protein, as well as some anemia. Long-term dietary administration of clothianidin did not result in a wider spectrum of effects in the dog; in contrast, the chronic feeding studies in rats showed additional effects in the liver, ovaries and kidneys. In the mouse chronic oral study, increases in vocalization and decreases in body weight and body weight gain were noted.

Based on the lack of significant tumor increases in two adequate rodent carcinogenicity studies, EPA has classified clothianidin as ''not likely to be carcinogenic to humans.'' A bone marrow micronucleus assay in mice showed that clothianidin is neither clastogenic nor aneugenic up to a toxic oral dose. Additionally, a study on the livers of Wistar male mice showed no induction of unscheduled DNA synthesis up to the limit dose; therefore, mutagenicity is not of concern.

Clinical signs of neurotoxicity were exhibited in both rats (decreased arousal, motor activity and locomotor activity) and mice (decreased spontaneous motor activity, tremors and deep respirations) in acute neurotoxicity studies following exposure by gavage; however, no indications of neurotoxicity were observed following dietary exposure in the subchronic neurotoxicity study in rats.

There was no evidence of increased quantitative or qualitative susceptibility of rat or rabbit fetuses following *in utero* exposure to clothianidin in developmental studies; however, increased quantitative susceptibility of rat pups was seen in both the reproduction and developmental neurotoxicity studies. In the rat reproduction study, offspring toxicity (decreased body weight gains and absolute thymus weights in pups, delayed sexual maturation and an increase in stillbirths) was observed in the absence of maternal effects. In the developmental neurotoxicity study in rats, offspring effects (decreased body weights, body weight gains, motor activity and acoustic startle response amplitude) were noted at doses lower than those resulting in maternal toxicity.

Decreased absolute and relative thymus and spleen weights were observed in multiple studies; these studies showed possible evidence of effects on the immune system. In addition, juvenile rats in the rat reproduction study appeared to be more susceptible to these effects. However, a guideline immunotoxicity study showed no evidence of clothianidin-mediated immunotoxicity in adult rats and a developmental immunotoxicity study demonstrated no increased susceptibility for offspring with regard to immunotoxicity.

Specific information on the studies received and the nature of the adverse effects caused by clothianidin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document: ''Clothianidin—Aggregate Human Health Risk Assessment of New Uses on Strawberry, Pistachio, and Citrus; New Tolerance for Tea; and Revised PHI and Tolerance for Pepper and Eggplant (Crop Subgroup 8–10B),'' dated September 27, 2012 at page 32, and additional information on pome fruit can be found in document: ''Clothianidin—Human Health Risk Assessment for Requested Foliar Uses on Rice, Seed Treatment on Leafy Vegetables, Increased Application Rate for Vegetables, and Expanded Uses on Fruiting Vegetables and Pome Fruit,'' dated February 1, 2012, in docket ID number EPA–HQ–OPP–2011–0860.

B. Toxicological Points of Departure/Levels of Concern

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

A summary of the toxicological endpoints for clothianidin used for human risk assessment is discussed in Unit II of the final rule published in the **Federal Register** of August 29, 2012 (77 FR 52246) (FRL–9360–4).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to clothianidin, EPA considered exposure for all of the petitioned-for tolerances as well as all existing clothianidin tolerances in 40 CFR 180.586. EPA assessed dietary exposures from clothianidin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for clothianidin. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA used maximum field trial values, empirical processing factors and assumed 100 percent crop treated (PCT) for all commodities. Clothianidin is a major metabolite of thiamethoxam, and there are a number of crops for which uses of both clothianidin and thiamethoxam have been registered. The labels for the various end-use products containing these active ingredients prohibit the application of both active ingredients to the same crop during a growing cycle. Due to that restriction and the assumption of 100 PCT, a single value reflecting the greatest clothianidin residue from either active ingredient has been used for crops listed for use with both active ingredients (versus combined estimates from clothianidin and thiamethoxam). Generally, this assessment uses the established or recommended clothianidin tolerance for crops having tolerances for both compounds (the exception being low-growing berry, subgroup 13–07G, which is based on observed clothianidin residues in thiamethoxam strawberry field trials). For foods with thiamethoxam tolerances but without clothianidin tolerances, maximum residues of clothianidin observed in thiamethoxam field trials have been used in these assessments. Foods falling

into this category include meats, meat by-products, artichoke, tropical fruits, coffee, hop, mint, and rice.

In relying on maximum field trial residues of clothianidin, EPA has adjusted the field trial values upward to account for metabolites of concern for leafy and root and tuber vegetables and for ruminants and poultry. Details on these adjustments are provided in document: ''Clothianidin—Human Health Risk Assessment for Requested Foliar Uses on Rice, Seed Treatment on Leafy Vegetables, Increased Application Rate for Vegetables, and Expanded Uses on Fruiting Vegetables and Pome Fruit,'' dated February 1, 2012, in docket ID number EPA–HQ–OPP–2011–0860.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 2003–2008 NHANES/WWEIA. As to residue levels in food, EPA assessed chronic dietary exposure using the same residue information and assumptions regarding metabolites/degradates as in the acute exposure analysis.

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

iv. *Anticipated residue information.* EPA used anticipated residue (maximum field trial residues) in the dietary assessment for clothianidin.

Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such Data Call-Ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

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

The Agency modeled estimated drinking water concentrations (EDWC) of clothianidin in surface and groundwater using the Tier 1 Rice Model, the Food Quality Protection Act (FQPA) Index Reservoir Screening Tool (FIRST), and the Screening Concentrations in Groundwater model (SCI–GROW). The Tier 1 Rice Model produced the greatest value of any of the models used to predict EDWCs for acute and chronic exposures. The Tier 1 Rice Model EDWC of 72 parts per billion (ppb) was entered directly into the dietary exposure model.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Clothianidin is currently registered for the following uses that could result in residential exposures: Turf, ornamental plants, and/or indoor use to control bed bugs. EPA assessed residential exposure using the following assumptions: Exposures may occur during application of products containing clothianidin (handler exposure) as well as following application (post-application exposure) and are expected to be of short-term (1–30 days) duration.

Adults were assessed for potential short-term dermal and inhalation handler exposure from applying clothianidin to residential turf/home lawns and for short-term post-application dermal exposure from contact with treated residential and recreational turf home lawns and golf courses. There is also potential for post-application dermal and inhalation exposure for adults and children resulting from use of clothianidin on residential turf, ornamentals (*i.e.,* trees), and indoor surfaces, as well as, potential for incidental oral post-application exposure for children.

Although there is potential for adult exposure resulting from both applying the product and post-application activities, the Agency did not combine exposure estimates from adult handler and post-application activities because of the conservative assumptions and inputs within each exposure scenario. The children's combined exposure includes only the hand-to-mouth exposure for the incidental oral exposure component. To include exposure from object-to-mouth and soil ingestion in addition to hand-to-mouth would overestimate incidental oral exposures for purposes of estimating combined residential exposure. Further, because the level of concern for dermal exposures (MOEs less than 100) and inhalation exposure (MOEs less than 1,000) are different, a total aggregate risk index (ARI) approach was used instead of the MOE approach. ARIs of greater than 1 indicate risks are not of concern.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

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

Clothianidin is a member of the neonicotinoid class of pesticides and is a metabolite of another neonicotinoid, thiamethoxam. Structural similarities or common effects do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same sequence of major biochemical events. Although clothianidin and thiamethoxam bind selectively to insect nicotinic acetylcholine receptors (nAChR), the specific binding site(s)/receptor(s) for clothianidin, thiamethoxam, and the other neonicotinoids are unknown at this time. Additionally, the commonality of the binding activity itself is uncertain, as preliminary evidence suggests that clothianidin operates by direct competitive inhibition, while thiamethoxam is a noncompetitive inhibitor. Furthermore, even if future research shows that neonicotinoids share a common binding activity to a specific site on insect nAChRs, there is not necessarily a relationship between this pesticidal action and a mechanism of toxicity in mammals. Structural variations between the insect and mammalian nAChRs produce quantitative differences in the binding affinity of the neonicotinoids towards these receptors, which, in turn, confers the notably greater selective toxicity of this class towards insects, including aphids and leafhoppers, compared to mammals. While the insecticidal action of the neonicotinoids is neurotoxic, the most sensitive regulatory endpoint for clothianidin is based on unrelated effects in mammals, including changes in body and thymus weights, delays in sexual maturation,

and stillbirths. Additionally, the most sensitive toxicological effect in mammals differs across the neonicotinoids (such as testicular tubular atrophy with thiamethoxam, and mineralized particles in thyroid colloid with imidaclopid). Thus, there is currently no evidence to indicate that neonicotinoids share common mechanisms of toxicity, and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the neonicotinoids. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism released by OPP on EPA's Web site at *http://www.epa.gov/pesticides/cumulative/.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There is no residual concern for increased qualitative or quantitative susceptibility in the rat or rabbit developmental toxicity studies. Since there is evidence of increased quantitative susceptibility of the young following exposure to clothianidin in the rat reproduction study and the DNT study, EPA performed a degree of concern analysis to:

i. Determine the level of concern for the effects observed when considered in the context of all available toxicity data; and,

ii. Identify any residual uncertainties after establishing toxicity endpoints and traditional uncertainty factors to be used in the clothianidin risk assessment.

Considering the overall toxicity profile and the endpoints and doses selected for the clothianidin risk assessment, EPA characterized the degree of concern for the effects observed in the clothianidin 2-generation reproduction and DNT studies as *low,* noting that there are clear NOAELs for the offspring effects and regulatory doses were selected to be protective of these effects. No other residual uncertainties were identified with respect to susceptibility.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X in assessing risks from dermal and oral exposure pathways. However, EPA does not have reliable data to support reduction of the FQPA SF in assessing risks from the inhalation exposure pathway and thus is retaining the 10X FQPA SF for these assessments. That decision is based on the following findings:

i. The toxicity database for clothianidin is complete with the exception of a required 28-day inhalation study.

ii. There are no residual concerns regarding potential prenatal and postnatal toxicity in the young. A rat developmental neurotoxicity study is available and shows evidence of increased quantitative susceptibility of offspring. However, EPA considers the degree of concern for the developmental neurotoxicity study to be low for prenatal and postnatal toxicity because the NOAEL and LOAEL were well characterized, and the doses and endpoints selected for risk assessment are protective of the observed susceptibility. While the rat multi-generation reproduction study showed evidence of increased quantitative susceptibility of offspring compared to adults, the degree of concern is low because the study NOAEL has been selected as the POD for risk assessment purposes for relevant exposure routes and durations. In addition, the potential immunotoxic effects observed in the study have been further characterized with the submission of a developmental immunotoxicity study that showed no evidence of susceptibility. As a result, there are no concerns or residual uncertainties for pre- and postnatal toxicity after establishing toxicity endpoints and traditional UFs to be used in the risk assessment for clothianidin.

iii. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on assumptions that were judged to be highly conservative and health-protective for all durations and population subgroups, including maximum field trial residues, adjustment factors from metabolism data, empirical processing factors, and 100 PCT for all commodities. The exposure databases (dietary food, drinking water, and residential) are complete. The risk assessment for each potential exposure scenario includes all metabolites and/or degradates of concern and does not underestimate potential exposure and risk for infants or children. Additionally, EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to clothianidin in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by clothianidin.

In conclusion, there are reliable data showing that, with the exception of scenarios involving inhalation exposure, the risk to infants and children can be safely assessed without an additional 10X safety factor. However, in the absence of the required inhalation toxicity study, EPA is retaining the 10X FQPA factor as a database uncertainty factor for assessing inhalation exposure and risk only, for both adults and children.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute Population adjusted dose (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to clothianidin will occupy 28% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to clothianidin from food and water will utilize 28% of the cPAD for children 1–2 years old the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of clothianidin is not expected;

therefore, the chronic aggregate risk estimates are equivalent to the dietary risk estimates and are below EPA's level of concern.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

For purposes of performing an aggregate assessment, the EPA selected the worst-case adult and children exposure scenarios. The treatment of tree trunks using a manually-pressurized handwand presents the worst-case exposure estimate for adults, while the bed bug scenario presents the worst-case exposure estimates for children 1 to <2 yrs old.

For short- and intermediate-term ''worst-case'' aggregate exposure estimates, the ARI for adults is 6.5 and for children 1 to <2 years old, the ARI is estimated at 1.2. ARI estimated values greater than 1.0 indicate risks are not of concern.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, clothianidin was classified as ''not likely to be carcinogenic to humans,'' and is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to clothianidin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodologies, based on solvent extraction and Liquid chromatography—mass spectrometry/mass spectrometry (LC–MS/MS) separation, identification, and quantification, are available for plant (Morse Method #Meth 164—modified, RM–39C–1, or Bayer Method 00552) and livestock (Bayer Method 00624) matrices. The (LOQ) for clothianidin in plant commodities is 0.01 ppm, except for wheat straw (0.02 ppm), and the validated LOQs are 0.01 ppm in milk and 0.02 ppm in animal tissues. Clothianidin and its major metabolites are not adequately recovered using any of the United States Food and Drug Administration (FDA) multiresidue methods.

The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint 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 established MRLs for clothianidin in or on tea, fresh at 0.7 ppm and fruiting vegetables other than cucurbits at 0.050 ppm. The residue field trial submitted to support the U.S. tolerances results in higher clothianidin residues than the maximum residue levels established by Codex and therefore, the U.S. tolerances cannot be harmonized with the Codex MRLs.

C. Response to Comments

EPA received one comment on the notice of filing for petition, 1E7923, in which the commenter requested that EPA deny IR–4's petition to establish a tolerance for residues of clothianidin on food crops because it is toxic to humans.

When new or amended tolerances are requested for the presence of the residues of a pesticide and its toxicologically significant metabolite(s) in food or feed, the Agency, as is required by section 408 of the FFDCA, estimates the risk of the potential exposure to these residues by performing an aggregate risk assessment. As discussed in Unit III, EPA's assessment for clothianidin concludes that there is a reasonable certainty that no harm will result from exposure to clothianidin residues of interest. Therefore, the tolerances established by this action are found to be acceptable. The commenter submitted no evidence or argument that addresses this statutory finding.

D. Revisions to Petitioned-For Tolerances

In this action EPA is only establishing tolerances for tea, dried and pepper and will make a final determination on the remaining petitioned for tolerances at a later date. Though EPA is able to make the required safety finding under FFDCA and the human health risk assessments support all of the petitioned-for uses, what must still be considered for the additional uses to be registered in the United States are potential ecological and environmental risks associated with clothianidin. Therefore, at this time EPA is only prepared to establish a tolerance on dried tea (without a U.S. registration; *i.e.,* an ''import tolerance'') and to increase the tolerance on pepper to support a shorter pre-harvest interval (PHI).

EPA is still in the process of assessing the potential ecological concerns identified with the additional exposures expected from the registration of the proposed pome fruit group 11–10, pepper/eggplant subgroup 8–10B, citrus fruit group 10–10, pistachio, and strawberry uses. However, in order to support an effort to establish tolerances for residues of pesticides on tea, to ensure a safe supply of tea for the U.S. consumer, EPA has determined it will move forward with establishing the tolerance for clothianidin on tea prior to finalizing the decision on the remaining petitioned for uses. Additionally, there is an existing tolerance for residues of clothianidin on fruiting vegetable group 8 at 0.20 ppm and residue field trial data were submitted for pepper to support a lower PHI which results in a recommended higher tolerance. Though EPA is not prepared to allow the expansion of the Fruiting Vegetable Group 8 at this time to include the additional commodities in Pepper/eggplant Subgroup 8–10B, shortening the PHI on pepper is not expected to result in any additional environmental exposure. Therefore, the EPA has determined that it will establish a higher tolerance for clothianidin on pepper in this action and a final determination on the petition for the pepper/eggplant subgroup 8–10B tolerance will be made at a later date.

As to the tolerance levels, the proposed tea, fresh tolerance at 50 ppm will be established on tea, dried at 70 ppm. The commodity listing is changed from tea, fresh to tea, dried to reflect the commodity from which residue data were collected and to reflect the principal tea commodity that is in the channels of trade. The value of the tolerance is changed based on the

output from the Organisation for Economic Cooperation and Development (OECD) calculation procedures. EPA is also establishing the separate tolerance on pepper at 0.80 ppm which is different than the requested tolerance at 0.7 ppm for pepper/eggplant subgroup 8–10B. EPA based the 0.80 tolerance level on the non-bell-pepper residue data and OECD Calculation Procedures.

Finally, to account for the establishment of a ''separate'' pepper tolerance, EPA re-defined the existing crop group tolerance expression ''vegetable, fruiting, group 8'' as ''vegetable, fruiting, group 8, except pepper''.

V. Conclusion

Therefore, tolerances are established for residues of clothianidin, (E)-1-(2-chloro-1,3-thiazol-5-ylmethyl)-3-methyl-2-nitroguanidine, in or on tea, dried at 70 ppm, pepper at 0.80 ppm, and vegetable, fruiting, group 8, except pepper at 0.20 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

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) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action 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: March 15, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.586 is amended in paragraph (a)(1) by revising the commodity ''vegetable, fruiting, group 8'', by alphabetically adding the commodities ''pepper'' and ''tea, dried'', and by adding footnote 1 to the table to read as follows:

§ 180.586 Clothianidin; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * * *	
Pepper	0.80
* * * * *	
Tea, dried [1]	70
* * * * *	
Vegetable, fruiting, group 8, except pepper	0.20
* * * * *	

[1] No U.S. registrations.

* * * * *

[FR Doc. 2013–07093 Filed 3–28–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 602

[Docket No. FTA–2013–0004]

RIN 2132–AB13

Emergency Relief Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This action establishes procedures governing the implementation of the Federal Transit Administration's (FTA) Public Transportation Emergency Relief Program under 49 U.S.C. 5324, as authorized by the Moving Ahead for Progress in the 21st Century Act. FTA is issuing this interim final rule in order to comply with the Disaster Relief Appropriations Act of 2013. FTA will accept comments on the interim final rule and will publish a final rule after the comment period closes.

DATES: This interim final rule becomes effective on March 29, 2013. Comments on this interim final rule are due May 28, 2013. Late-filed comments will be considered to the extent practicable. In compliance with the Paperwork Reduction Act, FTA is also seeking

comment on a new information collection. See the Paperwork Reduction Act section under Regulatory Analyses and Notices below. Please submit all comments relating to new information collection requirements to FTA and to the Office of Management and Budget (OMB) at the address listed in the **ADDRESSES** section on or before May 28, 2013. Comments to OMB are most useful if submitted within 30 days of publication.

ADDRESSES: Please submit your comments by only one of the following methods, identifying your submission by docket number FTA–2013–0004. All electronic submissions must be made to the U.S. Government electronic site at *http://www.regulations.gov*.

(1) *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

(2) *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

(3) *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

(4) *Fax:* 202–493–2251.

Comments regarding the proposed information collection should be submitted to FTA through one of the preceding methods and a copy should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention: FTA Desk Officer.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA–2013–0004) for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA received your comments, include a self-addressed stamped postcard. Note that all comments received will be posted without change to *www.regulations.gov* including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477).

Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program issues: Adam Schildge, Office of Program Management, 1200 New Jersey Ave. SE., Room E44–420, Washington, DC 20590, phone: (202) 366–0778, or email, *Adam.Schildge@dot.gov*. For legal issues: Bonnie Graves, Office of Chief Counsel, same address, Room E56–306, phone: (202) 366–4011, or email, *Bonnie.Graves@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Moving Ahead for Progress in the 21st Century Act (MAP–21, Pub. L. 112–141) authorized the Public Transportation Emergency Relief Program at 49 U.S.C. 5324. The Emergency Relief Program allows FTA to make grants for eligible public transportation capital and operating costs in the event of a catastrophic event, such as a natural disaster, that affects a wide area, as a result of which the Governor of a State has declared an emergency and the Secretary of Transportation has concurred, or the President has declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, 42 U.S.C. 5121–5207).

The Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2), enacted on January 29, 2013, provides $10.9 billion for FTA's Emergency Relief Program solely for recovery, relief and resiliency efforts in areas affected by Hurricane Sandy. The law provides that not more than $2 billion shall be made available no later than March 30, 2013. On February 6, 2013, FTA issued a notice of availability of emergency relief funds for the first $2 billion (78 FR 8691). In accordance with the statute, the remainder of the appropriated funds will be made available only after FTA enters into a Memorandum of Agreement (MOA) with the Federal Emergency Management Agency (FEMA) as required by section 20017(b) of MAP–21, and FTA issues interim regulations for the Emergency Relief Program. FTA entered into an MOA with FEMA on March 4, 2013 (available at *http://www.fta.dot.gov/documents/FTA_FEMA_MOA.pdf*). This interim final rule meets the requirement for interim regulations.

Projects funded through the Disaster Relief Appropriations Act of 2013 are subject to section 904(c) of that Act, which requires expenditure of funds within 24 months of grant obligation, unless this requirement is waived for this program in accordance with guidance to be issued by the Office of Management and Budget. In all cases, oversight procedures will be put in place to ensure that projects are implemented in accordance with the project schedule.

This interim final rule applies to FTA's Emergency Relief Program, authorized at 49 U.S.C. 5324, and is not limited to Hurricane Sandy response. The rule includes a description of eligible projects, the criteria FTA will use to identify projects for funding, and additional details on how FTA will administer the program. As with FTA's recent **Federal Register** notice of availability of emergency relief funds for Hurricane Sandy (78 FR 8691, Feb. 6, 2013), FTA will set priorities regarding the type of projects that will most likely receive funding for each specific emergency, based on the facts of the emergency and the type of relief most needed, as well as the availability of annual and supplemental appropriations. FTA seeks public comment on this interim final rule.

Authority

Section 5324(a)(2) of title 49, United States Code, defines an ''emergency'' as follows:

> The term 'emergency' means a natural disaster affecting a wide area (such as a flood, hurricane, tidal wave, earthquake, severe storm, or landslide) or a catastrophic failure from any external cause, as a result of which—
>
> (A) the Governor of a State has declared an emergency and the Secretary has concurred; or
>
> (B) the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

Section 5324(b) of title 49, United States Code, authorizes the Secretary to make awards for FTA's Emergency Relief (Emergency Relief) Program as follows:

> General Authority.—The Secretary may make grants and enter into contracts and other agreements (including agreements with departments, agencies, and instrumentalities of the Government) for—
>
> (1) capital projects to protect, repair, reconstruct, or replace equipment and facilities of a public transportation system operating in the United States or on an Indian reservation that the Secretary determines is in danger of suffering serious damage, or has suffered serious damage, as a result of an emergency; and
>
> (2) eligible operating costs of public transportation equipment and facilities in an area directly affected by an emergency during—

(A) the 1-year period beginning on the date of a declaration described in subsection (a)(2); or

(B) if the Secretary determines there is a compelling need, the 2-year period beginning on the date of a declaration described in subsection (a)(2).

In addition, section 5324(d) provides that a grant awarded under section 5324 shall be subject to the terms and conditions the Secretary determines are necessary, and made only for expenses that are not reimbursed under the Stafford Act. Accordingly, FTA will not fund project expenses that FEMA has funded.

Section-by-Section Analysis

Section 602.1 Purpose

This section states the purpose of the rule, which is to establish policy and provide program requirements for the administration of emergency relief funds for emergency public transportation services, and the protection, replacement, repair or reconstruction of public transportation equipment and facilities which have suffered or are in danger of suffering serious damage by a natural disaster over a wide area or a catastrophic failure from an external cause.

Section 602.3 Applicability

This section specifies that part 602 applies to entities that provide public transportation services and that are impacted by emergencies and major disasters.

Section 602.5 Definitions

This section provides definitions that apply to terms used in part 602. Some of the definitions are statutory, such as ''emergency,'' which is found in 49 U.S.C. 5324, ''major disaster,'' found in the Stafford Act, and ''net project cost,'' found in 49 U.S.C. 5302. Other definitions, such as ''catastrophic failure,'' ''emergency repairs,'' ''external cause,'' ''heavy maintenance,'' and ''serious damage'' are included in the Federal Highway Administration's (FHWA) emergency relief rule (23 CFR part 668). For consistency, FTA has incorporated these definitions into the FTA Emergency Relief Program.

The definition of ''emergency operations'' is consistent with the definition in 49 U.S.C. 5324. Eligible emergency operating assistance expenses are for operating costs outside the scope of a recipient's typical service or operations, and include but are not limited to: costs to assist with evacuations prior to an emergency and to assist with rescue operations; the net project cost of providing temporary public transportation service, such as bus or ferry service around inoperable rail lines, or additional service to meet the needs of an influx of evacuees; and the net project costs related to reestablishing, expanding, or relocating public transportation service before, during, or after an emergency or major disaster.

Section 5324 provides that capital projects to ''protect'' equipment and facilities in danger of suffering serious damage are an eligible expense. FTA has included two definitions that address these types of projects. First, ''emergency protective measures'' are actions taken immediately before, during or after an emergency to protect public health and safety, and to protect property from immediate damage or from further immediate damage. Such actions eliminate or lessen immediate threats to public health or safety, or eliminate or lessen the immediate threat of significant damage or additional damage to an affected recipient's property through measures that are cost effective. This definition is consistent with FEMA's description of emergency protective measures in 44 CFR 206.225. Some examples of emergency protective measures include, but are not limited to: moving rolling stock to protect it from damage, for example, to higher ground in order to protect it from storm surges; emergency communications; security forces; sandbagging; bracing/shoring damaged structures; debris removal; dewatering; and removal of health and safety hazards.

Second, for this rule, we have defined the term ''resilience'' to mean a capability to anticipate, prepare for, respond to, and recover from significant multi-hazard threats with minimum damage to social well-being, the economy, and the environment. This definition of ''resilience'' is consistent with the definition in the *2010 Interagency Climate Change Adaptation Task Force Progress Report to the President* and *America's Climate Choices: Adapting to the Impacts of Climate Change* by the National Academy of Sciences. A ''resiliency project'' is a project designed and built to address future vulnerabilities to a public transportation facility or system due to future recurrence of emergencies or major disasters that are likely to occur again in the geographic area in which the public transportation system is located; or projected changes in development patterns, demographics, or extreme weather or other climate patterns. ''Permanent repairs'' are defined as those repairs undertaken following the disaster occurrence for the purpose of repairing, replacing or reconstructing seriously damaged public transportation system elements, including rolling stock, equipment, facilities and infrastructure to a state of good repair. For all capital projects, the cost to perform the work, whether by in-house or contracted personnel, is an eligible cost. FTA seeks public comment on these definitions.

Section 602.7 Policy

This section describes FTA's policies related to the Emergency Relief Program. FTA's first goal in the Emergency Relief Program is to assist public transportation agencies in restoring public transportation service and in repairing and reconstructing transit assets to a state of good repair as expeditiously as possible. FTA has not defined the term ''state of good repair'' in this rule. This summer, FTA plans to issue interim policy guidance on the definition of the term state of good repair, and also plans to issue an advance notice of proposed rulemaking for the transit asset management program authorized by 49 U.S.C. 5326. In conjunction with repair and reconstruction activities, a second goal is to increase the resiliency of affected public transportation systems in order to help protect those systems from damage due to future emergencies and major disasters.

Grants awarded with section 5324 funds, as well as grants awarded under sections 5307 and 5311 for emergency relief purposes, may be made only for expenses that are not reimbursed by FEMA under the Stafford Act, or by other Federal agencies, or by insurance proceeds. If an applicant has already received FEMA or other Federal agency funding or insurance proceeds, the applicant may not apply for FTA emergency relief funding for the same project expenses. However, partial compensation for a loss by such other sources will not preclude FTA participation for the part of the loss not compensated. For example, insurance proceeds may only cover the value of a vehicle at the time it was destroyed, and not the cost to replace that vehicle. Consistent with FTA Circular 5010.1D, FTA may participate in the replacement cost beyond what the insurance proceeds may cover.

If FTA makes a grant and the recipient subsequently receives compensation from another source, the funds received from the other source must be used to reduce FTA's share of the project cost. FTA seeks public comment on the aforementioned policies and other policies for ensuring emergency relief funds are expended efficiently and consistent with the law's purposes.

The language in FTA's Emergency Relief Program at 49 U.S.C. 5324 is the same as the FHWA's Emergency Relief Program at 23 U.S.C. 125, in that assets must have ''suffered serious damage.'' FHWA's Emergency Relief Program rule provides that the Emergency Relief Program ''is not intended to fund heavy maintenance or routine emergency repair activities which should normally be funded as contingency items in the State and local road programs.'' 23 CFR 668.105(j). Therefore, FHWA has determined that eligible Emergency Relief repair activities in a State in the range of $700,000 (Federal share) or more are usually significant enough to justify approval of Emergency Relief funds.

FTA has not included such a provision in this interim final rule, but has included a definition of heavy maintenance and § 602.13 provides that heavy maintenance is not an eligible activity. FTA seeks public comment on whether and how, in a final rule, FTA should establish a similar policy that sets a minimum monetary damage threshold for FTA participation in the cost of repair, reconstruction, or replacement activities for public transportation systems after an emergency. Similarly, FTA seeks comment on whether there should be a minimum monetary cost threshold for emergency protective measures or emergency operations. Further, on what basis should FTA establish minimum cost thresholds for FTA participation, given that the size of public transportation systems and the resources of entities that operate them vary? In other words, should such a threshold vary based on the size of public transportation systems, as measured by annual revenue miles, directional miles, number of vehicles, unlinked passenger trips, budget, or some other basis?

Section 602.9 Federal Share

This section of the interim final rule provides that the Federal share for emergency relief project funds made available under 49 U.S.C. 5324, for both operating and capital projects, shall be for up to 80 percent of the project cost, unless the Secretary waives the local share requirement. This section also provides that when a recipient chooses to use funds available to it under 49 U.S.C. 5307 or 5311 for emergency projects, the Federal share will be 80 percent for capital projects and 50 percent for operating projects, which is consistent with the Federal share requirements of those sections. FTA seeks public comment on these Federal share requirements.

Section 602.11 Pre-Award Authority

This section describes the conditions under which FTA will grant pre-award authority. The purpose of pre-award authority is to allow affected recipients to respond to critical needs in preparation for, or in the immediate aftermath of, an emergency or major disaster, and in advance of receiving a grant from FTA under the Emergency Relief Program. Generally, pre-award authority will be effective beginning on the effective date of the declared emergency or major disaster, and subject to the appropriation of Emergency Relief Program funds. In expected weather events, such as hurricanes, pre-award authority for evacuations and activities to protect public transportation vehicles, equipment and facilities, shall be effective within a reasonable period of time in advance of the event, such as during the period the storm is forecast with some certainty to hit the affected area. FTA seeks comment on whether the language ''forecast with some certainty to hit the affected area'' is specific enough, or if FTA should adopt a policy with more specificity. FEMA Policy FP 010–4, May 18, 2012, (*pre_disaster_emergency_declaration_requests_policy_fp010_4[2].pdf*) provides the conditions under which FEMA will fund pre-disaster emergency protective measures. For example, a Federal agency must determine or affirm that a potential major disaster is imminent, the Governor must take action under State law and direct execution of the State emergency plan, and Direct Federal Assistance must be needed to meet critical emergency protection requirements before impact that are beyond the capability or capacity of the State, tribal or local governments; or the appropriate State, tribal, or local governments must have issued evacuation orders for three or more areas or for a geographical area with a combined population of more than 100,000 individuals. Adopting text similar to this in the final rule would provide affected recipients with some certainty as to when FTA would fund emergency protective measures, evacuations, etc.

Pre-award authority shall be subject to a maximum amount as determined by FTA. Except as provided in section 602.15 of this interim final rule, all applicable Federal grant requirements must be met for the project to remain eligible for Federal funding. As with pre-award authority for FTA's other programs, pre-award authority is not a legal or implied commitment that the project will be approved for FTA assistance or that FTA will obligate Federal funds, and affected recipients expend local funds at their own risk. Furthermore, pre-award authority is not a legal or implied commitment that all activities undertaken by the applicant will be eligible for inclusion in the project. In other words, not all activities undertaken by the applicant may be eligible for Federal assistance, even if the project is otherwise eligible. FTA seeks public comment on the use of pre-award authority for the Emergency Relief Program.

Section 602.13 Eligible Activities

This section describes the eligible activities under 49 U.S.C. 5324, as well as activities ineligible for emergency relief funding. An affected recipient may apply for section 5324 emergency relief funds on behalf of itself as well as affected subrecipients.

Emergency operations, emergency protective measures, emergency repairs, permanent repairs and resiliency projects, as those terms are defined in section 602.5 of this rule, are eligible for emergency relief funding. Affected recipients should repair, replace or reconstruct seriously damaged public transportation system elements as necessary to restore the elements to a state of good repair taking into account current as well as future conditions and risks. For example, replace destroyed rolling stock with new rolling stock, replace older seriously damaged elements with new ones, incorporate current design standards, replace a destroyed facility at a different location when replacing at the existing location is not practical or feasible, or when doing so will eliminate vulnerabilities to future disasters, incorporate additional required features resulting from the environmental review process, and incorporate or add protective features or design standards in order to protect the equipment or facilities from future damage. In other words, FTA does not expect affected recipients to replace old, destroyed rolling stock, equipment, and elements of facilities with similarly-aged rolling stock, equipment, and elements of facilities. Instead, affected recipients should replace these destroyed elements with new ones. New rolling stock acquired to replace destroyed rolling stock should be fully compliant with current safety and other design standards, including the Americans with Disabilities Act (ADA), as well as Buy America requirements. Facilities damaged by the emergency or disaster that require substantial work to bring into a state of good repair should be similarly brought up to current design standards, including the ADA. In addition, where

feasible, resiliency projects should be incorporated into replacement and repairs such that equipment, facilities and infrastructure will be protected from future disasters.

It is not the intent or purpose of the Emergency Relief Program to provide substitute funding for regular capital maintenance that is not a result of an emergency or major disaster. Therefore, heavy maintenance and projects for which funds were obligated in an FTA grant prior to the declared emergency or major disaster are not eligible expenses under the Emergency Relief Program. In addition, FTA will not fund project costs for which the recipient has received funding through FEMA, another Federal agency or through insurance proceeds. In general, projects that change the function of the original infrastructure, and do not enhance or otherwise improve system resiliency—for example, a change from a bus rapid transit system to light rail, or a replacement of bus shelters with intermodal facilities, or projects that significantly upgrade a maintenance facility—do not qualify for Emergency Relief funding. However, formula and other funds available to the recipient may be used in conjunction with Emergency Relief Program funds to make substantial changes or improvements to an affected transit asset during the course of an Emergency Relief project.

Replacing damaged diesel buses with compressed natural gas or other clean fuel buses is eligible under the Emergency Relief Program, but any costs associated with new alternative fueling stations or maintenance facilities is not eligible for Emergency Relief funds. Those associated costs are eligible, however, under FTA's formula programs, and recipients and subrecipients may use funds apportioned under sections 5307 or 5311 formula funds for those costs. Lost revenue as a result of service disruptions is not an eligible expense. Finally, project costs associated with the replacement or replenishment of stockpiles of materials that are not the property of the affected recipient and have not yet been integrated into the public transportation system are not eligible. This would include contractor-owned property on a construction site that has not yet been installed, and would be covered by the contractor's insurance company. This is distinguished from the cost to replace spare parts and other maintenance items necessary for the operation of the system that are seriously damaged or destroyed as a result of an emergency, which is an eligible expense. FTA seeks public comment on the list of eligible and ineligible activities.

FTA also requests comment on the extent of the benefit-cost analysis that is appropriate to carry out in the context of emergency repairs, permanent repairs, and resiliency projects. Because the benefits of resiliency projects include a reduction in the risk of damage from future emergencies, FTA particularly requests comments on the extent of risk analysis that should be conducted for resiliency projects. Similarly, factoring in the full cost of the loss of the function or service provided by critical transit infrastructure can affect how benefit-cost analyses should be addressed. For example, damage to rail and transit infrastructure can result in additional costs to transit riders who would use alternative modes of travel or forgo a trip, and result in decreases in business productivity because employees cannot get to work. Similarly, the transit system serves to help move people and goods before, during and after an emergency, a function that is very detrimental to lose and expensive to replace once lost. FTA welcomes comment on how these costs should be taken into account in a benefit-cost analysis.

Section 602.15 Grant Requirements

Section 5324(d) of title 49, United States Code provides that a grant awarded under sections 5324, 5307 and 5311 that is made to address an emergency shall be subject to the terms and conditions the Secretary determines are necessary. In general, projects will be subject to the requirements of chapter 53 of title 49, United States Code, as well as cross-cutting requirements, including but not limited to those outlined in FTA's Master Agreement.

This section provides information as to when FTA may determine the inapplicability of Federal requirements in order to expedite restoration of service through delivery of Emergency Relief Program funds. FTA will determine the terms and conditions of Emergency Relief grants based on the circumstances of a specific emergency or major disaster for which funding is available under the Emergency Relief Program.

FTA may determine the inapplicability of requirements associated with public transportation programs as necessary and appropriate for emergency repairs, permanent repairs, and emergency operating expenses that are incurred within 45 days of the emergency or major disaster, or longer as determined by FTA. This 45-day period is consistent with FTA's charter rule at 49 CFR 604.2(f), which provides that the charter rule does not apply to a recipient for actions directly responding to an emergency or major disaster. If FTA determines that any requirement does not apply, this determination shall apply to all eligible activities undertaken with funds authorized under 49 U.S.C. 5324 within the 45-day period, as well as funds authorized under 49 U.S.C. 5307 and 5311 and used for eligible emergency relief activities.

In the event an affected recipient or subrecipient finds that FTA requirements would limit the recipient's or subrecipient's ability to respond to an emergency or major disaster, the affected recipient or subrecipient may request that applicable requirements be waived in accordance with the emergency relief docket process as outlined below. Affected recipients and subrecipients should never assume that a waiver will be granted.

Under 49 CFR part 601, subpart D, FTA establishes an emergency relief docket each calendar year. The purpose of the docket is to allow recipients affected by national or regional emergencies to request relief from FTA administrative requirements set forth in FTA policy statements, circulars, guidance documents, and regulations. As stated above, 49 U.S.C. 5324(d) provides that a grant awarded under section 5324 or under section 5307 or 5311 to address an emergency shall be subject to the terms and conditions the Secretary determines are necessary. Effective with calendar year 2013, recipients affected by an emergency or major disaster may request waivers of chapter 53 requirements when the requirement(s) will limit a recipient's or subrecipient's ability to respond to an emergency or major disaster. Recipients must follow the procedures as set forth in 49 CFR part 601, subpart D when requesting a waiver of statutory or administrative requirements. FTA seeks public comment on the types of requirements that FTA should prospectively determine inapplicable or waived in the event of an emergency or major disaster.

Executive Order 11988, Floodplain Management, requires Federal agencies to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. The Executive Order provides an eight-step process that agencies should carry out as part of their decision-making on projects that have potential impacts to or within the floodplain. Executive Order 11988 is

further implemented by DOT Order 5650.2, Floodplain Management and Protection.

Since this rule addresses natural disasters, including weather events that can produce serious flooding, FTA has included a provision in this rule that addresses Executive Order 11988. Specifically, recipients shall not use grant funds for any activity in an area delineated as a 'special flood hazard area' or equivalent, as labeled in the Federal Emergency Management Administration's (FEMA) most recent and current data source, unless, prior to seeking FTA funding for such action, the recipient designs or modifies its actions in order to minimize potential harm to or within the floodplain, in accordance with Executive Order 11988. To guide decision making, recipients shall use the ''best available information'' as identified by FEMA, which includes advisory data (such as Advisory Base Flood Elevations), preliminary and final Flood Insurance Rate Maps (FIRMs), and Flood Insurance Studies (FISs). If FEMA data is mutually determined by FTA and the recipient to be unavailable or insufficiently detailed, other Federal, State, or local data may be used as the ''best available information'' in accordance with Executive Order 11988.

The final determination on ''best available information'' shall be used to establish such reconstruction requirements as a project's minimum elevation. In certain situations, notably where a project or activity is located within a special flood hazard area, use of FTA funds will require that a project and activity shall be designed and constructed in accordance with specific and additional reconstruction terms, such as elevated minimums for project elevations (e.g. best available data plus one foot in elevation), as determined necessary to adequately enhance long-term structural resilience, and mitigate against the reoccurrence of flood-related damages. Additionally, in scenarios where higher minimum elevations are required by either State or locally adopted building codes or standards, the higher of the competing minimums would apply. This standard does not necessarily mean that transit agencies will be required to move existing facilities to a higher elevation; however, in order to minimize potential harm within the floodplain in accordance with Executive Order 11988, recipients should consider updated design features or added protective features (resiliency projects) in order to reduce the risk of damage from future disasters. A base flood elevation from an interim or preliminary or non-FEMA source cannot be used if it is lower than the current FIRM. Recipients shall also consider the best available data on sea-level rise, storm surge, scouring and erosion before rebuilding. In all instances, FTA retains the authority to award funds in direct alignment with recipient acceptance of and continued compliance with Federal determinations regarding increased standards for floodplain management. FTA seeks public comment on this provision.

Section 602.17 Application Procedures

Applications for Emergency Relief funding must include a detailed damage assessment report to support the request for assistance for capital projects. Typically, a damage assessment involves on-the-ground visits to the damaged sites to verify the extent of the damage and to estimate the cost of repairs. The damage assessment report should be coordinated with FEMA, if appropriate, to avoid duplication of effort. FTA seeks comment on how to maximize harmonization of FTA and FEMA requirements for damage assessment reports. The damage assessment report should include, by political subdivision or other generally recognized administrative or geographic boundaries, a description of the types and extent of damage to public transportation systems and a preliminary estimate of cost of restoration, replacement, or reconstruction for seriously damaged systems in each jurisdiction. Pictures showing the kinds and extent of damage and sketch maps detailing the damaged areas should be included, as appropriate, in the damage assessment report. In addition, the damage assessment report should include recommendations for resiliency projects to protect equipment and facilities from future emergencies and disasters.

FTA is requesting public comment regarding whether, with respect to requests for Emergency Relief funding for permanent repairs or resiliency projects relating to damaged or destroyed facilities, it is appropriate to incorporate requirements of Section 1315(b) of MAP–21 such that the damage assessment report should include an evaluation of whether such damaged or destroyed facilities have repeatedly required repair or reconstruction in the past. If so, FTA seeks comment as to whether the applicant should evaluate whether there are reasonable alternatives that could reduce the need for Federal funds to be expended on such repair or reconstruction activities in the future, better protect public safety, health and the environment, and/or meet transportation needs as described in relevant and applicable Federal, State, local and tribal plans.

Generally, a damage assessment report should be completed within six weeks of the emergency or major disaster. For large disasters where extensive damage to public transportation systems is readily evident, the appropriate FTA Regional Administrator may approve a grant application under section 602.17(f) prior to submission of the damage assessment report. In these cases, the applicant shall prepare and submit to the appropriate FTA Regional Administrator an abbreviated or preliminary damage assessment report, summarizing eligible repair costs by jurisdiction, after the damage inspections have been completed.

The applicant shall include the damage assessment report as an appendix to the grant application. In addition to the report, an applicant shall submit a copy of the Governor's declaration or a Presidential declaration; a list of projects which describes emergency operations, emergency protective measures, and emergency repairs completed as well as permanent work needed to repair or replace the damaged or destroyed rolling stock, equipment, facilities, and infrastructure; and supporting documentation showing other sources of funding available, including insurance policies, agreements with other Federal agencies, and any other source of funds available to address the damage resulting from the emergency or major disaster.

Applications for emergency operating expenses must include the dates, hours, number of vehicles, and total fare revenues received (if any) for the emergency service. Only net project costs may be reimbursed.

Applicants that apply for and/or receive funding from another Federal agency, including FEMA, for operating expenses and also seek funding from FTA for operating costs must include a copy of the agreement with the other Federal agency, including the scope of the agreement, the amount funded, and the dates the other Federal agency funded operating costs, as well as the scope of service and dates for which the applicant is seeking FTA funding. Applicants that apply for and/or receive funding from another Federal agency, including FEMA, for emergency or permanent repairs or emergency protective measures and also seek funding from FTA for emergency or permanent repairs or emergency protective measures must include a copy of the agreement with the other Federal agency, including the scope of

the agreement, the amount funded, and a list of projects included in the other Federal agency's application.

Each applicant is responsible for preparing and submitting a grant application, and the appropriate FTA regional office may provide technical assistance to the applicant in preparing a list of projects for the grant application. This work may involve joint site inspections to view damage and reach tentative agreement on the type of permanent corrective work the applicant will undertake. The data collected must be sufficient to make a determination of eligibility of the proposed work. The FTA Regional Administrator's approval of the grant application constitutes a finding of eligibility under 49 U.S.C. 5324. FTA seeks public comment on the application procedures.

Rulemaking Analyses and Notices

All comments received on or before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. A final rule may be published at any time after close of the comment period.

Immediate Effective Date

As required by the Disaster Relief Appropriations Act of 2013, FTA is issuing this interim final rule in order to implement the Emergency Relief Program and to provide information regarding the application procedures for Emergency Relief Program grants in response to Hurricane Sandy. This interim final rule is effective immediately. In addition, FTA requests comments on the rule, given that its requirements will apply to the Emergency Relief Program in general, and not only to grant funds disbursed in response to Hurricane Sandy.

The Administrative Procedure Act (5 U.S.C. 553(d)) requires that a rule be published 30 days prior to its effective date unless one of three exceptions applies. One of these exceptions is when the agency finds good cause for a shorter period. Here, FTA has determined that good cause exists for immediate effectiveness of this rule because the rule is expected to address the immediate need to repair transit system facilities, infrastructure and equipment damaged by Hurricane Sandy. Hurricane Sandy affected mid-Atlantic and northeastern states in October 2012, and particularly devastated transit operations in New Jersey and New York. Through immediate promulgation of the interim final rule, many of the much-needed Hurricane Sandy recovery efforts can occur in a more expeditious manner. Thus, it is in the public interest for this final rule to have an immediate effective date.

FTA will publish a notice responding to any comments received and, if appropriate, will amend provisions of the rule. If FTA subsequently establishes criteria or conditions for grants made under the Emergency Relief Program that are different from those in this interim final rule, the different criteria or conditions will not be applied retroactively to applications submitted or grants awarded consistent with this interim final rule, unless the change benefits the applicant.

Executive Order 12866 (Regulatory Planning and Review), EO 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FTA has determined preliminarily that this action is a significant regulatory action within the meaning of Executive Order 12866 and is significant within the meaning of Department of Transportation regulatory policies and procedures because of substantial congressional, State and local government, and public interest. Those interests include restoring public transportation service as quickly as possible after an emergency or major disaster, the receipt of Federal financial support for repairing and replacing public transportation investments damaged or destroyed by emergencies and major disasters as expeditiously as possible, and the receipt of Federal financial support for emergency operations before, during and after emergencies and major disasters.

FTA has determined that this is an economically significant rule within the meaning in Executive Order 12866 because of the amount of funding FTA reasonably expects to distribute as a result of Hurricane Sandy. FTA was appropriated $10.9 billion for the Emergency Relief Program in response to Hurricane Sandy, and FTA expects to distribute more than $100 million to entities impacted by the hurricane in the upcoming year. The Obama Administration's budget request included $25 million for fiscal year 2013 for the Emergency Relief program, and the authorization in 49 U.S.C. 5338(f) is for ''such sums as are necessary to carry out section 5324.'' Congress did not appropriate any funds for the Emergency Relief Program in the 2013 Continuing Appropriations Resolution (Pub. L. 112–175). Hurricane Sandy was an extraordinary event resulting in historical damage to public transportation systems. While it is impossible to predict how much funding Congress might appropriate for the Emergency Relief Program for extraordinary events such as Hurricane Sandy, in a typical year without an extraordinary event such as Hurricane Sandy, FTA does not expect this rule to have an economic impact greater than $100 million.

The purpose of this interim final rule is to provide grant application procedures and describe eligible activities as directed by statute. The rule itself does not affect the total amount of grant funds available to States or local governmental authorities. That amount will be specified in annual or supplemental appropriations acts of Congress. FTA will distribute funds through the Emergency Relief Program consistent with the requirements of this rule to those States and local governmental authorities that have experienced emergencies or major disasters.

Through the Emergency Relief Program, FTA will reimburse affected recipients for eligible operating and capital costs incurred as a result of an emergency or major disaster. MAP–21 generally prescribes the criteria and types of projects eligible for emergency relief grants, and FTA has exercised limited discretion in this rulemaking to implement the statute.

While complying with the application procedures set forth in this rule is a requirement for receiving grant funds, the rule does not impose any mandate on States or governmental authorities to submit an application. However, should a State or local governmental authority choose to submit an application, there are some costs and burdens associated with the application process. FTA received emergency clearance from OMB under the Paperwork Reduction Act (PRA) for funds made available by the Disaster Relief Appropriations Act, and included in this notice is a request for comment for the information collection required by this rule. Interested persons should consult the Paperwork Reduction Act section of this document for further information.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FTA has evaluated the effects of this interim final rule on small entities and has determined the interim final rule will not have a significant economic impact on a substantial number of small entities. Recipients of

Emergency Relief Program funds are generally States and local governmental authorities. The only burden placed upon local governments by this rule is the small paperwork burden associated with the application process, which is addressed in the Paperwork Reduction Act section of this notice and is designed to minimize the paperwork burdens of the rule. For this reason, FTA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This interim final rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The Federal share for grants made under the Emergency Relief Program is 80 percent, and the Secretary may waive all or part of the non-Federal share. This interim final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $143.1 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism)

This interim final rule has been analyzed in accordance with the principles and criteria established by Executive Order 13132, and FTA has determined that this interim final rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA has also determined that this interim final rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations effectuating Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this interim final rule.

Paperwork Reduction Act

On February 6, 2013, in compliance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) and the Office of Management and Budget (OMB) implementing regulation at 5 CFR 1320.13, FTA received emergency approval from OMB for an Information Collection for funds appropriated by the Disaster Relief Appropriations Act (Information Collection number 2132–0575). The approval for this information collection will expire on August 13, 2013.

In compliance with the PRA and OMB implementing regulation at 5 CFR 1320.8(d), FTA is seeking longer-term approval from OMB for Information Collection number 2132–0575, for which FTA received emergency approval, as abstracted below. The Information Collection includes not only funds specific to Hurricane Sandy but for the Emergency Relief Program in its entirety. In order to receive emergency relief funds, applicants will be required to fill out and submit a grant application. This is the same grant application used by FTA recipients for other FTA programs and will be submitted electronically through the Transportation Electronic Award and Management (TEAM) system. In addition to the grant application, applicants will be required to develop a damage assessment report. FTA is seeking comment on whether the information collected will have practical utility; whether its estimation of the burden of the proposed information collection is accurate; whether the burden can be minimized through the use of automated collection techniques or other forms of information technology; and for ways in which the quality, utility, and clarity of the information can be enhanced.

Type of Review: OMB Clearance. Updated information collection request.

Respondents: In any given year, FTA estimates that as many as 20 recipients may experience an emergency that is declared by a Governor of a State or the President. The PRA estimate was based on a total of 20 recipients seeking emergency relief funds per year.

Frequency: Information will be collected periodically whenever an applicant applies for emergency relief funding.

Estimated Total Annual Burden Hours: 3,600. FTA estimates the average annual time burden per applicant is 180 hours. This estimate includes: (1) 50 hours for preparation of a grant application, including any supplemental emergency relief forms (49 CFR 602.17(b)); (2) 50 hours per grant recipient to develop a damage assessment report (49 CFR 602.17(a)); and 80 hours for project management, including submission of Milestone Progress Reports, Federal Financial Reports and other required reports.

Additional documentation detailing FTA's Paperwork Reduction Act Information Collection Request, including FTA's Justification Statement, may be accessed from OMB's Web site at *http://www.reginfo.gov/public/do/PRASearch,* Information Collection number 2132–0575. OMB is required to file comments or make a decision concerning the proposed information rule within 60 days after receiving the information collection request submission from FTA. FTA will summarize and respond to any comments on the proposed information collection request from OMB and the public in the preamble to the final rule.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), requires Federal agencies to analyze the potential environmental effects of their proposed actions either through a Categorical Exclusion, an Environmental Assessment or an Environmental Impact Statement. This interim final rule is categorically excluded under FTA's NEPA implementing procedures at 23 CFR 771.118(c)(4), which covers planning and administrative activities which do not involve or lead directly to construction, such as the promulgation of rules, regulations and directives. FTA has determined that no unusual circumstances exist and that this Categorical Exclusion is applicable.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

Executive Order 12898 directs every Federal agency to make environmental justice part of its mission by identifying and addressing the effects of all programs, policies, and activities on minority populations and low-income populations. The DOT's environmental justice initiatives accomplish this goal by involving the potentially affected public in developing transportation projects that fit harmoniously within their communities without sacrificing safety or mobility. FTA has developed a program circular addressing environmental justice in transit projects, C 4703.1, *Environmental Justice Policy Guidance for Federal Transit Administration Recipients.* The Circular is designed to provide a framework to assist recipients as they integrate principles of environmental justice into their transit decision-making process. The Circular contains recommendations for State DOTs, MPOs and transit providers on (1) How to fully engage environmental justice populations in the transportation decision-making process; (2) how to determine whether environmental justice populations would be subjected to disproportionately high and adverse human health or environmental effects of a public transportation project, policy, or activity; and (3) how to avoid, minimize, or mitigate these effects.

Executive Order 12630 (Taking of Private Property)

This action 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.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

FTA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this interim final rule will not cause an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this action under Executive Order 13175 (Nov. 6, 2000), and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). FTA has determined that it is not a significant energy action under that order since it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Privacy Act

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.). You may review U.S. DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN set forth in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 602

Disaster assistance, Grant programs, Mass transportation, Transportation.

Issued on: March 25, 2013.

Peter M. Rogoff,

Administrator.

For the reasons set forth in the preamble, FTA amends Chapter VI of Title 49, Code of Federal Regulations, by adding Part 602, as set forth below.

PART 602—EMERGENCY RELIEF

Sec.
602.1 Purpose.
602.3 Applicability.
602.5 Definitions.
602.7 Policy.
602.9 Federal share.
602.11 Pre-award authority.
602.13 Eligible activities.
602.15 Grant requirements.
602.17 Application procedures.

Authority: 49 U.S.C. 5324 and 5334; 49 CFR 1.91.

§ 602.1 Purpose.

This part establishes the procedures and eligibility requirements for the administration of emergency relief funds for emergency public transportation services, and the protection, replacement, repair or reconstruction of public transportation equipment and facilities which are found to have suffered or are in danger of suffering serious damage by a natural disaster over a wide area or a catastrophic failure from an external cause.

§ 602.3 Applicability.

This part applies to entities that provide public transportation services and that are impacted by emergencies and major disasters.

§ 602.5 Definitions.

The following definitions apply to this part:

Affected recipient. A recipient or subrecipient that operates public transportation service in an area impacted by an emergency or major disaster.

Applicant. An entity that operates or allocates funds to an entity to operate public transportation service and applies for a grant under 49 U.S.C. 5324.

Catastrophic failure. The sudden failure of a major element or segment of the public transportation system due to an external cause. The failure must not be primarily attributable to gradual and progressive deterioration or lack of proper maintenance.

Emergency—A natural disaster affecting a wide area (such as a flood, hurricane, tidal wave, earthquake, severe storm or landslide) or a catastrophic failure from any external cause, as a result of which:

(1) The Governor of a State has declared an emergency and the Secretary of Transportation has concurred; or

(2) The President has declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

Emergency operations. The net project cost of temporary service that is outside the scope of an affected recipient's normal operations, including but not limited to: evacuations; rescue operations; bus or ferry service to replace inoperable rail service or to detour around damaged areas; additional service to accommodate an influx of passengers or evacuees; returning evacuees to their homes after the disaster or emergency; and the net project costs related to reestablishing, expanding, or relocating public transportation service before, during, or after an emergency or major disaster.

Emergency protective measures. (1) Capital projects undertaken immediately before, during or following the emergency or major disaster for the purpose of protecting public health and safety or for protecting property. Such projects:

(i) Eliminate or lessen immediate threats to public health or safety; or

(ii) Eliminate or lessen immediate threats of significant damage or additional damage to an affected recipient's property through measures that are cost effective.

(2) Examples of such projects include, but are not limited to:

(i) Moving rolling stock in order to protect it from damage, e.g., to higher ground in order to protect it from storm surges;

(ii) Emergency communications;

(iii) Security forces;

(iv) Sandbagging;

(v) Bracing/shoring damaged structures;

(vi) Debris removal;

(vii) Dewatering; and

(viii) Removal of health and safety hazards.

Emergency repairs. Capital projects undertaken immediately following the

emergency or major disaster, until such time as permanent repairs can be undertaken, for the purpose of:

(1) Minimizing the extent of the damage, or

(2) Restoring service.

External cause. An outside force or phenomenon that is separate from the damaged element and not primarily the result of existing conditions.

Heavy maintenance. Work usually done by a recipient or subrecipient in repairing damage normally expected from seasonal and occasionally unusual natural conditions or occurrences, such as routine snow removal, debris removal from seasonal thunderstorms, or heavy repairs necessitated by excessive deferred maintenance. This may include work required as a direct result of a disaster, but which can reasonably be accommodated by a recipient or subrecipient's routine maintenance, emergency or contingency program.

Major Disaster. Any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. 42 U.S.C. 5122.

Net project cost. The part of a project that reasonably cannot be financed from revenues. 49 U.S.C. 5302.

Permanent repairs. Capital projects undertaken following the emergency or major disaster for the purpose of repairing, replacing or reconstructing seriously damaged public transportation system elements, including rolling stock, equipment, facilities and infrastructure, as necessary to restore the elements to a state of good repair.

Recipient. An entity that operates public transportation service and receives Federal transit funds directly from FTA.

Resilience/Resiliency. A capability to anticipate, prepare for, respond to, and recover from significant multi-hazard threats with minimum damage to social well-being, the economy, and the environment.

Resiliency Project. A project designed and built to address future vulnerabilities to a public transportation facility or system due to future recurrence of emergencies or major disasters that are likely to occur again in the geographic area in which the public transportation system is located; or projected changes in development patterns, demographics, or extreme weather or other climate patterns.

Serious damage. Heavy, major or unusual damage to a public transportation facility which severely impairs the safety or usefulness of the facility. Serious damage must be beyond the scope of heavy maintenance.

State. Any one of the United States, the District of Columbia, Puerto Rico or the Virgin Islands, Guam, American Samoa or Commonwealth of the Northern Mariana Islands.

Subrecipient. An entity that operates public transportation service and receives FTA funding through a recipient.

§ 602.7 Policy.

(a) The Emergency Relief Program is intended to aid recipients and subrecipients in restoring public transportation service and in repairing and reconstructing public transportation assets to a state of good repair as expeditiously as possible following an emergency or major disaster.

(b) Emergency relief funds are not intended to supplant other Federal funds for correction of preexisting, non-disaster related deficiencies.

(c) In conjunction with repair and reconstruction activities, recipients may include projects that increase the resiliency of affected public transportation systems to protect the systems from the effects of future emergencies and major disasters.

(d) The expenditure of emergency relief funds for emergency repair shall be in such a manner so as to reduce, to the greatest extent feasible, the cost of permanent restoration work completed after the emergency or major disaster.

(e) Emergency relief funds, or funds made available under 49 U.S.C. 5307 (Urbanized Area Formula Program) or 49 U.S.C. 5311 (Rural Area Formula Program) awarded for emergency relief purposes shall not duplicate assistance under another Federal program or compensation from insurance or any other source. Partial compensation for a loss by other sources will not preclude FTA emergency relief fund assistance for the part of such loss not compensated otherwise. Any compensation for damages or insurance proceeds for repair or replacement of the public transit equipment or facility must be used upon receipt to reduce FTA's emergency relief fund participation in the project.

§ 602.9 Federal share.

(a) A grant, contract, or other agreement for emergency operations, emergency protective measures, emergency repairs, permanent repairs and resiliency projects under 49 U.S.C. 5324 shall be for up to 80 percent of the net project cost.

(b) A grant made available under 49 U.S.C. 5307 or 49 U.S.C. 5311 to address an emergency shall be for up to 80 percent of the net project cost for capital projects, and up to 50 percent of the net project cost for operations projects.

(c) The FTA Administrator may waive, in whole or part, the non-Federal share required under paragraphs (a) and (b) of this section.

§ 602.11 Pre-award authority.

(a) Except as provided in paragraph (b) of this section, pre-award authority for the Emergency Relief Program shall be effective beginning on the effective date of a declaration of emergency or major disaster, and subject to the appropriation of Emergency Relief Program funds.

(b) For expected weather events, pre-award authority for evacuations and activities to protect public transportation vehicles, equipment and facilities, shall be effective within a reasonable period of time in advance of the event, such as during the period the storm is forecast with some certainty to hit the affected area.

(c) Pre-award authority shall be subject to a maximum amount determined by FTA based on estimates of immediate financial need, preliminary damage assessments, available Emergency Relief funds and other criteria to be determined.

(d) Pre-award authority is not a legal or implied commitment that the subject project will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or implied commitment that all activities undertaken by the applicant will be eligible for inclusion in the project(s).

(e) Except as provided in § 602.15, all FTA statutory, procedural, and contractual requirements must be met.

(f) The recipient must take no action that prejudices the legal and administrative findings that the FTA Regional Administrator must make in order to approve a project.

(g) The Federal amount of any future FTA assistance awarded to the recipient for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/non-Federal match ratio at the time the funds are obligated.

(h) When FTA subsequently awards a grant for the project, the Financial Status Report in FTA's electronic grants management system must indicate the use of pre-award authority.

§ 602.13 Eligible activities.

(a) An affected recipient may apply for emergency relief funds on behalf of itself as well as affected subrecipients.

(b) Eligible uses of Emergency Relief funds include:

(1) Emergency operations;

(2) Emergency protective measures;

(3) Emergency repairs;

(4) Permanent repairs;

(5) Actual engineering and construction costs on approved projects; and

(6) Resiliency projects.

(c) Ineligible uses of Emergency Relief funds include:

(1) Heavy maintenance;

(2) Project costs for which the recipient has received funding from another Federal agency;

(3) Project costs for which the recipient has received funding through payments from insurance policies;

(4) Projects that change the function of the original infrastructure;

(5) Projects for which funds were obligated in an FTA grant prior to the declared emergency or major disaster;

(6) Reimbursements for lost revenue due to service disruptions caused by an emergency or major disaster.

(7) Project costs associated with the replacement or replenishment of damaged or lost material that are not the property of the affected recipient and not incorporated into a public transportation system such as stockpiled materials or items awaiting installation.

(8) Other project costs FTA determines are not appropriate for the Emergency Relief Program.

§ 602.15 Grant requirements.

(a) Funding available under the Emergency Relief program is subject to the terms and conditions FTA determines are necessary.

(b) The FTA Administrator shall determine the terms and conditions based on the circumstances of a specific emergency or major disaster for which funding is available under the Emergency Relief Program.

(1) In general, projects funded under the Emergency Relief Program shall be subject to the requirements of chapter 53 of title 49, United States Code, as well as cross-cutting requirements, including but not limited to those outlined in FTA's Master Agreement.

(2) The FTA Administrator may determine requirements associated with public transportation programs are inapplicable as necessary and appropriate for emergency repairs, permanent repairs, emergency protective measures and emergency operating expenses that are incurred within 45 days of the emergency or major disaster, or longer as determined by FTA. If the FTA Administrator determines any requirement is inapplicable, the determination shall apply to all eligible activities undertaken with funds authorized under 49 U.S.C. 5324 within the 45-day period, as well as funds authorized under 49 U.S.C. 5307 and 5311 and used for eligible emergency relief activities.

(3) FTA shall publish a notice on its Web site and in the emergency relief docket established under 49 CFR part 601 regarding the grant requirements for a particular emergency or major disaster.

(c) In the event an affected recipient or subrecipient believes an FTA requirement limits its ability to respond to the emergency or major disaster, the recipient or subrecipient may request that the requirement be waived in accordance with the emergency relief docket process as outlined in 49 CFR part 601, subpart D. Applicants should not proceed on projects assuming that requests for such waivers will be granted.

(d) In accordance with Executive Order 11988, Floodplain Management, recipients shall not use grant funds for any activity in an area delineated as a special flood hazard area or equivalent, as labeled in the Federal Emergency Management Administration's (FEMA) most recent and current data source unless, prior to seeking FTA funding for such action, the recipient designs or modifies its actions in order to minimize potential harm to or within the floodplain.

(1) Except as otherwise provided in this subparagraph, recipients shall use the ''best available information as identified by FEMA, which includes advisory data (such as Advisory Base Flood Elevations (ABFEs)), preliminary and final Flood Insurance Rate Maps (FIRMs), or Flood Insurance Studies (FISs).

(2) If FEMA data is mutually determined by FTA and the recipient to be unavailable or insufficiently detailed, other Federal, State, or local data may be used as ''best available information'' in accordance with Executive Order 11988.

(3) The final determination on ''best available information'' shall be used to establish such reconstruction requirements as a project's minimum elevation.

(4) Where higher minimum elevations are required by either State or locally adopted building codes or standards, the higher of the competing minimums would apply.

(5) A base flood elevation from an interim or preliminary or non-FEMA source may not be used if it is lower than the current FIRM.

§ 602.17 Application procedures.

(a) As soon as practical after occurrence, affected recipients shall make a preliminary field survey, working cooperatively with the appropriate FTA Regional Administrator and other governmental agencies with jurisdiction over eligible public transportation systems. The preliminary field survey should be coordinated with the Federal Emergency Management Agency, if applicable, to eliminate duplication of effort. The purpose of this survey is to determine the general nature and extent of damage to eligible public transportation systems.

(1) The affected recipient shall prepare a damage assessment report. The purpose of the damage assessment report is to provide a factual basis for the FTA Regional Administrator's finding that serious damage to one or more public transportation systems has been caused by a natural disaster over a wide area, or a catastrophic failure. As appropriate, the damage assessment report should include by political subdivision or other generally recognized administrative or geographic boundaries—

(i) The specific location, type of facility or equipment, nature and extent of damage;

(ii) The most feasible and practical method of repair or replacement;

(iii) A preliminary estimate of cost of restoration, replacement, or reconstruction for damaged systems in each jurisdiction.

(iv) Potential environmental and historic impacts;

(v) Photographs showing the kinds and extent of damage and sketch maps detailing the damaged areas;

(vi) Recommended resiliency projects to protect equipment and facilities from future emergencies or major disasters.

(2) Unless unusual circumstances prevail, the damage assessment report should be prepared within six weeks following the natural disaster or catastrophic failure.

(3) For large disasters where extensive damage to public transportation systems is readily evident, the FTA Regional Administrator may approve an application prior to submission of the damage assessment report. In these

cases, the applicant shall prepare and submit to the FTA Regional Administrator an abbreviated or preliminary damage assessment report, summarizing eligible repair costs by jurisdiction, after the damage inspections have been completed.

(b) Before funds can be made available, a grant application for emergency relief funds must be made to, and approved by, the appropriate FTA Regional Administrator. The application shall include:

(1) A copy of the Governor's declaration or a Presidential declaration;

(2) A copy of the damage assessment report, as appropriate;

(3) A list of projects, as documented in the damage assessment report, identifying emergency operations, emergency protective measures, and emergency repairs completed as well as permanent repairs needed to repair or replace the damaged or destroyed rolling stock, equipment, facilities, and infrastructure; and

(4) Supporting documentation showing other sources of funding available, including insurance policies, agreements with other Federal agencies, and any other source of funds available to address the damage resulting from the emergency or major disaster.

(c) Applications for emergency operations must include the dates, hours, number of vehicles, and total fare revenues received for the emergency service. Only net project costs may be reimbursed.

(d) Applicants that receive funding from another Federal agency for operating expenses and also seek funding from FTA for operating expenses must include:

(1) A copy of the agreement with the other Federal agency, including the scope of the agreement, the amount funded, and the dates the other agency funded operating costs; and

(2) The scope of service and dates for which the applicant is seeking FTA funding.

(e) Applicants that receive funding from another Federal agency for emergency or permanent repairs or emergency protective measures and also seek funding from FTA for emergency or permanent repairs or emergency protective measures must include:

(1) A copy of the agreement with the other Federal agency, including the scope of the agreement and the amount funded; and

(2) A list of projects included in the other agency's application or equivalent document.

(f) Applicants are responsible for preparing and submitting a grant application. The FTA regional office may provide technical assistance to the applicant in preparation of a program of projects. This work may involve joint site inspections to view damage and reach tentative agreement on the type of permanent repairs the applicant will undertake. Program data should be kept to a minimum, but should be sufficient to identify the approved disaster or catastrophe and to permit a determination of the eligibility of proposed work. If the appropriate FTA Regional Administrator determines the damage assessment report is of sufficient detail to meet these criteria, additional program support data need not be submitted.

(g) The appropriate FTA Regional Administrator's approval of the grant application constitutes a finding of eligibility under 49 U.S.C. 5324.

[FR Doc. 2013–07271 Filed 3–28–13; 8:45 am]

BILLING CODE P

Proposed Rules

Federal Register
Vol. 78, No. 61
Friday, March 29, 2013

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2013–0051]

Shielding and Radiation Protection Review Effort and Licensing Conditions for Dry Storage Applications

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft interim staff guidance; request for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) requests public comment on Draft Spent Fuel Storage and Transportation Interim Staff Guidance No. 26A (SFST–ISG–26A), Revision 0, ''Shielding and Radiation Protection Review Effort and Licensing Conditions for 10 CFR Part 72 Applications.''

DATES: Submit comments by May 13, 2013. Comments received after this date will be considered, if it is practical to do so; however, the NRC staff is only able to ensure consideration of comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2013–0051. You may submit comments by any the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0051. 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:* RDB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mr. Michel Call, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–492–3289; email: *Michel.Call@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0051 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0051.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The draft SFST–ISG–26A, Revision 0 is available electronically under ADAMS Accession No. ML13010A570.
- *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–2013–0051 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 that that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely 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 that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Further Information

The draft SFST–ISG provides guidance to NRC staff when reviewing the shielding and radiation protection portions of applications for certificates of compliance (CoC), specific licenses, and amendments submitted in accordance with part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste,'' (10 CFR part 72) Subpart L, ''Approval of Spent Fuel Storage Casks,'' and Subpart B, ''License Application, Form, and Contents.'' The draft SFST–ISG–26A proposes to revise the shielding and radiation protection review procedures contained in NUREG–1536, Revision 1, ''Standard Review Plan for Spent Fuel Dry Storage Systems at a General License Facility,'' and NUREG–1567, ''Standard Review Plan for Spent Fuel Dry Storage Facilities.'' The draft SFST–ISG revises these review procedures by enhancing their prioritization; providing guidance regarding conditions the staff should include in certificates of compliance, specific licenses, and associated technical specifications; and providing guidance regarding the analyses that the staff should verify are included by applicants in applications submitted under 10 CFR Part 72 and the staff's evaluation of those analyses.

III. Background

The NRC issues SFST–ISGs to communicate insights and lessons learned and to address emergent issues not covered in SFST Standard Review Plans (SRPs). In this way, the NRC staff and stakeholders may use the guidance in an SFST–ISG document before it is incorporated into a formal SRP revision.

The NRC has developed draft SFST–ISG–26A, Revision 0 to (1) enhance the prioritization of shielding and radiation protection review procedures to improve the effectiveness and efficiency of staff reviews of these areas; (2) provide guidance regarding the conditions that the staff should include in certificates of compliance, specific licenses, and associated technical specifications; and (3) provide guidance regarding the analyses that the staff should verify are included by applicants in applications submitted under 10 CFR Part 72 and the staff's evaluation of those analyses.

Proposed Action

By this action, the NRC is requesting public comments on draft SFST–ISG–26A. This SFST–ISG proposes certain revisions to NRC guidance on implementation of the requirements in 10 CFR Part 72. Along with comments on this draft SFST–ISG, the NRC invites the public to include suggestions for alternatives to the guidance, or parts thereof, proposed to address the two issues described in this draft SFST–ISG and to describe how those suggested alternatives adequately address the issues. The NRC also invites comments that include information regarding facility operations and exposures that support the comments or that the commenter thinks NRC should consider. The NRC will make a final determination regarding issuance of SFST–ISG–26A after it considers any public comments received in response to this request.

Backfitting and Issue Finality

This ISG provides guidance to the NRC staff reviewers on: (1) Establishing the priorities of NRC's shielding and radiation protection review procedures for applications for initial and amendments of spent nuclear fuel dry storage system CoCs and applications for specific-license independent spent fuel storage installation licenses and license amendments; (2) verifying the inclusion and evaluating the scope of applicant's analyses of radiation protection and shielding for these systems and installations; and (3) stating conditions the staff should include in CoCs, licenses, and technical specifications. Prioritization of staff review procedures, verification and evaluation of an applicant's analyses, and the determination of appropriate conditions to be included in CoCs, licenses, and technical specifications are not matters to which backfitting or issue finality protections apply. Staff implementation of such guidance in the context of applications does not result in backfitting or non-compliance with issue finality protection provisions. For this reason, the NRC has not prepared a backfit analysis for this ISG.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 13th day of March 2013.

Mark D. Lombard,

Director, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2013–06387 Filed 3–28–13; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM13–2–000]

18 CFR Part 35

Small Generator Interconnection Agreements and Procedures; Supplemental Notice of Workshop

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Supplemental notice of workshop.

SUMMARY: On February 27, 2013, the Federal Energy Regulatory Commission (Commission) announced that staff will convene a workshop on Wednesday, March 27, 2013 to discuss certain topics related to the proposals in the Small Generator Interconnection Agreements and Procedures Notice of Proposed Rulemaking (Docket No. RM13–2–000).[1] Please note that the time for the conference has been changed.

DATES: The conference will be convened from 9:30 a.m. to approximately 5:00 p.m. (EDT).

ADDRESSES: The staff-led workshop will be held in the Commission Meeting Room at the Commission's headquarters at 888 First Street NE., Washington, DC 20426. Members of the Commission may attend the conference, which will also be open for the public to attend. Advance registration is not required, but is encouraged. Attendees may register at the following Web page: *https://www.ferc.gov/whats-new/registration/small-generator-03-27-13-form.asp.*

SUPPLEMENTARY INFORMATION: Attached to this supplemental notice is an agenda for the workshop. If any changes are made, the revised agenda will be posted prior to the event on the Calendar of Events on the Commission's Web site, *www.ferc.gov.*

This workshop is not intended to address the substance of any particular case pending before the Commission. However, notice is hereby given that discussions at the workshop may concern matters at issue in the following Commission proceedings that are either pending or within their rehearing period: CSOLAR IV South, LLC, Wistaria Ranch Solar, LLC, CSOLAR IV West, LLC & CSOLAR IV North, LLC v. California Independent System Operator Corporation (Docket No. EL13–37–000); NV Energy Operating Co. (Docket No. ER13–679–000); North American Natural Resources, Inc. v. PJM Interconnection, L.L.C., American Electric Power Service Corp., and Indiana Michigan Power Co. (Docket No. EL13–10–000); California Independent System Operator Corporation (Docket No. ER13–218–001); California Independent System Operator Corporation (Docket Nos. ER12–2643–000 and ER12–2643–001); SunPower Corporation (Docket No. ER13–958–000); Review of Small Generator Interconnection Agreements and Procedures (Docket No. AD12–17–000); and Solar Energy Industries Association (Docket No. RM12–10–000).

We note that the topics included here do not encompass all the proposals in the Notice of Proposed Rulemaking (NOPR). The Commission encourages stakeholders to submit written comments on all the proposals in the NOPR, not just those discussed at the workshop. There will not be a separate comment period for the workshop. The deadline for submitting written comments on the NOPR, including comments on the results of the workshop, is June 3, 2013.

We also note that we plan to leave time for audience questions and comments following each agenda topic.

The workshop will not be transcribed. However, there will be a free webcast of the workshop. Anyone with Internet access interested in viewing this workshop can do so by navigating to the FERC Calendar of Events at *www.ferc.gov* and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the webcasts and offers the option of

[1] *Small Generator Interconnection Agreements and Procedures,* 142 FERC ¶ 61,049 (2013), 78 FR 7524 (Feb. 1, 2013).

listening to the workshop via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call (703) 993–3100.

FERC workshops are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For information related to the agenda, please contact Leslie Kerr at *leslie.kerr@ferc.gov* or (202) 502–8540. For information related to logistics, please contact Sarah McKinley at *sarah.mckinley@ferc.gov* or (202) 502–8368.

Dated: March 19, 2013.

Kimberly D. Bose,

Secretary.

Small Generator Interconnection Agreements and Procedures

RM13–2–000

March 27, 2013

Agenda

9:30–9:45 a.m. Welcome and Opening Remarks

Introduction

On January 17, 2013, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) proposing to revise the *pro forma* Small Generator Interconnection Procedures (SGIP) and *pro forma* Small Generator Interconnection Agreement (SGIA) originally set forth in Order No. 2006.[1] This workshop is convened to give stakeholders the opportunity to discuss the proposed reforms to the *pro forma* SGIP and the *pro forma* SGIA and other related issues.

9:45–11:00 a.m. Roundtable Discussion: Fast Track Process Eligibility

In the NOPR, the Commission proposed to revise the 2 megawatt (MW) threshold for participation in the SGIP Fast Track Process.[2] The Commission proposed to base Fast Track eligibility on individual system and generator characteristics, up to a limit of 5 MW. These characteristics include interconnection voltage level, the circuit distance of the interconnection from the substation, and generator capacity as the basis for determining whether an interconnection customer is eligible to be evaluated under the Fast Track Process, as shown in the table below.

Line Voltage	Fast Track Eligibility Regardless of Location	Fast Track Eligibility on ≥ 600 Ampere Line and ≤ 2.5 Miles from Substation
< 5 kilovolt (kV)	≤ 1 MW	≤ 2 MW
≥ 5 kV and < 15 kV	≤ 2 MW	≤ 3 MW
≥ 15 kV and < 30 kV	≤ 3 MW	≤ 4 MW
≥ 30 kV	≤ 4 MW	≤ 5 MW

Roundtable participants should be prepared to discuss the following:

- The individual system and generator characteristics included in the Commission's proposal (and the levels at which they are included); and
- Whether the proposal strikes an appropriate balance between allowing more small generating facilities to interconnect under the Fast Track Process and protecting system safety and reliability.

Roundtable Participants

➢ Aaron Berner, Manager, Interconnection Analysis, PJM Interconnection, L.L.C.

➢ Michael Coddington, Senior Electrical Engineering Researcher, Distributed Grid Integration, National Renewable Energy Laboratory

➢ Paul Hutchison, Renewable Energy Analyst, Public Utilities Commission of Ohio

➢ Eric Laverty, Director of Transmission Access Planning, Midwest Independent Transmission System Operator, Inc.

➢ Rachel Peterson, Interim Energy Advisor, California Public Utilities Commission

➢ Bhaskar Ray, Senior Director of Engineering and Design, SunEdison L.L.C. (Solar Energy Industries Association)

➢ Tim Roughan, Director, Energy and Environmental Policy, National Grid (Edison Electric Institute)

➢ Michael Sheehan, P.E., Keyes, Fox & Wiedman L.L.P. (Interstate Renewable Energy Council)

➢ Holly Rachel Smith, Assistant General Counsel, National Association of Regulatory Utility Commissioners

➢ Sky Stanfield, Attorney, Keyes, Fox & Wiedman L.L.P. (Interstate Renewable Energy Council)

➢ Steve Steffel, Manager, Distributed Energy Resources Planning and Analytics, Pepco Holdings, Inc.

➢ Jeff Triplett, Utility System Consultant, Power System Engineering (National Rural Electric Cooperative Association)

➢ Michael Worden, Chief, Electric Distribution Systems, New York State Public Service Commission

11:00–11:15 a.m. Break

11:15 a.m.–12:15 p.m. Roundtable Discussion: Pre-Application Report

The Commission proposed in the NOPR to include provisions in the SGIP that would allow the interconnection customer to request from the transmission provider a pre-application report providing existing information

[1] *Standardization of Small Generator Interconnection Agreements and Procedures,* Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh'g,* Order No. 2006–A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification,* Order No. 2006–B, FERC Stats. & Regs. ¶ 31,221 (2006).

[2] *See Small Generator Interconnection Agreements and Procedures,* 142 FERC ¶ 61,049, at P 30–32 (2013).

about system conditions at a possible point of interconnection (see section 1.2 of Appendix C to the NOPR for the proposed SGIP revisions related to the pre-application report).[3]

Roundtable participants should be prepared to discuss the following:

• The content of the pre-application report, including whether additional items should be included in the report; and

• Whether the proposed fee of $300 for the pre-application report is appropriate.

Roundtable Participants

➢ Aaron Berner, Manager, Interconnection Analysis, PJM Interconnection, L.L.C.

➢ Michael Coddington, Senior Electrical Engineering Researcher, Distributed Grid Integration, National Renewable Energy Laboratory

➢ Paul Hutchison, Renewable Energy Analyst, Public Utilities Commission of Ohio

➢ Eric Laverty, Director of Transmission Access Planning, Midwest Independent Transmission System Operator, Inc.

➢ Rachel Peterson, Interim Energy Advisor, California Public Utilities Commission

➢ Bhaskar Ray, Senior Director of Engineering and Design, SunEdison L.L.C. (Solar Energy Industries Association)

➢ Tim Roughan, Director, Energy and Environmental Policy, National Grid (Edison Electric Institute)

➢ Michael Sheehan, P.E., Keyes, Fox & Wiedman L.L.P. (Interstate Renewable Energy Council)

➢ Holly Rachel Smith, Assistant General Counsel, National Association of Regulatory Utility Commissioners

➢ Sky Stanfield, Attorney, Keyes, Fox & Wiedman L.L.P. (Interstate Renewable Energy Council)

➢ Steve Steffel, Manager, Distributed Energy Resources Planning and Analytics, Pepco Holdings, Inc.

➢ Jeff Triplett, Utility System Consultant, Power System Engineering (National Rural Electric Cooperative Association)

➢ Michael Worden, Chief, Electric Distribution Systems, New York State Public Service Commission

12:15–1:00 p.m. Break

1:00–2:30 p.m. Roundtable Discussion: Supplemental Review Screens

In the NOPR, the Commission proposed to revise the supplemental review in section 2.4 of the *pro forma* SGIP following failure of the Fast Track Process screens in section 2.2.1 of the *pro forma* SGIP.[4] The supplemental review screens include a minimum load screen (section 2.4.1.1 of Appendix C to the NOPR), a voltage and power quality screen (section 2.4.1.2 of Appendix C to the NOPR), and a safety and reliability screen (section 2.4.1.3 of Appendix C to the NOPR).

Roundtable participants should be prepared to discuss the following:

• The specific content of the supplemental review screens proposed in the NOPR, including:

○ Whether twelve months of minimum load data is appropriate for use in the minimum load screen, or whether additional data, if available, should be required to be considered;

○ The reasons that minimum load data are not available to transmission providers and what the Commission could do to encourage data availability where appropriate; and

○ Potential modifications to the supplemental review screens proposed in the NOPR to ensure the safety and reliability of the system.

• Whether the $2,500 fee for the supplemental review proposed in the NOPR is appropriate.

Roundtable Participants

➢ Aaron Berner, Manager, Interconnection Analysis, PJM Interconnection, L.L.C.

➢ Michael Coddington, Senior Electrical Engineering Researcher, Distributed Grid Integration, National Renewable Energy Laboratory

➢ Paul Hutchison, Renewable Energy Analyst, Public Utilities Commission of Ohio

➢ Eric Laverty, Director of Transmission Access Planning, Midwest Independent Transmission System Operator, Inc.

➢ Rachel Peterson, Interim Energy Advisor, California Public Utilities Commission

➢ Bhaskar Ray, Senior Director of Engineering and Design, SunEdison L.L.C. (Solar Energy Industries Association)

➢ Tim Roughan, Director, Energy and Environmental Policy, National Grid (Edison Electric Institute)

➢ Michael Sheehan, P.E., Keyes, Fox & Wiedman L.L.P. (Interstate Renewable Energy Council)

➢ Holly Rachel Smith, Assistant General Counsel, National Association of Regulatory Utility Commissioners

➢ Sky Stanfield, Attorney, Keyes, Fox & Wiedman L.L.P. (Interstate Renewable Energy Council)

➢ Steve Steffel, Manager, Distributed Energy Resources Planning and Analytics, Pepco Holdings, Inc.

➢ Jeff Triplett, Utility System Consultant, Power System Engineering (National Rural Electric Cooperative Association)

➢ Michael Worden, Chief, Electric Distribution Systems, New York State Public Service Commission

2:30–2:45 p.m. Break

2:45–3:45 p.m. Roundtable Discussion: Interconnection of Storage Devices

The Commission did not propose to revise the definition of Small Generating Facility to include storage devices in Attachment 1 to the SGIP and Attachment 1 to the SGIA as devices that produce electricity. However, Commission staff would like to discuss whether such a revision to the definition of Small Generating Facility would be appropriate and whether other revisions to the SGIP and SGIA related to interconnecting storage devices would be appropriate.

Roundtable participants should be prepared to discuss the following:

• Their experiences related to the interconnection of storage devices; and

• Potential revisions to the *pro forma* SGIP and *pro forma* SGIA that would facilitate interconnection of such devices.

Roundtable Participants

➢ Alan Elmy, Manager, Interconnection Projects, PJM Interconnection, L.L.C.

➢ Robert Rounds, Director, Asset and Project Management, Beacon Power, L.L.C. (Electricity Storage Association)

➢ Michael Sheehan, P.E., Keyes, Fox & Wiedman LLP (Interstate Renewable Energy Council)

➢ Mark Siira, Director of Business Development, ComRent International (Institute of Electrical and Electronics Engineers)

➢ Steve Steffel, Manager, Distributed Energy Resources Planning and Analytics, Pepco Holdings, Inc.

➢ Michael Worden, Chief, Electric Distribution Systems, New York State Public Service Commission

3:45–4:45 p.m. Panel Discussion: Disconnection of Small Generating Facilities During Over- and Under-Frequency Events

In the NOPR, the Commission proposed to revise section 1.5.4 of the *pro forma* SGIA to require the interconnection customer to design, install, maintain, and operate its Small Generating Facility in accordance with the latest version of any applicable standards, such as the Institute of

[3] *See id.* P 26–29.

[4] *See id.* P 33–40.

Electrical and Electronics Engineers Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems, to minimize the likelihood of an off-normal frequency disturbance resulting in common mode disconnection of its Small Generating Facility.[5]

Panelists should be prepared to discuss the following:

- Their experiences and any relevant analysis involving frequency issues associated with distributed generation;
- Potential conflicts between existing disconnection requirements in current standards and new smart grid interoperability standards being developed under the auspices of the National Institute of Standards and Technology;
- Whether the proposed revision to section 1.5.4 of the *pro forma* SGIA appropriately addresses small generator disconnection due to common mode frequency disturbances at high penetrations of distributed generation; and
- Whether abnormal voltage conditions should also be addressed in the proposed revisions to section 1.5.4 of the *pro forma* SGIA.

Panelists

➢ Allen Hefner, Jr., Ph.D., National Institute of Standards and Technology

➢ Rachel Peterson, Interim Energy Advisor, California Public Utilities Commission

➢ Michael Sheehan, P.E., Keyes, Fox & Wiedman LLP (Interstate Renewable Energy Council)

➢ Mark Siira, Director of Business Development, ComRent International (Institute of Electrical and Electronics Engineers)

[FR Doc. 2013–06820 Filed 3–28–13; 8:45 am]

BILLING CODE 6717–01–P

[5] *See id.* P 46.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM12–19–000]

Revisions to Modeling, Data, and Analysis Reliability Standard

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: Under section 215 of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (Commission) proposes to approve Reliability Standard MOD–028–2, submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization. NERC proposes one modification to the currently-effective Reliability Standard MOD–028–1, pertaining to the information a transmission service provider must include when calculating Total Transfer Capability using the area interchange methodology for the on-peak and off-peak intra-day and next day time periods. The Commission also proposes to approve NERC's proposed implementation plan and retirement of the currently-effective standard.

DATES: Comments are due May 13, 2013.

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

- *Agency Web site: http://ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Rachel Bryant (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, 202–502–6155, *rachel.bryant@ferc.gov.*

Syed Ahmad (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, 202–502–8718, *syed.ahmad@ferc.gov.*

Christopher Young (Technical Information), Office of Energy of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, 202–502–6403, *christopher.young@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

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Issued March 21, 2013

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Commission proposes to approve Modeling, Data, and Analysis (MOD) Reliability Standard MOD–028–2, submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO). NERC proposes one modification to the currently-effective Reliability Standard MOD–028–1, pertaining to the information a transmission service provider[2] must include when calculating Total Transfer Capability (TTC) using the area interchange methodology for the on-peak and off-peak intra-day and next day time periods. The Commission also proposes to approve NERC's proposed implementation plan and retirement of the currently-effective standard.

I. Background

2. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Specifically, the Commission may approve, by rule or order, a proposed Reliability Standard or modification to a Reliability Standard if it determines that the Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[3] Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[4] Pursuant to section 215 of the FPA, the Commission established a process to

[1] 16 U.S.C. 824o (2006).

[2] NERC defines ''transmission service provider'' as ''[t]he entity that administers the transmission tariff and provides Transmission Service to Transmission Customers under applicable transmission service agreements.'' NERC, *Glossary of Terms Used in NERC Reliability Standards* 64 (2011), *http://www.nerc.com/files/Glossary_of_Terms.pdf.* We also use the term ''transmission operator'' in this proposed rulemaking, which is defined by NERC as ''[t]he entity responsible for the reliability of its 'local' transmission system, and that operates or directs the operations of the transmission facilities.'' *Id.* These terms indicate distinct NERC functional entities, to which different requirements within the same Reliability Standard may apply. Accordingly, in the context of describing the requirement of a Reliability Standard, we necessarily use either or both terms when appropriate.

[3] 16 U.S.C. 824o(d)(2).

[4] *Id.* 824o(e)(3).

select and certify an ERO,[5] and subsequently certified NERC.[6]

3. In March 2007, the Commission issued Order No. 693, evaluating 107 Reliability Standards, including 23 MOD standards pertaining to methodologies for calculating Available Transfer Capability (ATC) and Available Flowgate Capability (AFC).[7] The Commission approved one out of the 23 MOD standards unconditionally, approved nine with direction for modification and left the remaining 13 pending with direction for modification.[8]

4. On November 24, 2009, the Commission issued Order No. 729,[9] which approved Available Transmission System Capability Reliability Standard MOD–001–1 as part of a set of Reliability Standards that pertain to methodologies for the consistent and transparent calculation of ATC and AFC. These Reliability Standards were designed to ensure, among other things, that transmission service providers maintain awareness of available system capability and future flows on their own systems, as well as those of their neighbors, and to reduce transmission service provider discretion and enhance transparency in the calculation of ATC.[10] Requirement R1 of MOD–001–1 required a transmission operator to select one of three methodologies for calculation of ATC or AFC for each available ATC path for each time frame (hourly, daily or monthly). NERC developed these three methodologies as detailed in Reliability Standards MOD–028–1 (the area interchange methodology), MOD–029–1a (the rated system path methodology), and MOD–030–2 (the flowgate methodology).[11]

5. The MOD Reliability Standards related to this discussion require certain users, owners, and operators of the bulk power system to develop consistent and transparent methodologies for the calculation of ATC or AFC.[12] Three currently-effective Reliability Standards—MOD–028–1, MOD–029–1a, and MOD–030–2—address three different methodologies for calculating ATC or AFC.[13] MOD–028–1, which describes the area interchange methodology for determining ATC, only applies to those transmission operators and transmission service providers that elect to implement this particular methodology as part of their reliability compliance with Reliability Standard MOD–001–1. MOD–001–1 requires transmission service providers to ''[adhere] to a specific documented and transparent methodology'' and ''to select one of three methodologies for calculating [ATC] or [AFC] for each available transfer capability path for each time frame (hourly, daily or monthly) for the facilities in its area.'' [14]

6. Requirement R3.1 of MOD–028–1 details the information a transmission operator must include in its TTC determination under the area interchange methodology for the on-peak and off-peak intra-day and next day time periods, as well as future days two through 31 and for months two through 13.[15]

II. NERC Petition

7. On August 24, 2012, NERC submitted a Petition for Approval of Proposed Reliability Standard (Petition), seeking Commission approval of a proposed Reliability Standard, MOD–028–2, Area Interchange Methodology, Requirement R3.1, which would revise the currently effective ''Version 1'' standard—MOD–028–1.

8. NERC states that Florida Power & Light Company (FPL) requested that NERC interpret MOD–028–1, Requirement R3.1. Specifically, FPL requested that NERC clarify whether Requirement R3.1, which instructs transmission operators to include data ''[f]or on peak and off peak intra-day and next day TTCs,'' actually requires transmission operators to provide separate TTC numbers for different portions of the current day. NERC explains that, upon reviewing FPL's request for interpretation, the NERC Standards Committee determined that providing this clarification might require a modification to the standard.[16] In its Petition, NERC asserts that it intended the language of MOD–028–1 to specify that, for TTC used in current-day and next-day ATC calculations, the load forecast used should be consistent with the period being calculated. Specifically, NERC states:

> Requirement R3 of the MOD–028–1 standard is proposed to be modified to clarify language regarding load forecasting, to indicate that for days two through 31, a daily load forecast is required (identical to the current standard); for months two through 13, a monthly load forecast is required (identical to the current standard); and for current-day and next-day, entities may use *either* a daily or hourly load forecast (the language being clarified). The new language clarifies and is consistent with the intent of the original requirement language, and does not materially change the standard.[17]

9. NERC thus proposes Reliability Standard MOD–028–2, which revises MOD–028–1 as follows:

> R3. When calculating TTCs for ATC Paths, the Transmission Operator shall include the following data for the Transmission Service Provider's area * * *
>
> R3.1. ~~For on peak and off peak intra day and next day~~*For* TTCs, use the following (as well as any other values and additional parameters as specified in the ATCID).
>
> R3.1.1. Expected generation and Transmission outages, additions, and retirements, included as specified in the ATCID.
>
> *R.3.1.2.* ~~Load~~*A daily or hourly load* forecast for ~~the applicable period being calculated~~*TTCs used in current-day and next-day ATC calculations.*
>
> *R.3.1.3. A daily load forecast for TTCs used in ATC calculations for days two through 31.*
>
> ~~R.3.1.2.~~R3.1.4. A monthly load forecast for TTCs used in ATC calculations for months two through 13 months TTCs.

III. Discussion

10. Pursuant to section 215(d) of the FPA, we propose to approve NERC's proposed Reliability Standard MOD–028–2, as just, reasonable, not unduly discriminatory or preferential and in the public interest. We agree with NERC that the proposed Reliability Standard clarifies the existing provision and does not present any reliability concerns.

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[5] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[6] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[7] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1046, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007). *See also Preventing Undue Discrimination and Preference in Transmission* Service, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228 (2009), *order of clarification,* Order No. 890–D, 129 FERC ¶ 61,129 (2009) (directing public utilities to develop Reliability Standards and business practices to improve the consistency and transparency of ATC calculations).

[8] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1010.

[9] *Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk Power System,* Order No. 729, 129 FERC ¶ 61,155 (2009), *order on clarification,* Order No. 729–A, 131 FERC ¶ 61,109, *order on reh'g and reconsideration,* Order No. 729–B, 132 FERC ¶ 61,027 (2010).

[10] Order No. 729, 129 FERC ¶ 61,155 at PP 87–89.

[11] *Id.* P 51.

[12] *Id.* P 1.

[13] *Id.* P 51.

[14] *Id.* P 19.

[15] *Id.* P 57 (stating that this information includes: expected generation and transmission outages, additions, and retirements; load forecasts; and unit commitment and dispatch order).

[16] Petition, Exhibit E (Record of Development of Proposed Reliability Standard).

[17] Petition at 7 (emphasis added).

11. However, we have identified a concern regarding possible market implications of NERC's proposed modification to Requirement R3.1 of MOD–028–2. Although NERC's statutory functions are properly focused on the reliability of the Bulk-Power System, the Commission has determined that the ERO should also attempt to develop Reliability Standards that have no undue negative effect on competition. In Order No. 729, the Commission stated ''that a proposed Reliability Standard should not unreasonably restrict [ATC] * * * beyond any restriction necessary for reliability.'' [18] The Commission noted that a transmission service provider could use parameters and assumptions to skew its ATC values, but stated that it expected such risks to be mitigated through complaints and the Commission's market oversight authority.[19] In Order No. 672, the Commission stated that, ''[a]mong other possible considerations, a proposed Reliability Standard should not unreasonably restrict [ATC] * * * beyond any restriction necessary for reliability and should not limit use * * * in an unduly preferential manner.'' [20]

12. Although section 215(d)(2) of the FPA requires the Commission to give ''due weight'' to the technical expertise of the ERO, the statute is clear that ''due weight'' is not to be given ''with respect to the effect of a standard on competition.'' [21]

13. We believe that NERC's proposed revision to R3.1.2 allows a transmission operator flexibility to choose either a daily or hourly load forecast when forecasting current-day and next-day TTC. However, we seek comments regarding whether a transmission operator could potentially use a load forecast assumption that is not applicable to the period being calculated. For example, a transmission operator using daily on-peak load forecasts in determining off-peak TTC for the current day could, either purposefully or inadvertently, suppress off-peak ATC used by generators that make off-peak sales, or other customers who purchase hourly service. Accordingly, we seek comment whether this gives rise to any market-related concerns or the potential for undue discrimination in ATC calculations.

[18] Order No. 729, 129 FERC ¶ 61,155 at P 109.

[19] *Id.* P 135.

[20] Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 332.

[21] 16 U.S.C. 824o(d)(2).

IV. Information Collection Statement

14. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[22] The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.[23]

15. As stated above, the Commission previously approved, in Order No. 729, the Reliability Standard that is the subject of the current rulemaking. This proposed rulemaking proposes to approve one revision to a previously approved Reliability Standard developed by NERC as the ERO. The proffered revision relates to an existing Reliability Standard and does not change this standard; therefore, it does not add to or otherwise increase entities' current reporting burden. Thus, the current proposal would not materially affect the burden estimates relating to the currently effective version of the Reliability Standards presented in Order No. 729. The MOD–028–1 Reliability Standard that is subject of the approved revision was approved in Order No. 729, and the related information collection requirements were reviewed and approved, accordingly.[24] The Commission will submit the revised Reliability Standard to OMB as a request for ''no material'' or ''nonsubstantive'' change.[25]

V. Environmental Analysis

16. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[26] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[27] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

[22] 5 CFR 1320.11.

[23] 44 U.S.C. 3507(d).

[24] *See* Order No. 729, 129 FERC ¶ 61,155 at PP 307–312.

[25] This type of submittal means that there is no change to the existing burden estimates and the existing expiration date.

[26] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[27] 18 CFR 380.4(a)(2)(ii).

VI. Regulatory Flexibility Act Analysis

17. The Regulatory Flexibility Act of 1980 (RFA) [28] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's Office of Size Standards develops the numerical definition of a small business.[29] For electric utilities, a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours. The Commission does not expect the revision discussed herein to materially affect the cost for small entities to comply with the proposed Reliability Standard. Therefore, the Commission certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

VII. Comment Procedures

18. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due May 13, 2013. Comments must refer to Docket No. RM12–19–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

19. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

20. Commenters that are not able to file comments electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

21. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded

[28] 5 U.S.C. 601–612.

[29] *See* 13 CFR 121.201.

remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

22. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington DC 20426.

23. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

24. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1 (866) 208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–07114 Filed 3–28–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–148500–12]

RIN 1545–BL36

Shared Responsibility Payment for Not Maintaining Minimum Essential Coverage

Correction

In proposed rule document 2013–2141 appearing on pages 7314–7331 in the issue of Monday, February 1, 2013, make the following correction:

On page 7321, in the first column, in the 26th line from the bottom, ''½'' should read as ''1/12''.

[FR Doc. C1–2013–02141 Filed 3–28–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0118]

RIN 1625–AA08

Special Local Regulations; Marine Events, Wrightsville Channel; Wrightsville Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard is proposing to establish a Special Local Regulation for the ''Swim the Loop/Motts Channel Sprint'' swim event, to be held on the waters adjacent to and surrounding Harbor Island in Wrightsville Beach, North Carolina. This Special Local Regulation is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on the Atlantic Intracoastal Waterway within 550 yards north and south of the U.S. 74/76 Bascule Bridge crossing the Atlantic Intracoastal Waterway, mile 283.1, at Wrightsville Beach, North Carolina, during the swim event.

DATES: Comments and related material must be received by the Coast Guard on or before April 29, 2013.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *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.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email BOSN4 Joseph M. Edge, Coast Guard Sector North Carolina, Coast Guard; telephone 252–247–4525, email *Joseph.M.Edge@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hariston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. 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.

1. 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 [USCG–2013–0118] 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.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2013–0118) 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.

3. 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).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the 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**.

B. Regulatory History and Information

For a similar event last year, we published a Notice of Proposed Rulemaking (NPRM) on June 13, 2012, entitled, ''Special Local Regulations for Marine Events, Wrightsville Channel; Wrightsville Beach, NC'' in the **Federal Register** (77 FR 35321). We received no comments on that proposed rule. No public meeting was requested, and none was held.

C. Basis and Purpose

On October 6, 2013, from 8:45 a.m. until 11:45 a.m., Without Limits Coaching will sponsor ''Swim the Loop'' and the ''Motts Channel Sprint'' on the waters adjacent to and surrounding Harbor Island in Wrightsville Beach, North Carolina. The swim event will consist of up to 150 swimmers per event swimming a 1.3 mile course or a 3.5 mile course around Harbor Island in Wrightsville Beach, North Carolina. Participants will enter the Atlantic Intracoastal Waterway at the Dockside Marina on the west bank of the Atlantic Intracoastal Waterway south of the U.S. 74/76 Bascule Bridge at Wrightsville Beach, North Carolina, and swim north and clockwise around Harbor Island returning to the Dockside Marina. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during this event.

D. Discussion of Proposed Rule

The Coast Guard is proposing to establish a safety zone on the navigable waters of the Atlantic Intracoastal Waterway 550 yards north and south of the U.S. 74/76 Bascule Bridge, mile 283.1, latitude 34°13′06″ North, longitude 077°48′44″ West, at Wrightsville Beach, North Carolina.

To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the channel during this event. Specifically, the channel in the vicinity of the U.S. 74/76 Bascule Bridge at Wrightsville Beach, North Carolina, will remain closed during the event on October 6, 2013, from 8 a.m. until 12 p.m. During the event, general navigation within the safety zone will be restricted, no person or vessel may enter or remain in the regulated area, with the exception of participants and vessels authorized by the Coast Guard Captain of the Port or his representative.

E. 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.

1. 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. Although this regulation will restrict access to the area, the effect of this rule will not be significant because the regulated area will be in effect for a limited time, from 8 a.m. until 12 p.m., on October 6, 2013. The Coast Guard will provide advance notification via maritime advisories so mariners can adjust their plans accordingly. The regulated area will apply only to the section of Atlantic Intracoastal Waterway in the immediate vicinity of U.S. 74/76 Bascule Bridge at Wrightsville Beach, North Carolina. Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will 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 recreational vessels intending to transit the specified portion of Atlantic Intracoastal Waterway from 8 a.m. to 12 p.m. on October 6, 2013.

This proposed rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule will only be in effect for four hours from 8 a.m. until 12 p.m. The regulated area applies only to the section of Atlantic Intracoastal Waterway in the vicinity of the U.S. 74/76 Bascule Bridge at Wrightsville Beach, North Carolina. Vessel traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the swim course. The Patrol Commander will allow non-participating vessels to transit the event area once all swimmers are safely clear of navigation channels and vessel traffic areas. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. 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. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT,** above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. 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.

6. 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.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children from Environmental Health Risks

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

11. Indian Tribal Governments

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

12. 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.

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. This special local regulation is necessary to provide for the safety of the general public and event participants from potential hazards associated with movement of vessels near the event area. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. 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 § 100.35–T05–0118 to read as follows:

§ 100.35–T05–0118 Special Local Regulations For Marine Events, Wrightsville Channel; Wrightsville Beach, NC

(a) *Regulated area.* The following location is a regulated area: All waters of the Atlantic Intracoastal Waterway within 550 yards north and south of the U.S. 74/76 Bascule Bridge, mile 283.1, latitude 34°13′06″ North, longitude 077°48′44″ West, at Wrightsville Beach, North Carolina. All coordinates reference Datum NAD 1983.

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

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

(3) *Participant* means all vessels participating in the ''The Crossing'' swim event under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector North Carolina.

(4) *Spectator* means all persons and vessels not registered with the event sponsor as participants or official patrol.

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

(2) The Coast Guard Patrol Commander may terminate the event, or the operation of any support vessel participating in the event, at any time it is deemed necessary for the protection of life or property. The Coast Guard may be assisted in the patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(3) Vessel traffic, not involved with the event, may be allowed to transit the regulated area with the permission of the Patrol Commander. Vessels that desire passage through the regulated area shall contact the Coast Guard Patrol Commander on VHF–FM marine band radio for direction. Only participants and official patrol vessels are allowed to enter the regulated area.

(4) All Coast Guard vessels enforcing the regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22 (157.1 MHz). The Coast Guard will issue marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) *Enforcement period:* This section will be enforced from 8 a.m. to 12 p.m. on October 6, 2013.

Dated: March 13, 2013.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2013–07282 Filed 3–28–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0140]

RIN 1625–AA00

Safety Zone; USA Triathlon, Milwaukee Harbor, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone within Milwaukee Harbor, Milwaukee, Wisconsin. This Zone is intended to restrict vessels from a portion of Milwaukee Harbor due to the 2013 and 2014 Olympic and Sprint Distance National Championships. This proposed safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the 2013 and 2014 Olympic and Sprint Distance National Championships.

DATES: Comments and related material must be received by the Coast Guard on or before April 29, 2013.

ADDRESSES: You may submit comments identified by docket number USCG–2013–0140 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Petty Officer Joseph McCollum, U.S. Coast Guard Sector Lake Michigan; telephone 414–747–7148, email *Joseph.P.McCollum@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. 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.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2013–0140), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2013–0140] in the ''SEARCH'' box and click ''SEARCH.'' Click on the ''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.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2013–0140) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder 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. We have an agreement with the Department of

Transportation to use the Docket Management Facility.

3. 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).

4. 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**.

B. Background and Purpose

The Olympic and Sprint Distance National Championships are scheduled to take place in Milwaukee, Wisconsin in August of 2013 and 2014. These events are expected to attract 4000 participants each year. Participants will compete in a swim—as part of a triathlon competition—across both the Lakeshore inlet and the Discovery World Marina within Milwaukee Harbor. The swim portion of the National Championship is anticipated to occur on August 10 and 11, 2013, and on August 9 and 10, 2014. The Captain of the Port, Sector Lake Michigan, has determined that the likelihood of transiting watercraft during the swim competition involving a large number of competitors presents a significant risk of serious injuries or fatalities.

C. Discussion of Proposed Rule

The Captain of the Port, Sector Lake Michigan, has determined that a safety zone is necessary to mitigate the aforementioned safety risks. Thus, this proposed rule establishes a safety zone that encompasses all waters of Milwaukee Harbor, including Lakeshore inlet and Discovery World Marina, west of a line across the entrance to the Discovery World Marina connecting 43°02′15.1″ N, 087°53′37.4″ W and 43°01′44.2″ N, 087°53′44.6″ W (NAD 83).

This proposed rule will establish a safety zone within Milwaukee Harbor for the 2013 and 2014 calendar years. This proposed rule will be effective from August 1, 2013, until August 30, 2014. Additionally, the Coast Guard anticipates that this safety zone will be enforced from 6:30 a.m. until 11 a.m. on August 10 and 11, 2013. This 2013 enforcement schedule may change, and in the event of a change, the Captain of the Port, Sector Lake Michigan, will establish an updated enforcement schedule with a Notice of Enforcement. Likewise, the Captain of the Port, Sector Lake Michigan, will establish the 2014 enforcement schedule via a Notice of Enforcement.

The Captain of the Port Lake Michigan will notify the public that the zone in this proposal is or will be enforced by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners.

All persons and vessels shall comply with the instructions of the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative. The Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

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

1. 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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. Overall, we expect the economic impact of this proposed rule to be minimal and that a full Regulatory Evaluation is unnecessary.

2. 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 might be small entities: The owners or operators of vessels intending to transit or anchor within the waters of the Discovery World Marina or Lakeshore inlet during two days in August of 2013 and 2014.

This proposed safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This proposed rule will be enforced for a limited time on two days each year. This proposed safety zone has been designed to allow traffic to pass safely around the zone whenever possible and vessels will be allowed to pass through the zone with the permission of the Captain of the Port. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7148. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. 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.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a safety zone and is therefore categorically excluded under figure 2–1, paragraph 34(g) of the Instruction. 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 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T09–0140 to read as follows:

§ 165.T09–0140 Safety Zone; USA Triathlon, Milwaukee Harbor, Milwaukee, Wisconsin.

(a) *Location.* The safety zone will encompass all waters of Milwaukee Harbor, including Lakeshore inlet and Discovery World Marina, west of a line across the entrance to the Discovery World Marina connecting 43°02′15.1″ N, 087°53′37.4″ W and 43°01′44.2″ N, 087°53′44.6″ W (NAD 83).

(b) *Effective Period.* This safety zone will be effective from August 1, 2013, until August 30, 2014. This proposed rule will be enforced for periods in August 2013 and 2014. The Captain of the Port, Sector Lake Michigan, will establish an enforcement schedule via a Notice of Enforcement when the exact dates are known. The Captain of the Port, Sector Lake Michigan, will also establish the 2014 enforcement schedule via a Notice of Enforcement.

(c) *Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring in this safety zone is prohibited unless authorized by the Captain of the Port,

Sector Lake Michigan, or his or her designated on-scene representative.

(2) This safety zone is closed to all vessel traffic except as permitted by the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port, Sector Lake Michigan, is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan, to act or his or her behalf. The on-scene representative of the Captain of the Port, Sector Lake Michigan, will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

Dated: March 15, 2013.

M.W. Sibley,

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

[FR Doc. 2013–07281 Filed 3–28–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0034]

RIN 1625–AA87

Security Zones; Captain of the Port Detroit

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to add a permanent security zone within the Captain of the Port Detroit Zone. This proposed security zone is intended to restrict vessels from a portion of the Detroit River in order to ensure the safety and security of participants, visitors, and public officials at the Annual North American International Auto Show (NAIAS), which is held at Cobo Hall in downtown Detroit, MI. Vessels in close proximity to the proposed security zone will be subject to increased monitoring and boarding during the enforcement of the security zone.

DATES: Comments and related material must be received by the Coast Guard on or before April 29, 2013.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Adrian Palomeque, Prevention Department, Sector Detroit, U.S. Coast Guard; telephone (313) 568–9508, email *Adrian.F.Palomeque@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. 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.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2013–0034), 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 the comment is successfully transmitted. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2013–0034] in the ''SEARCH'' box and click ''SEARCH.'' Click on the ''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.

2. 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.* In the ''Keyword'' box insert ''USCG–2013–0034'' and click ''Search.'' Click on the ''Open Docket Folder'' link. 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. 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).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the 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**.

B. Regulatory History and Information

The Coast Guard has published multiple temporary final rules (TFRs) in the past in response to the NAIAS. Specifically, the Coast Guard published a TFR on January 7, 2011 (76 FR 1065), January 18, 2012 (77 FR 2453), and on December 28, 2012 (77 FR 76411). Each of these TFRs established a security zone to protect participants and spectators associated with the NAIAS. Because this event will likely recur annually, the Captain of the Port Detroit is proposing to establish a permanent security zone and thus, alleviate the need to publish annual TFRs in the future.

C. Basis and Purpose

For two weeks in the month of January, the Annual North American International Auto Show (NAIAS) will be held at Cobo Hall in downtown Detroit, MI. The NAIAS is the prime venue for introducing the world's most anticipated vehicles. In 2011, the NAIAS attendance for the public showing was over 735,000 people and press preview days attracted over 5,000 journalists representing 55 countries. Attendance and participation at the 2012 and 2013 NAIAS events were similar, and the attendance and participation at future NAIAS events is anticipated to be similar, too.

In years past, NAIAS has attracted numerous protesters from various organizations due to the state of the economy, worker layoffs, and the closures of automotive dealerships around the country. Because of the likely presence of high profile visitors at future NAIAS events, it is possible that protests may continue in subsequent years. Consequently, the Captain of the Port Detroit has determined that establishing a security zone in the vicinity of the NAIAS event is necessary to safeguard portions of the Detroit River from destruction, loss, or injury from sabotage or other subversive acts.

D. Discussion of Proposed Rule

As stated aboce, to safeguard portions of the Detroit River during NAIAS events, the Captain of the Port Detroit proposes to establish a permanent security zone. This proposed security zone will ensure the safety of the participants in and visitors of the annual NAIAS being held at Cobo Hall in downtown Detroit, MI. The proposed security zone will be enforced for two weeks in the month of January. The proposed security zone is expected to be enforced from 8 a.m. until 11:59 p.m. daily for the duration of the event.

The proposed security zone will encompass an area of the Detroit River beginning at a point of origin on land adjacent to the west end of Joe Louis Arena at 42°19.44′ N, 083°03.11′ W; then extending offshore approximately 150 yards to 42°19.39′ N, 083°03.07′ W; then proceeding upriver approximately 2000 yards to a point at 42°19.72′ N, 083°01.88′ W; then proceeding onshore to a point on land adjacent the Tricentennial State Park at 42°19.79′ N, 083°01.90′ W; then proceeding downriver along the shoreline to connect back to the point of origin. Vessels in close proximity to the proposed security zone will be subject to increased monitoring and boarding. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene representative. Entry into, transit, or anchoring within the proposed security zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

As mentioned above, the proposed security zone will be enforced for two weeks in the month of January. Each year, the Captain of the Port will notify the public by all appropriate means of the specific enforcement dates and times for the proposed security zone. Means of notification will include an annual publication of a Notice of Enforcement (NOE) in the **Federal Register**. Also, means of notification may include Broadcast Notice to Mariners and Local Notice to Mariners.

E. 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.

1. 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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The proposed security zone created by this rule will be relatively small and enforced for relatively short time. Also, the proposed security zone is designed to minimize its impact on navigable waters. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the proposed security zone when permitted by the Captain of the Port.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Detroit River, Detroit, Michigan, beginning at a point of origin on land at 42°19.44′ N, 083°03.11′ W; then extending offshore approximately 150 yards to 42°19.39′ N, 083°03.07′ W; then proceeding upriver approximately 2000 yards to a point at 42°19.72′ N, 083°01.88′ W; then proceeding onshore to a point on land at 42°19.79′ N, 083°01.90′ W; then returning to the point of origin.

This proposed security zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this proposed rule will not obstruct the regular flow of commercial traffic and will allow vessel traffic to pass around the proposed security zone. In the event that this proposed security zone affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the security zone. The Coast Guard will give notice

to the public via a Broadcast to Mariners that the regulation is in effect.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. 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. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. 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.

6. 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.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. 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.

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment.

This proposed rule involves the establishment of a security zone and is therefore, categorically excluded under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Preliminary Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. 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 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Amend § 165.915 by adding paragraph (a)(3) to read as follows:

§ 165.915 Security Zones; Captain of the Port Detroit

(a) * * *

(3) *North American International Auto Show, Detroit River, Detroit, MI.* All waters of the Detroit River encompassed by a line beginning at a point of origin on land adjacent to the west end of Joe Louis Arena at 42°19.44′ N, 083°03.11′ W; then extending offshore approximately 150 yards to 42°19.39′ N, 083°03.07′ W; then proceeding upriver approximately 2000 yards to a point at 42°19.72′ N, 083°01.88′ W; then proceeding onshore to a point on land adjacent to the Tricentennial State Park at 42°19.79′ N, 083°01.90′ W; then proceeding downriver along the shoreline to connect back to the point of origin on land adjacent to the west end of the Joe Louis Arena. All geographic coordinates are North American Datum of 1983 (NAD 83). This security zone will be

enforced for two weeks in the month of January with the exact dates and times to be published annually via a Notice of Enforcement.

* * * * *

Dated: February 15, 2013.

J.E. Ogden,

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

[FR Doc. 2013–07284 Filed 3–28–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0088; FRL–9783–4]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Particulate Matter Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to convert a conditional approval of specified provisions of the Ohio state implementation plan (SIP) to a full approval. Ohio submitted a request to approve a section of its particulate matter (PM) rules on February 23, 2012. The PM rule revisions being approved establish work practices for coating operations, add a section clarifying that sources can be subject to both stationary source and fugitive source PM restrictions, and add a PM emission limitation exemption for jet engine testing. Pursuant to a state commitment underlying a previous conditional approval of this rule, the revised rule provides that any exemption from the work practice requirements that the state grants to large coating sources must be submitted to EPA for approval.

DATES: Comments must be received on or before April 29, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0088, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakely.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakely, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakely, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: 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 rule, 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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: February 11, 2013.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2013–07261 Filed 3–28–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[EPA–HQ–OAR–2013–0162; FRL–9790–5]

RIN 2060–AQ71

Amendments to Compliance Certification Content Requirements for State and Federal Operating Permits Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to amend the compliance certification requirements for state and federal operating permits programs that were published in the **Federal Register** on June 27, 2003. In that action, one sentence was removed from the rules in error. This action proposes to restore the sentence to its original location in the rules.

DATES: *Comments.* Comments must be received on or before May 28, 2013.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by April 19, 2013, the EPA will hold a public hearing. Additional information about the hearing would be published in a subsequent **Federal Register** notice.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0162, by one of the following methods:

- *Http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Attention Docket ID No. EPA–HQ–OAR–2013–0162.
- *Fax:* (202) 566–9744.
- *Mail:* Attention Docket ID No. EPA–HQ–OAR–2013–0162, Air and Radiation Docket, Mailcode: 28221T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2013–0162. Such deliveries are only accepted during the Docket Center's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2013–0162. The EPA's policy is that all comments received will be included in the public docket without change and

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

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Joanna Swanson, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5282; fax number (919) 541–5509; email address: *swanson.joanna@epa.gov.*

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–0641; fax number (919) 541–5509; email address: *long.pam@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this Supplementary Information section of this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. What should I consider as I prepare my comments for the EPA?
1. Submitting CBI
2. Tips for Preparing Your Comments
C. Where can I get a copy of this document and other related information?
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II. Overview of the Proposed Rule
III. Background
A. The Title V Operating Permits Program
B. History of Changes to the Title V Compliance Certification Requirements
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IV. Proposed Revisions to the Title V Program Rules
A. The Proposed Change and Rationale
B. Scope of Rulemaking and Request for Comment
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

Entities potentially affected by this proposed action would include owners and operators of emission sources in all industry groups that hold or apply for a title V operating permit. Other entities potentially affected by this proposed action would include federal, state, local, and tribal air pollution control agencies that administer title V permit programs.

B. What should I consider as I prepare my comments for the EPA?

1. Submitting CBI

Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Environmental Protection Agency, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2013–0162.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket found on *www.regulations.gov,* an electronic copy of this proposed rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this proposed rule will be posted on the EPA's title V Web page at *http://www.epa.gov/ttn/oarpg/t5pfpr.html.*

D. How can I find information about a possible public hearing?

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–0641; fax number (919) 541–5509; email address: *long.pam@epa.gov.*

II. Overview of the Proposed Rule

This proposed rule would restore a sentence that was inadvertently removed from the operating permits program rules found in 40 CFR parts 70 and 71 due to an editing error. This error occurred in a June 27, 2003, final rule (68 FR 38517) amending the compliance certification requirements in 40 CFR 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B). The final rule removed the following sentence from the end of paragraph (c)(5)(iii)(B) of both sections: ''If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information.'' This proposed rule would restore this sentence to its former position in both paragraphs.

This sentence was originally added to the operating permits rules in the context of the 1997 Compliance Assurance Monitoring (CAM) rulemaking, which clarified the use of CAM monitoring data in compliance certifications. Specifically, this sentence was intended to clarify that material information (i.e., compliance information beyond required monitoring) known by the owner or operator must be identified and addressed in compliance certifications consistent with section 113(c)(2) of the Act and the 1997 Credible Evidence rule. The 2003 rulemaking that erroneously removed the subject sentence was intended to address a court remand concerning other aspects of the annual compliance certification requirements of title V.

The EPA is requesting comments only on whether, on the sole basis that the removal of the language in question was inadvertent, the language in question should or should not be restored. However, the EPA is not requesting comments on any other aspects of these provisions or on any other provisions of the part 70 and 71 rules.

III. Background

This section traces the origin of the sentence that is addressed in this proposal and its accidental removal from the regulations. Section III.A gives background information on the operating permits program under the Clean Air Act (CAA or ''the Act''), followed in section III.B by background on the rulemaking that created the sentence in question and the rulemaking in which the sentence was accidentally removed.

A. The Title V Operating Permits Program

Title V of the Act establishes an operating permits program for major sources of air pollutants, as well as certain other sources (CAA section 502(a)). Under title V, states were required to develop and implement title V permitting programs in conformance with program requirements promulgated by the EPA, which the EPA placed in 40 CFR part 70. Under title V, the EPA also developed a federal operating permits program to apply where states do not have approved programs, where the EPA determines that a state is not adequately implementing a program, in cases where a state has not satisfied an EPA objection, in Indian country (absent an explicitly approved part 70 program), and in certain areas of the Outer Continental Shelf. The federal program was promulgated in 40 CFR part 71. Most states, certain local agencies and one tribe have approved part 70 programs. The EPA administers the part 71 federal program in most areas of Indian Country (one tribe has been delegated implementation authority) and in certain areas of the Outer Continental Shelf (where there is no state permitting authority).

Once the operating permits programs are in place, title V requires every major source to apply for and operate pursuant to an operating permit (CAA sections 502(a) and 503), and requires that the permits contain conditions that assure compliance with all of the sources' applicable requirements under the Act (CAA section 504(a)). Among other things, title V also requires that sources certify compliance with the applicable requirements of their permits no less frequently than annually (CAA section 503(b)(2)), provides authority to the EPA to prescribe procedures for determining compliance and for monitoring and analysis of pollutants regulated under the Act (CAA section 504(b)) and requires each permit to ''set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions'' (CAA section 504(c)).

B. History of Changes to the Title V Compliance Certification Requirements

1. The CAM Rulemaking and the Credible Evidence Rule

The part 70 rule was originally promulgated on July 21, 1992 (57 FR 32250), and the part 71 rule on July 1, 1996 (61 FR 34202). Among other requirements, these rules required operating permits to include requirements for sources to submit annual compliance certifications,[1] consistent with CAA sections 503(b)(2), 504(c) and 114(a)(3).

The requirement to identify ''any other material information * * *,'' which is the sentence the EPA is proposing to restore in this action, was originally added to the title V compliance certification requirements of parts 70 and 71 in the context of a CAM rulemaking on October 22, 1997 (62 FR 54899). The CAM rule (located at 40 CFR part 64) is authorized by CAA section 114(a), which requires the EPA to promulgate regulations concerning enhanced monitoring and compliance certification. The CAM rule is an applicable requirement of the Act that imposes a methodology to create monitoring and/or recordkeeping to provide a reasonable assurance of compliance with applicable requirements. Section 114(a)(3) of the Act specifies certain requirements for compliance certifications that are relevant to the CAM rule and to title V. A goal of the CAM rule is to establish additional monitoring requirements so that units subject to part 64 can use the CAM monitoring data to address title V compliance certification requirements. At the time that the CAM rule was promulgated, in order to clarify that the EPA always intended for the CAM provisions to operate within the title V compliance certification process, the compliance certification provisions in 40 CFR 70.6(c)(5)(iii) and 71.6(c)(5)(iii) were also amended to reflect the

[1] The compliance certification requirement are found in 40 CFR 70.6(c)(5) and 71.6(c)(5).

requirements of compliance certification for those units subject to part 64 (62 FR 54937). In the CAM rulemaking, the EPA explained the revisions of the part 70 and 71 compliance certification requirements as follows:

To tailor compliance certification to the monitoring imposed by part 64, EPA has revised § 70.6(c)(5)(iii) (and § 71.6(c)(5)(iii)) so that a compliance certification includes the following elements.

First, the permit conditions being certified must be identified. Second, the method(s) and other information used to determine compliance status of each term and condition must be identified. These method(s) will have to include at a minimum any testing and monitoring methods identified in § 70.6(a)(3) that were conducted during the relevant time period. In addition, if the owner or operator knows of other material information (i.e., information beyond required monitoring that has been specifically assessed in relation to how the information potentially affects compliance status), that information must be identified and addressed in the compliance certification. This requirement merely emphasizes the general prohibition in section 113(c)(2) of the Act on knowingly making a false certification or omitting material information and the general criminal section on submitting false information to the government codified at 18 USC 1001. The revised part 70 provision does not impose a duty on the owner or operator to assess every possible piece of information that may have some undetermined bearing on compliance * * *

62 FR 54936.

Thus, after the 1997 CAM rulemaking, the compliance certification provisions that are pertinent to this proposal, 40 CFR 70.6(c)(5)(iii)(B) and (C) and 71.6(c)(5)(iii)(B) and (C), stated that a part 70 or 71 source's compliance certifications must include, among other items, the following information:

(B) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section. *If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;*

(C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the method or means designated in paragraph (c)(5)(iii)(B) of this section. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under part 64 of this chapter occurred; and

62 FR 54947 (emphasis added to denote the sentence that is at issue in this action).[2] [3]

Another rule, the Credible Evidence rule, was promulgated earlier in 1997 (62 FR 8314, February 24, 1997). The Credible Evidence rulemaking clarified that non-reference test data can be used in enforcement actions, and removed any potential ambiguity regarding use of such data for compliance certifications under section 114 and title V of the Act. That rulemaking was based on the EPA's understanding that Congress gave the EPA clear statutory authority to use any available information—not just data from reference tests or other federally promulgated or approved compliance methods—to prove CAA violations (62 FR 8314). The Credible Evidence rule revised 40 CFR parts 51, 52, 60 and 61 to make clear that ''any credible evidence'' can be used for this purpose by the EPA, states and citizens, but made no such revisions to part 70 or 71, in part because the CAM rule that was under development was expected to concurrently modify the existing part 70 requirements to provide additional detail as to what information sources must consider when certifying compliance (62 FR 8319).[4]

Although the scope of and authority for the Credible Evidence and CAM rules differ, there are complementary aspects to these rules (62 FR 54906). The 1997 CAM rulemaking discussed the relationship between the CAM rule and the Credible Evidence rule. In addressing comments on this relationship, the EPA stated the following in the 1997 CAM rulemaking:

First, these commenters suggested that compliance with indicator ranges under part 64 should act as a shield to enforcement actions. The Agency disagrees. Complete compliance with an approved part 64 monitoring plan does not shield a source from enforcement actions for violations of applicable requirements of the Act if other credible evidence proves violations of applicable emission limitations or standards. The Agency expects that a unit that is operating within appropriately established indicator ranges as part of approved monitoring will, in fact, be in compliance with its applicable limits. Part 64 does not prohibit the Agency, however, from undertaking enforcement where appropriate (such as cases where the part 64 indicator ranges may have been set improperly and other data such as information collected during an inspection provides clear evidence that enforcement is warranted).

* * * * *

Finally, it has been suggested during the part 64 and credible evidence rulemakings that a Title V permit may be written to limit the types of evidence used to prove violations of emissions standards. As mentioned in the [Credible Evidence rulemaking], even if a Title V permit specifies that certain monitoring, CAM or other monitoring, be performed and that this monitoring is the sole or exclusive means of establishing compliance or non-compliance, EPA views such provisions as null and void. Such an attempt to eliminate the possible use of credible evidence other than the monitoring specified in a Title V permit is antithetical to the credible evidence rule and to section 113(e)(1). If such a provision is nonetheless included in a permit, the permit should be vetoed to avoid any ambiguity. If the provision is not vetoed, the provision is without meaning, as it is *ultra vires,* that is, beyond the authority of the permit writer to limit what evidence may be used to prove violations, just as if a permit writer were to attempt to write in a provision that a source may not be assessed a penalty of $25,000 per day of violation for each violation. Evidence that is permitted by statute to be used for enforcement purposes, fines that may be levied, and any other statutory provisions, may not be altered by a permit.

62 FR 54907.

This discussion provides a clear statement by the EPA regarding its position on credible evidence and title V permits. The EPA has not reversed or weakened this position in subsequent actions.

2. The 2001 and 2003 Rulemakings To Address a Court Remand

On March 1, 2001, to respond to an October 29, 1999, remand from the United States Court of Appeals for the District of Columbia Circuit in *Natural Resources Defense Council* v. *EPA,* 194 F.3d 130 (D.C. Cir. 1999), the EPA published a direct final rule (66 FR 12872) and a parallel proposal (66 FR 12916) requiring title V compliance certifications to identify whether compliance during the period was continuous or intermittent as specified in CAA section 114(a)(3) per the 1990 CAA Amendments. Accordingly, this language was to be added to paragraph

[2] The language in 40 CFR 70.6 and 71.6 was identical except that the final sentence that appears above in the text of paragraph (c)(5)(iii)(C) was not included in 40 CFR 71.6. This difference in language was maintained throughout the revisions discussed in this preamble, and remains the same in the current regulations.

[3] The compliance certification requirements apply to all part 70 and 71 sources, not just part 64 (CAM) sources.

[4] In explaining why the Credible Evidence rulemaking made no changes to 40 CFR part 70 or 71, the EPA also stated that the final Credible Evidence rule ''merely eliminates any potential ambiguity or conflict between Parts 51, 52, 60, and 61 and Part 70 regarding the ability of sources to use non-reference test data in compliance certifications. Consistent with the congressional intent reflected in Title V and section 114(a)(3), Part 70 already contemplates use of non-reference test data in compliance certifications'' (62 FR 8319).

(c)(5)(iii)(C) of both 40 CFR 70.6 and 71.6. The preamble discussion of this change stated the following:

In response to the court's remand, we have added text to sections, §§ 70.6(c)(5)(iii)([C]) and 71.6(c)(5)(iii)([C]), to require that the responsible official for the affected facility include in the annual (or more frequent) compliance certification whether compliance during the period was continuous or intermittent. Specifically, the revised text, including the introductory language for both sections reads: ''Permits shall include each of the following * * *: A requirement that the compliance certification include all of the following * * *: The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in paragraph (c)(5)(iii)(B) of this section.'' The italicized text indicates the revisions made in response to the Court decision. Other text within both of these sections remains as promulgated in 1997. Under this revised language, the responsible official must include in the compliance certification a statement as to whether compliance during the period was continuous or intermittent. We believe these revisions respond directly and adequately to the Court's decision to remand the compliance certification requirements to us and are consistent with the requirements of the Act.

66 FR 12874 (direct final rule); 66 FR 12918 (parallel proposed rule).[5]

The revised regulatory language in the 2001 direct final rulemaking for the part 70 program reads as follows:

§ 70.6 Permit content.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in paragraph (c)(5)(iii)(B) of this section. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under part 64 of this chapter occurred; and

* * * * *

66 FR 12876.

The revised regulatory language in the 2001 direct final rulemaking for the part 71 program reads as follows:

§ 71.6 Permit content.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in paragraph (c)(5)(iii)(B) of this section. The certification shall identify each deviation and take it into account in the compliance certification; and

* * * * *

66 FR 12876.

During the period provided for public comment on the 2001 direct final rule and parallel proposal, the EPA received significant comments.[6] Accordingly, the EPA withdrew the direct final rule, considered the comments that were received and, based on consideration of those comments, published a final rule on June 27, 2003 (68 FR 38518). In the final rule, the EPA finalized paragraph (c)(5)(iii)(C) of both 40 CFR 70.6 and 71.6 as proposed. In addition, in response to comments, the EPA revised paragraph (c)(5)(iii)(B) in both rules to remove from the first sentence the reference to whether the methods or other means used by the source to determine compliance ''provide continuous or intermittent data.'' The preamble stated the following:

In response to the comments, we have deleted the second clause after the comma in the first sentence from §§ 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B). This removes the requirement that the responsible official for the affected facility identify in the annual (or more frequent) compliance certification whether the methods provide continuous or intermittent data. * * * Other text within §§ 70.6(c)(5)(iii)(B), 71.6(c)(5)(iii)(B), 70.6(c)(5)(iii)(C), and 71.6(c)(5)(iii)(C) remains as proposed in March 2001. The language in this final rule requires responsible officials to identify in the compliance certification whether compliance during the covered period was continuous or intermittent, but responsible officials do not need to state whether the methods used for determining compliance provide continuous or intermittent data. We believe these revisions respond directly and adequately to the Court's decision to remand the compliance certification requirements to us and are consistent with the requirements of the Act.

68 FR 38521.

However, in addition to the change described above, the actual revisions as set out in the regulatory language section in the 2003 final rule also deleted the last sentence of paragraph (c)(5)(iii)(B) in both the part 70 and 71 rules, despite the fact that the preamble stated that no other changes were being made. *Id.* The final regulatory language for 40 CFR 70.6 and 71.6 is shown below:

§ 70.6 Permit content.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(B) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section;

(C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in paragraph (c)(5)(iii)(B) of this section. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under part 64 of this chapter occurred; and

* * * * *

§ 71.6 Permit content.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(B) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section;

(C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in paragraph (c)(5)(iii)(B) of this section. The certification shall identify each deviation and take it into account in the compliance certification; and

* * * * *

68 FR 38523.

[5] There are a number of errors in this paragraph of the **Federal Register** as it appeared in the preamble text in both the direct final and parallel proposed rules. The first sentence of the preamble text in both the direct final and parallel proposed rules misidentified 40 CFR 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B) as the paragraphs in which text was being added. However, the revised regulatory text actually addressed paragraph (c)(5)(iii)(C) of the two rules, and the revised regulatory text was clearly placed in the paragraph (C) in the rule language section of the notices. In addition, the clause ''including whether compliance during the period was continuous or intermittent'' that is located midway through the paragraph should have been italicized to denote the text that was proposed to be added in response to the court decision, but no text was italicized.

[6] These comments are available in Docket No. EPA–HQ–OAR–2002–0062, items EPA–HQ–OAR–2002–0062–0002 through –0006.

A comparison of the version of paragraphs 40 CFR 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B) promulgated in 2003 with the version promulgated in the 1997 CAM rule, as described in section III.B.1 above, shows that the last sentence of those paragraphs—which stated ''If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information.''—was deleted, despite the fact that no mention of this change was made in either the 2001 direct final and parallel proposed rulemaking or the 2003 final rulemaking. The accidental deletion of that last sentence in 40 CFR 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B) is the error that the EPA seeks to correct with this proposed action.

IV. Proposed Revisions to the Title V Program Rules

A. The Proposed Change and Rationale

This proposed rule would reinstate the inadvertently removed sentence, which, consistent with the Credible Evidence rule, directs owners and operators of sources to ''identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information,'' in its original place before the semicolon at the end of 40 CFR 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B). No other changes are proposed, and the other regulatory text within these paragraphs would remain as finalized on June 27, 2003. Thus, this proposed rule only seeks to correct what the EPA believes was demonstrably an error in the 2003 final rulemaking discussed in the previous section.

As illustrated in the previous section, the substance of the preambles and rule text from the 2001 and 2003 rulemakings make it clear that the EPA did not intend to remove the missing sentence from 40 CFR 70.6(c)(5)(iii)(B) or 71.6(c)(5)(iii)(B). The EPA did not discuss or propose any revisions to these paragraphs in the 2001 direct final rulemaking or parallel proposal.[7] Similarly, while the EPA revised the text of 40 CFR 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B) as part of the 2003 final amendments, it did not discuss any intent to remove this sentence. To the contrary, the EPA stated clearly that ''[o]ther text within §§ 70.6(c)(5)(iii)(B), 71.6(c)(5)(iii)(B), 70.6(c)(5)(iii)(C), and 71.6(c)(5)(iii)(C) remains as proposed in March 2001'' (68 FR 38521). The EPA did not propose to remove the deleted sentence from paragraph (c)(5)(iii)(B) of 40 CFR 70.6 and 71.6 or to make any other changes to those paragraphs in that March 2001 rulemaking. Moreover, the EPA's response to comments on the 2001 proposed amendments reiterated the sentence's requirement that ''responsible officials must identify in [their title V compliance certifications] other material information where failure to do so would constitute a false certification of compliance.''[8]

Despite the accidental removal of the sentence in question on June 27, 2003, the EPA's actions since that time have remained consistent with the direction provided in the accidentally removed sentence, and with the Credible Evidence rule in general. For example, the part 71 federal operating permits program administered by the EPA includes a form for sources to use for their annual compliance certifications, and the instructions for completing the form state the following:

> *Compliance Status:* For each permit requirement and its associated compliance methods, indicate whether there was intermittent or continuous compliance (check one) during the reporting period. *You should consider all available information or knowledge that you have when evaluating this, including compliance methods required by the permit and ''credible evidence'' (e.g., non-reference test methods and information ''readily available'' to you).* You are always free to include written explanations and other information to clarify your conclusion regarding compliance status[9]

Language similar to this was originally included in the instructions for the compliance certification form that the EPA issued shortly after the credible evidence sentence (the sentence we are restoring) was added to parts 70 and 71 as part of the promulgation of the CAM rule in 1997. After the credible evidence language was inadvertently deleted from the part 71 rule in 2003, the EPA revised the compliance certification form and associated instructions in 2004 to reflect the requirement for sources to certify whether compliance was continuous or intermittent, but the EPA did not revise the instruction for sources to consider credible evidence when determining compliance status. In addition, the EPA Web site where the part 71 forms and instructions are located states that ''[o]n February 22, 2004, we revised the Annual Compliance Certification form and the Instruction Manual to reflect policy decisions concerning monitoring and the data used for compliance certifications.''[10] The retention of the instruction to consider credible evidence in the Annual Compliance Certification form clearly indicates that the EPA continues to believe that the title V rules should be implemented as if the removed sentence is still applicable. Note also that the EPA has made revisions to the part 71 forms a number of times since 2003, so it has had ample opportunity to change this language if its policy had changed; however, the EPA has made no such changes.[11]

Title V permits issued by EPA Regional Offices since 2003 also provide evidence of the EPA's ongoing practice of requiring sources to use credible evidence in compliance certifications. A review of a sample of recent part 71 permits revealed that they include language similar to the language in the removed sentence, which requires the annual compliance certification to include ''any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information.'' These permits include a permit issued by Region II in 2011, two permits issued by Region VIII in 2010 and 2011, and a permit issued by Region V in 2012.[12]

Similarly, EPA guidance to title V rule writers on an EPA Region III Web site concerning compliance and enforcement illustrates the EPA's commitment to the use of credible

[7] As discussed previously, while the 2001 preamble discussion of the proposed revisions at 66 FR 12918 mistakenly referred to changes to paragraph (c)(5)(iii)(B) of 40 CFR 70.6 and 71.6, the proposed amendments in that action addressed only 40 CFR 70.6(c)(5)(iii)(C) and 71.6(c)(5)(iii)(C). The proposed revisions to the regulatory language correctly addressed 40 CFR 70.6(c)(5)(iii)(C) and 71.6(c)(5)(iii)(C).

[8] Responses to public comments prepared for the June 27, 2003 Final Rule, section 2.3, page 11, EPA Docket No. EPA–HQ–OAR–2002–0062–0008, June 2003.

[9] Annual Compliance Certification (A–COMP), EPA Form 5900–04, at page 4 (emphasis added), accessed from *http://www.epa.gov/airquality/permits/p71forms.html* on September 25, 2012.

[10] *http://www.epa.gov/airquality/permits/p71forms.html* accessed on September 25, 2012.

[11] *http://www.epa.gov/airquality/permits/p71forms.html* accessed on September 25, 2012.

[12] Region II part 71 permit issued to Turning Stone Casino Resort in Verona, New York, *http://www.epa.gov/region02/air/permit/trsc07052011.pdf.* Region VIII part 71 permits issued to (1) Samson Resources Company, *http://www.epa.gov/region8/air/permitting/Samson-HowardSWD_Initial_V-SU-0051-10.00.pdf;* and (2) Public Service Company of Colorado, *http://www.epa.gov/region8/air/permitting/PSCo-TiffanyCS-FinalRenewal-2-Permit-V-SU-00023-2010.00.pdf.* Region V part 71 permit issued for operations at the Treasure Island Resort & Casino in Red Wing, Minnesota. *http://yosemite.epa.gov/r5/r5ard.nsf/f5dbe2e3ef9dc9c1862570430068f396/10cd79ad1a4c177386257ad0004d7bc3/$FILE/V-PI-2704900084-2012-10%20-%20Final.pdf.* These Web sites were accessed on December 19, 2012.

evidence. That Web site includes the following guidance:

> Title V permit conditions cannot limit the types of data or information (i.e., credible evidence) that may be used to prove a violation of any applicable requirement. Title V permits should contain language clarifying that any credible evidence may be used in determining a source's compliance status (or alternatively, that nothing in the permit precludes the use of credible evidence in determining compliance or noncompliance with the terms of the permit). Such language gives fair notice to the source and the public, and prevents the source from claiming that they weren't on notice that other credible evidence could be used to demonstrate a violation or compliance. Such language can most easily be added to Title V permits by modifying the ''boilerplate'' provisions (i.e., general permit conditions) as in the following example * * *.[13]

As illustrated by these examples, following the mistaken removal of the sentence on June 27, 2003, the EPA has clearly articulated a position consistent with the Credible Evidence rule under all circumstances, including the annual compliance certification. In light of the EPA's continued, consistent commitment to the use of credible evidence in compliance certifications and other title V contexts, the EPA has not previously devoted its limited resources to correcting the inadvertent deletion in the regulatory text through a formal rulemaking. Nonetheless, the EPA's Office of Inspector General (OIG) has indicated that the title V rules should be amended to restore the credible evidence language to the regulatory requirements in order to improve the content of annual compliance certifications.[14] In concurrence with the OIG recommendation, the EPA is now taking this action to restore the language currently missing in the part 70 and 71 rules.

In any case, the restored language reflects the Act's general prohibition on knowingly making a false certification or omitting material information, independent of any EPA policy or previous rulemaking actions. As modified in the 1990 CAA Amendments, section 113(c)(2) of the Act states that any person who knowingly ''makes any false material statement, representation, or certification in, *or omits material information from,* * * * any notice, application, record, report, plan, or other document required pursuant to this Act'' (emphasis added) is subject to fine or imprisonment, upon conviction. The EPA believes that it is important for sources to be on notice and to understand the requirement to consider as part of their compliance status any compliance information determined by methods other than those identified in the permit. Moreover, for the sake of clarity, the EPA believes that this general duty should be explicit in the part 70 and 71 compliance certification requirements.

B. Scope of Rulemaking and Request for Comment

The purpose of this rulemaking is to restore language inadvertently deleted from the title V regulations, 40 CFR parts 70 and 71.[15] Given the passage of time, the EPA is proposing to make this change through a proposed rule and providing an opportunity for public input. Accordingly, the EPA is requesting comments only on whether, on the sole basis that the removal of the language in question was inadvertent, the language in question should or should not be restored. However, the EPA is not requesting comments on any other aspects of these provisions or on any other provisions of the part 70 and 71 rules. If comments are submitted outside of this scope, the EPA will not take them into consideration when finalizing this rule.

V. Statutory and Executive Order Reviews

This proposed rule would implement a technical correction to the CFR, adding a sentence that was inadvertently removed in a prior rulemaking; it would not otherwise impose or amend any requirements. The analysis below is consistent with the limited nature of this rulemaking.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The EPA is simply correcting the CFR to reinstate a sentence that was inadvertently removed. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR parts 70 and 71 under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.,* and has assigned OMB control numbers 2060–0243 and 2060–0336, respectively. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed action on small entities, small entity is defined as: (1) A small business as defined in the U.S. Small Business Administration size standards at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. As explained above, this

[13] *http://www.epa.gov/reg3artd/permitting/t5_compl_enf.htm.* The Web site states that this page was last updated on February 11, 2011.

[14] EPA Office of Inspector General, *Substantial Changes Needed in Implementation and Oversight of Title V Permits If Program Goals Are To Be Fully Realized,* Report No. 2005–P–00010, pp 31–32 and p 37, Recommendation 2–2, March 9, 2005. *http://www.epa.gov/oig/reports/2005/20050309-2005-P-00010.pdf*

[15] Section 70.4(i) provides that states with an approved part 70 program may need to revise their programs when the relevant federal statutes or regulations are modified or supplemented. Given that the relevant federal statute concerning representations or statements made in compliance certifications (CAA section 113(c)(2)) applies regardless of the specific language in 40 CFR 70.6(c)(5)(iii)(B), the EPA is proposing that states will not need to submit part 70 program revisions in response to this rulemaking, except where a state program interferes with the implementation of the sentence the EPA proposes to restore. The EPA is also proposing that permit reopenings will not be needed under 40 CFR 70.7(f)(1) or 71.7(f)(1) in response to this rulemaking, except where a permit contains language that interferes with the implementation of the sentence the EPA proposes to restore. Notwithstanding the previous statements in this footnote, the EPA may require individual states to revise their programs or reopen permits where the EPA believes such actions would be necessary to ensure the appropriate implementation of the program or its permits.

proposed rule would merely restore a sentence removed from the rules in error and, therefore, does not impose any new requirements on any entities, either large or small. The EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed rule contains no federal mandates under the provisions of title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector; it simply restores a sentence removed from the rules because of erroneous amendatory language contained in the June 27, 2003, amendments. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The sentence restored in this action was removed in error and, therefore, it does not impose new regulatory requirements.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As explained previously, this proposed rule would merely restore a sentence removed from the rules in error. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). As explained previously, this proposed rule would merely restore a sentence removed from the rules in error. Thus, Executive Order 13175 does not apply to this action.

The EPA specifically solicits additional comment on this proposed action from tribal officials.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through the OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As explained previously, this proposed rule would merely restore a sentence removed from the rules in error.

List of Subjects

40 CFR Part 70

Environmental protection, administrative practice and procedure, air pollution control, intergovernmental relations, reporting and recordkeeping requirements.

40 CFR Part 71

Environmental protection, administrative practice and procedure, air pollution control, reporting and recordkeeping requirements.

Dated: March 22, 2013.

Bob Perciasepe,

Acting Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 70—STATE OPERATING PERMIT PROGRAMS

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

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

■ 2. Revise § 70.6 paragraph (c)(5)(iii)(B) to read as follows:

§ 70.6 Permit content.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(B) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section. If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

* * * * *

PART 71—FEDERAL OPERATING PERMIT PROGRAMS

■ 1. The authority citation for part 71 continues to read as follows:

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

■ 2. Revise § 71.6 paragraph (c)(5)(iii)(B) to read as follows:

§ 71.6 Permit content.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(B) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section. If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

* * * * *

[FR Doc. 2013–07266 Filed 3–28–13; 8:45 a.m.]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[IB Docket No. 12–376; FCC 12–161]

Earth Stations Aboard Aircraft Communicating with Fixed-Satellite Service Geostationary-Orbit Space Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: The Federal Communications Commission is correcting the comment and reply comment dates for a proposed rule that appeared in the **Federal Register** of March 8, 2013. The document proposed rules for Earth Stations Aboard Aircraft.

FOR FURTHER INFORMATION CONTACT: Andrea Kelly, Satellite Division, International Bureau, FCC, (202) 418–0748, *Andrea.Kelly@fcc.gov,* or Howard Griboff, Policy Division, International Bureau, FCC, (202) 418–1460, *Howard.Griboff@fcc.gov.*

Correction

In the proposed rule of March 8, 2013, FR Doc. 2013–04429, on page 14952, column 1, correct the **DATES** section to read as follows:

DATES: Submit comments on or before May 22, 2013 and replies on or before June 21, 2013.''

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–07264 Filed 3–28–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R5–ES–2012–0045; 4500030113]

RIN 1018–AY12

Endangered and Threatened Wildlife and Plants; Endangered Status for the Diamond Darter and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on our July 26, 2012, proposed listing and designation of critical habitat for the diamond darter (*Crystallaria cincotta*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, associated DEA, and amended required determinations section. Comments previously submitted on the proposed rule need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider all comments received or postmarked on or before April 29, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain copies of the proposed rule and the draft economic analysis on the Internet at *http://www.regulations.gov* at Docket Number FWS–R5–ES–2012–0045, or by mail from the West Virginia Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Comment submission: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R5–ES–2012–0045, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R5–ES–2012–0045; 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 comments 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: John Schmidt, Acting Field Office Supervisor, U.S. Fish and Wildlife Service, West Virginia Field Office, 694 Beverly Pike, Elkins, WV 26241; by telephone (304) 636–6586; or by facsimile (304) 636–7824. Any person who uses a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed listing and designation of critical habitat for the diamond darter (*Crystallaria cincotta)* that was published in the **Federal Register** on July 26, 2012 (77 FR 43906), our DEA, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties.

We are also notifying the public that we will publish two separate rules for the final listing determination and the final critical habitat determination for the diamond darter. The final listing rule will publish under the existing docket number, FWS–R5–ES–2012–0045, and the final critical habitat designation will publish under new docket number FWS–R5–ES–2013–0019.

We will consider information and recommendations from all interested parties as to both determinations. As to the proposed listing determination, we are particularly interested in comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(3) Any information on the biological or ecological requirements of the species, and ongoing conservation measures for the species and its habitat.

(4) Current or planned activities in the areas occupied by the species and possible impacts of these activities on this species.

As to the proposed critical habitat determination, we are particularly interested in comments concerning:

(5) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act, including whether there are threats to the species from human activity, the degree of which 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 is not prudent.

(6) Specific information on:

(a) The amount and distribution of the species' habitat;

(b) What areas occupied by the species at the time of listing that contain features essential for the conservation of the species we should include in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential to the conservation of the species and why.

(7) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(8) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(9) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(10) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(11) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you submitted comments or information on the proposed rule (77 FR 43906) during the initial comment period from July 26, 2012, to September 24, 2012, please do not resubmit them. We have incorporated them into the public record as part of the original comment period, and we will fully consider them in the preparation of our final determination.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, 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.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R5–ES–2012–0045 for the proposed listing action and at Docket No. FWS–R5–ES–2013–0019 for the proposed critical habitat designation, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, West Virginia Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss in this document only those topics directly relevant to the designation of critical habitat for the diamond darter. For more information on the diamond darter, its habitat, or previous Federal actions, refer to the proposed listing and designation of critical habitat published in the **Federal Register** on July 26, 2012 (77 FR 43906), which is available online at *http://www.regulations.gov* (at Docket Number FWS–R5–ES–2012–0045) or from the West Virginia Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On July 26, 2012, we published a proposed rule to list the diamond darter as endangered and to designate critical habitat (77 FR 43906). We proposed to designate a total of approximately 123 river miles of critical habitat in Kanawha and Clay Counties, West Virginia, and Edmonson, Hart, and Green Counties, Kentucky. That proposal had a 60-day comment period, ending September 24, 2012.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider, among other things, the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and

any benefits that may result from designation due to State or Federal laws that may apply to critical habitat. When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan.

In the case of the diamond darter, the benefits of critical habitat include public awareness of the presence of the fish and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the diamond darter due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, our DEA concerning the proposed critical habitat designation is available for review and comment (see **ADDRESSES**).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the diamond darter. The DEA separates conservation measures into two distinct categories according to ''without critical habitat'' and ''with critical habitat'' scenarios. The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections otherwise afforded to the diamond darter (including listing under the Act, as well as other Federal, State, and local regulations). The ''with critical habitat'' scenario describes the incremental impacts specifically due to designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methodology of the analysis, see Chapter 2, ''Framework for the analysis,'' of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the diamond darter over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. The DEA identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing. The DEA quantifies economic impacts of the diamond darter conservation efforts associated with the following categories of activity: (1) Resource extraction (coal, gravel, and rock mining, and oil and natural gas exploration) and utilities; (2) timber management, agriculture, and grazing; (3) other in-stream work; (4) transportation (roads, highways, bridges); and (5) water quality/sewage management.

The DEA concludes that the types of conservation efforts requested by the Service during section 7 consultation regarding the diamond darter are not expected to change due to critical habitat designation. The Service believes that results of consultation under the adverse modification and jeopardy standards are likely to be similar because: (1) The primary constituent elements that define critical habitat are also essential for the survival of the diamond darter; (2) the diamond darter is limited in its range; and (3) the number of individuals in the surviving population is very small. In addition, although one of the proposed critical habitat units for the diamond darter is unoccupied, incremental impacts of the critical habitat designation will be limited for the following reasons: (1) The unit is currently occupied by nine federally listed endangered mussel species: northern riffleshell (*Epioblasma torulosa rangiana*), snuffbox (*E. triquetra*), pink mucket (*Lampsilis abrupta*), ring pink (*Obovaria retusa*), rough pigtoe (*Pleurobema plenum*), clubshell (*P. clava*), fanshell (*Cyprogenia stegaria*), spectaclecase (*Cumberlandia monodonta*), and sheepnose (*Plethobasus cyphyus*); and (2) the unit is situated at least partially within the Mammoth Cave National Park, which is managed according to a land and resource management plan that includes specific measures to protect sensitive species.

The DEA concludes that incremental impacts of critical habitat designation are limited to additional administrative costs of consultations and that indirect incremental impacts are unlikely to result from the designation of critical habitat for the diamond darter. The present value of the total direct (administrative) incremental cost of critical habitat designation is $800,000 over the next 20 years assuming a 7 percent discount rate, or $70,000 on an annualized basis. Transportation activities are likely to be subject to the greatest incremental impacts at $320,000 over the next 20 years, followed by timber management, agriculture, and grazing at $260,000; resource extraction at $150,000; other in-stream work at $50,000; and water quality/sewage management at $18,000 (present values over 20 years assuming a 7 percent discount rate).

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations.

Required Determinations—Amended

In our July 26, 2012, proposed rule (77 FR 43906), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Orders (E.O.) 12866 and 13563 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the DEA data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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 of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*),

whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., 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. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rule.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the diamond darter would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as resource extraction; timber management, agriculture, and grazing; other in-stream activities; transportation; and water quality/sewer management. In order to determine whether it is appropriate for our agency to certify that this proposed 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. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we finalize the proposed listing for this species, in areas where the diamond darter are present, Federal agencies will be required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize the proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the diamond darter. We do not expect the critical habitat designation to result in impacts to small entities for transportation and water quality/sewer management activities, as consultations considering these activities do not involve third parties. We anticipate 12 small entities over 20 years, or less than 1 entity in a single year, could be affected by other in-stream work at a cost of $875 to $8,800 each, representing less than 1 percent of annual revenues. In the resource extraction category, 50 small entities over 20 years, or 3 entities in a single year, could be affected by utility pipeline installation at a cost of $875 to $8,800 each, representing less than 1 percent of annual revenues, and 6 small entities could be affected by bituminous coal and lignite surface mining within a single year, at a cost of $875 to $5,300 each, representing less than 1 percent of annual revenues. One hundred and ninety small entities could be affected by timber management, agriculture, and grazing within a single year, at a cost of $880 to $22,000 each, representing less than 1 percent of annual revenues. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts, if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the EO regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, 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.

Authors

The primary authors of this notice are the staff members of the West Virginia Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 14, 2013.

Rachel Jacobson,

Principal Deputy, Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–07306 Filed 3–28–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Ocean and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 1206013325–3262–02]

RIN 0648–XA983

Endangered and Threatened Wildlife; 90-day Finding on a Petition to List Sperm Whales in the Gulf of Mexico as a Distinct Population Segment Under the Endangered Species Act

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

ACTION: 90-day petition finding.

SUMMARY: We, NMFS, announce a 90–day finding on a petition from WildEarth Guardians to list the sperm whale (*Physter macrocephalus*) as an endangered or threatened distinct population segment (DPS) in the Gulf of Mexico. We find that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. As a result, we hereby initiate a status review of sperm whales in the Gulf of Mexico to determine whether the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information pertaining to this species and potential critical habitat from any interested party.

DATES: Scientific and commercial information pertinent to the petitioned action must be received by May 28, 2013.

ADDRESSES: You may submit information or data, identified by ''NOAA–NMFS–2013–0059,'' by any one of the following methods:

• *Electronic Submissions:* Submit all electronic information via the Federal eRulemaking Portal *http://www.regulations.gov.* To submit information via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter ''NOAA–NMFS–2013–0059'' in the keyword search. Locate the document you wish to provide information on from the resulting list and click on the ''Submit a Comment'' icon to the right of that line.

• *Mail or hand-delivery:* Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: All information received is a part of the public record and may be posted to *http://www.regulations.gov* without change. All personally identifiable information (for example, name, address, etc.) voluntarily submitted may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept information from anonymous sources, although submitting comments anonymously will prevent NMFS from contacting you if NMFS has difficulty retrieving your submission. Attachments to electronic submissions will be accepted in Microsoft Word, Excel, Corel WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Heather Coll, NMFS, Office of Protected Resources, (301) 427–8455; or Marta Nammack, NMFS, Office of Protected Resources (301) 427–8469.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 2011, we received a petition from WildEarth Guardians to list the sperm whale (*Physeter macrocephalus*) in the Gulf of Mexico as an endangered or threatened DPS under the Endangered Species Act (ESA); sperm whales are currently listed as a single endangered species throughout their global range (35 FR 8495; June 2, 1970). The petitioner also requested designation of critical habitat concurrent with the listing to help ensure survival of sperm whales in the Gulf of Mexico. Copies of the petition are available from us (see **ADDRESSES,** above).

ESA Statutory and Regulatory Provisions and Evaluation Framework

In accordance with section 4(b)(3)(A) of the ESA, to the maximum extent practicable and within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce is required to make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When we find that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted, we are required to promptly commence a review of the status of the species concerned, during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, within 12 months of receipt of the petition we conclude the review with a finding as to whether, in fact, the petitioned action is warranted. Because the finding at the 12-month stage is based on a comprehensive review of all best available information, as compared to the narrow scope of review at the 90-day stage, which focuses on information set forth in the petition, this 90-day finding does not prejudge the outcome of the status review.

Under the ESA, the term ''species'' means a species, a subspecies, or a DPS of a vertebrate species (16 U.S.C. 1532(16)). A joint NMFS–USFWS policy clarifies the Services' interpretation of the phrase ''Distinct Population Segment,'' or DPS (61 FR 4722; February 7, 1996). The DPS Policy requires the consideration of two elements when evaluating whether a vertebrate population segment qualifies as a DPS under the ESA: (1) discreteness of the population segment in relation to the remainder of the species to which it belongs; and (2) the significance of the population segment to the species to which it belongs.

A species is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, and ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether a species is threatened or endangered based on any one or a combination of the following section 4(a)(1) factors: (A) The present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; and (E) any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

The ESA requires us to designate critical habitat concurrent with final listing rule ''to the maximum extent prudent and determinable'' (16 U.S.C. 1533 (a)(3)(A)). The ESA defines ''critical habitat'' as ''* * * the specific areas within the geographical area occupied by the species at the time it is listed * * * on which are found those physical and biological features (I)

essential to the conservation of the species and (II) which may require special management considerations or protection; and * * * 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.'' 16 U.S.C. 1532 (5)(A).

ESA-implementing regulations issued jointly by the Services (50 CFR 424.14(b)) define ''substantial information,'' in the context of reviewing a petition to list, delist, or reclassify a species, as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

Judicial decisions have clarified the appropriate scope and limitations of the Services' review of petitions at the 90-day finding stage, in making a determination that a petitioned action ''may be'' warranted. As a general matter, these decisions hold that a petition need not establish a ''strong likelihood'' or a ''high probability'' that a species is either threatened or endangered to support a positive 90-day finding.

To make a 90-day finding on a petition to list, delist, or reclassify a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the petitioned action may be warranted, including its references and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioners' sources and characterizations of the information presented if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates that the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be disregarded at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude that it supports the petitioners' assertions. In other words, conclusive information indicating that the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding.

Analysis of Petition

We first evaluated whether the petition presented the information indicated in 50 CFR 424.14(b)(2). The petition contains information on the species, including the taxonomy, species description, geographic distribution, habitat, population status and trends, and factors contributing to the species' population numbers. While the petitioner acknowledged the worldwide endangered listing of sperm whales, they requested that we partition a Gulf of Mexico DPS from the worldwide listing as ''the DPS deserves separate listing as it is a discrete population that is also significant to the species and faces additional unique threats to its survival.''

DPS Analysis

The petition requests that we designate sperm whales in the Gulf of Mexico as a threatened or endangered DPS, and presents arguments that sperm whales in the Gulf of Mexico meet the Services' requirements for identifying a DPS eligible for listing. Our joint NMFS–USFWS DPS policy (February 7, 1996; 61 FR 4722) identifies two elements that must be considered when identifying a DPS: (1) the discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the species to which it belongs. A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or (2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA. If a population segment is considered discrete under one or more of the above conditions, its biological and ecological significance will then be considered in light of Congressional guidance (see Senate Report 151, 96th Congress, 1st Session) that the authority to list DPS's be used '' * * * sparingly'' while encouraging the conservation of genetic diversity. In carrying out this examination, the Services will consider available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. This consideration may include, but is not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Petitioners present information indicating that sperm whales in the Gulf of Mexico are physically and behaviorally different from other sperm whales, and that international boundaries and separate management also qualify them as discrete under the DPS policy. Physical differences presented in the petition are genetic and size differences. With respect to behavior, petitioners cite communication, group size, and lack of migration as differences rendering sperm whales in the Gulf of Mexico as discrete from other populations. Finally, petitioners assert that the Gulf of Mexico population is partly delineated by international boundaries with Mexico and therefore subject to different governmental management in Mexican waters.

Petitioners argue that sperm whales in the Gulf of Mexico are significant because their lack of migration behavior indicates persistence in an ecological setting unusual or unique for the taxon and that the loss of such a population would result in a significant gap in the range of the taxon. They also point to genetic characteristics to support their assertion that sperm whales in the Gulf of Mexico are significant in that they differ from other populations.

Analysis of ESA Section 4(a)(1) Factors

The petition states that sperm whales in the Gulf of Mexico are more at risk than other sperm whales which are listed globally as endangered. Petitioners identify at least three causal factors in section 4(a)(1) of the ESA that are contributing to the decline of sperm whales in the Gulf of Mexico. The petition provides information on the present or threatened destruction, modification, or curtailment of the petitioned DPS' habitat or range; the inadequacy of existing regulatory mechanisms; and other natural or manmade factors affecting its continued existence. Specifically, the petition presents information on multiple threats to sperm whales in the Gulf of Mexico, including oil and gas development and the recent Deepwater Horizon spill, destruction of coastal habitats, water pollution including the Gulf's ''dead zone,'' fishery interactions, anthropogenic noise, ship strikes, and climate change. The petition also states that there is a lack of adequate regulatory mechanisms to manage those threats.

Petition Finding

Based on the above information and criteria specified in 50 CFR 424.14(b)(2), we find that the petitioners present substantial scientific and commercial information indicating that listing sperm whales (*Physeter macrocephalus*) in the Gulf of Mexico as an endangered or threatened DPS may be warranted.

Information Solicited

To ensure that the status review is based on the best available scientific and commercial data, we are soliciting information on whether sperm whales in the Gulf of Mexico should be identified as a DPS and, if so, whether the DPS should be listed as endangered or threatened based on the above ESA section 4(a)(1) factors. Specifically, we are soliciting information, for this population, in the following areas: (1) Its discreteness in relation to the remainder of its species; (2) its significance to the global species of sperm whales; (3) historical and current population status and trends; (4) historical and current distribution; (5) migratory movements and behavior; (6) genetic population structure; (7) current or planned activities that may adversely impact sperm whales in the Gulf of Mexico; and (8) ongoing efforts to conserve sperm whales in the Gulf of Mexico. We request that all information and data be accompanied by supporting documentation such as (1) maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

We are also requesting information on areas within U.S. jurisdiction that may qualify as critical habitat for sperm whales in the Gulf of Mexico that we might consider for designation. Areas that include the physical and biological features essential to the conservation of the species should be identified, and information regarding the potential need for special management considerations for those features should be provided. Essential features include, but are not limited to (1) space for individual growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and development of offspring; (5) habitats that are protected from disturbance or are representative of the historical, geographical and ecological distributions of the species (50 CFR 424.12(b)).

References Cited

A complete list of references is available upon request from NMFS Protected Resources Headquarters Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 25, 2013.

Alan Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2013–07355 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 78, No. 61
Friday, March 29, 2013

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 and Nutrition Service

Child Nutrition Programs; Income Eligibility Guidelines

Correction

In notice document 2013–6544 appearing on pages 17628–17631 in the issue of Friday, March 22, 2013, make the following correction:

On page 17630, the table should appear as follows:

Effective from July 1, 2013 to June 30, 2014												
	FEDERAL POVERTY GUIDELINES	REDUCED PRICE MEALS - 185 %					FREE MEALS - 130 %					
HOUSEHOLD SIZE	ANNUAL	ANNUAL	MONTHLY	TWICE PER MONTH	EVERY TWO WEEKS	WEEKLY	ANNUAL	MONTHLY	TWICE PER MONTH	EVERY TWO WEEKS	WEEKLY
48 CONTIGUOUS STATES, DISTRICT OF COLUMBIA, GUAM, AND TERRITORIES											
1	11,490	21,257	1,772	886	818	409	14,937	1,245	623	575	288
2	15,510	28,694	2,392	1,196	1,104	552	20,163	1,681	841	776	388
3	19,530	36,131	3,011	1,506	1,390	695	25,389	2,116	1,058	977	489
4	23,550	43,568	3,631	1,816	1,676	838	30,615	2,552	1,276	1,178	589
5	27,570	51,005	4,251	2,126	1,962	981	35,841	2,987	1,494	1,379	690
6	31,590	58,442	4,871	2,436	2,248	1,124	41,067	3,423	1,712	1,580	790
7	35,610	65,879	5,490	2,745	2,534	1,267	46,293	3,858	1,929	1,781	891
8	39,630	73,316	6,110	3,055	2,820	1,410	51,519	4,294	2,147	1,982	991
For each add'l family member, add	4,020	7,437	620	310	287	144	5,226	436	218	201	101
ALASKA											
1	14,350	26,548	2,213	1,107	1,022	511	18,655	1,555	778	718	359
2	19,380	35,853	2,988	1,494	1,379	690	25,194	2,100	1,050	969	485
3	24,410	45,159	3,764	1,882	1,737	869	31,733	2,645	1,323	1,221	611
4	29,440	54,464	4,539	2,270	2,095	1,048	38,272	3,190	1,595	1,472	736
5	34,470	63,770	5,315	2,658	2,453	1,227	44,811	3,735	1,868	1,724	862
6	39,500	73,075	6,090	3,045	2,811	1,406	51,350	4,280	2,140	1,975	988
7	44,530	82,381	6,866	3,433	3,169	1,585	57,889	4,825	2,413	2,227	1,114
8	49,560	91,686	7,641	3,821	3,527	1,764	64,428	5,369	2,685	2,478	1,239
For each add'l family member, add	5,030	9,306	776	388	358	179	6,539	545	273	252	126
HAWAII											
1	13,230	24,476	2,040	1,020	942	471	17,199	1,434	717	662	331
2	17,850	33,023	2,752	1,376	1,271	636	23,205	1,934	967	893	447
3	22,470	41,570	3,465	1,733	1,599	800	29,211	2,435	1,218	1,124	562
4	27,090	50,117	4,177	2,089	1,928	964	35,217	2,935	1,468	1,355	678
5	31,710	58,664	4,889	2,445	2,257	1,129	41,223	3,436	1,718	1,586	793
6	36,330	67,211	5,601	2,801	2,586	1,293	47,229	3,936	1,968	1,817	909
7	40,950	75,758	6,314	3,157	2,914	1,457	53,235	4,437	2,219	2,048	1,024
8	45,570	84,305	7,026	3,513	3,243	1,622	59,241	4,937	2,469	2,279	1,140
For each add'l family member, add	4,620	8,547	713	357	329	165	6,006	501	251	231	116

[FR Doc. C1–2013–06544 Filed 3–28–13; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Income Eligibility Guidelines

Correction

In notice document 2013–6547 appearing on pages 17631–17632 in the issue of Friday, March 22, 2013, make the following correction:

On page 17632, the table should appear as follows:

INCOME ELIGIBILITY GUIDELINES
(Effective from July 1, 2013 to June 30, 2014)

Household Size	Federal Poverty Guidelines- 100%					Reduced Price Meals - 185%				
	Annual	Monthly	Twice-Monthly	Bi-Weekly	Weekly	Annual	Monthly	Twice-Monthly	Bi-Weekly	Weekly
48 Contiguous States, D.C., Guam and Territories										
1	$11,490	$958	$479	$442	$221	$21,257	$1,772	$886	$818	$409
2	15,510	1,293	647	597	299	28,694	2,392	1,196	1,104	552
3	19,530	1,628	814	752	376	36,131	3,011	1,506	1,390	695
4	23,550	1,963	982	906	453	43,568	3,631	1,816	1,676	838
5	27,570	2,298	1,149	1,061	531	51,005	4,251	2,126	1,962	981
6	31,590	2,633	1,317	1,215	608	58,442	4,871	2,436	2,248	1,124
7	35,610	2,968	1,484	1,370	685	65,879	5,490	2,745	2,534	1,267
8	39,630	3,303	1,652	1,525	763	73,316	6,110	3,055	2,820	1,410
Each add'l family member add	+ $4,020	+ $335	+ $168	+ $155	+ $78	+ $7,437	+ $620	+ $310	+ $287	+ $144
Alaska										
1	$14,350	$1,196	$598	$552	$276	$26,548	$2,213	$1,107	$1,022	$511
2	19,380	1,615	808	746	373	35,853	2,988	1,494	1,379	690
3	24,410	2,035	1,018	939	470	45,159	3,764	1,882	1,737	869
4	29,440	2,454	1,227	1,133	567	54,464	4,539	2,270	2,095	1,048
5	34,470	2,873	1,437	1,326	663	63,770	5,315	2,658	2,453	1,227
6	39,500	3,292	1,646	1,520	760	73,075	6,090	3,045	2,811	1,406
7	44,530	3,711	1,856	1,713	857	82,381	6,866	3,433	3,169	1,585
8	49,560	4,130	2,065	1,907	954	91,686	7,641	3,821	3,527	1,764
Each add'l family member add	+ $5,030	+ $420	+ $210	+ $194	+ $97	+ $9,306	+ $776	+ $388	+ $358	+ $179
Hawaii										
1	$13,230	$1,103	$552	$509	$255	$24,476	$2,040	$1,020	$942	$471
2	17,850	1,488	744	687	344	33,023	2,752	1,376	1,271	636
3	22,470	1,873	937	865	433	41,570	3,465	1,733	1,599	800
4	27,090	2,258	1,129	1,042	521	50,117	4,177	2,089	1,928	964
5	31,710	2,643	1,322	1,220	610	58,664	4,889	2,445	2,257	1,129
6	36,330	3,028	1,514	1,398	699	67,211	5,601	2,801	2,586	1,293
7	40,950	3,413	1,707	1,575	788	75,758	6,314	3,157	2,914	1,457
8	45,570	3,798	1,899	1,753	877	84,305	7,026	3,513	3,243	1,622
Each add'l family member add	+ $4,620	+ $385	+ $193	+ $178	+ $89	+ $8,547	+ $713	+ $357	+ $329	+ $165

[FR Doc. C1–2013–06547 Filed 3–28–13; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2013–0004]

Notice of Request for a New Information Collection: Egg Products Industry 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 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 survey of the egg products industry.

DATES: Comments on this notice must be received on or before May 28, 2013.

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–2013–0004. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E. Street, Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6065, South Building, Washington, DC 20250; (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Egg Products Industry 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, 2.53) as specified in the Egg Products and Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). FSIS protects the public by verifying that egg products are safe, wholesome, not adulterated, and correctly labeled.

FSIS plans to request a new information collection to conduct a new survey of official egg products plants. In 2003, FSIS conducted a survey of the egg products plants to collect information on use of food safety practices and technologies. This was part of a broader effort that also surveyed the meat and poultry slaughter and processing industries from 2003 to 2006. FSIS needs to survey the egg products industry again so that the Agency has current information on industry practices for conducting regulatory impact analyses as required by OMB.

In this currently planned survey of the egg products industry, FSIS will collect data to provide the most accurate, up-to-date information on use and adoption rates of industry practices and technologies. The Agency will ask questions similar to those asked in the previous survey, and will add new questions to address issues currently facing FSIS and industry.

The results of the egg products industry survey will provide reliable and valid information regarding food safety practices in FSIS-regulated plants; the Agency will use to this information to address many of its analytical needs. A major purpose of the survey is to enable the Agency to develop baseline information for estimating compliance costs in regulatory impact analyses. FSIS also will use the survey data to provide information for evaluating the effectiveness of its egg products inspection program and to conduct analyses to assess the industry's food safety technologies, sanitation practices, health risk reduction, and recall readiness. The Agency should be able to use this information to determine whether industry performance in these areas has improved since the previous survey was conducted.

FSIS has made the following estimates on the basis of an information collection assessment.

Estimate of Burden: FSIS estimates that it will take each respondent 30 minutes and each nonrespondent 12 minutes to participate in the survey.

Respondents: Official egg plants.

Estimated No. of Respondents: 58 respondents and 22 nonrespondents.

Estimated No. of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 33.4 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 both to FSIS, at the addresses provided above, and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.*

Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC on: March 25, 2013.

Alfred V. Almanza,

Administrator.

[FR Doc. 2013–07387 Filed 3–28–13; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0037]

Electronic Filing of Import Inspection Applications for Meat, Poultry, and Egg Products: Availability of Draft Compliance Guide and PGA Message Set Pilot Program

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of and requesting comments on a draft compliance guide for U.S. importers and brokers on the electronic filing of import inspection applications for certain meat, poultry, and egg products through the Automated Commercial Environment (ACE). ACE is the Web-based portal for the collection and use of international trade data maintained by U.S. Customs and Border Protection (CBP). FSIS is also announcing a pilot program intended to test the transfer of data from the Participating Government Agency (PGA) Message Set in ACE to FSIS's Web-based data analytics system, the Public Health Information System (PHIS). The PGA Message Set is the data that CBP will collect electronically from U.S. importers and brokers from PGAs. This data will enable agencies to make decisions about which products can come into the U.S. without the multiple paper forms currently used. FSIS encourages U.S. importers and brokers to review the draft compliance guide and, if they are interested, to request participation in FSIS's pilot program. The Agency will consider all comments submitted and will revise the draft compliance guide as necessary.

DATES: Submit electronic or written requests to participate in the pilot program on or before May 28, 2013. Comments on the draft compliance guide should be submitted on or before June 27, 2013.

ADDRESSES: FSIS invites interested persons to submit requests to participate in the pilot program and comments on the compliance guide. Written or email requests to participate in the pilot program should be submitted to Mary Stanley, whose contact information can be found below. Comments on the compliance guide may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Office of Policy and Program Development, Risk, Innovations, and Management Division, Docket Clearance Unit, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163A, Washington, DC 20250–3700.
- *Hand-or courier-delivered submittals:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Office of Policy and Program Development, Risk, Innovations, and Management Division, Docket Clearance Unit, 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–2012–0037. Comments received in response to this notice will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mary Stanley, Director, International Policy Division, Office of Policy and Program Development, FSIS, USDA, South Agriculture Building, Room 2925–S, 1400 Independence Avenue SW., Washington DC 20250; telephone: (202) 720–0287, fax: (202) 720–4929 or email: *mary.stanley@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) prohibit the importation of meat and poultry products into the United States if such products are adulterated or misbranded and unless they comply with all the inspection, building construction standards, and all other provisions of the Acts and regulations as are applied to domestic products (21 U.S.C. 620, 466). The Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) prohibits the importation of egg products unless they have been processed under an approved continuous inspection system of the government of the foreign country of origin and comply with all other provisions of the Act and regulations that apply to United States domestic products (U.S.C. 1046).

FSIS meat, poultry, and egg products import regulations require importers to apply for the inspection of imported product (9 CFR 327.5, 381.198, and 590.920). Applicants complete FSIS Form 9540–1, ''Import Inspection Application and Report,'' for meat, poultry products, and egg [1] products. Until recently, the applicants gave the completed Form 9540–1 to FSIS import inspection program personnel, who entered the information from the form into the Automated Import Inspection System (AIIS), the computer system that

[1] For egg products, applicants had to submit FSIS Form 5200–8, Import Request Egg Products. The Agency has revised FSIS Form 9540–1, Import Inspection Application, to include egg products and additional information the Agency needs to accurately assigning reinspection tasks and sampling of the product.

generated reinspection assignments and received and stored reinspection results. The egg products import request form (FSIS Form 5200–8) information was entered into the Egg Product Database, which was used to track imported egg products and identify shipments for reinspection.

On May 29, 2012, FSIS replaced AIIS and the Egg Product Database with the import component of PHIS. PHIS has replaced many of the Agency's current systems and has automated many business processes. PHIS provides a streamlined, electronic alternative to the paper-based import inspection application process.

PHIS electronically links with CBP's ACE system, the Web-based portal for the collection and use of international trade data, to create a unified import processing system for entering data. Currently, the PHIS interface with ACE enables the transfer to FSIS of a limited number of data elements collected by CBP that are also required by FSIS. The PGA Message Set defines the additional information FSIS requires from importers to complete the Agency's import application process. The PGA Message Set will enable U.S. importers and customs brokers to enter FSIS import inspection application information directly into the Automated Broker Interface (ABI), which transfers data into ACE as part of the CBP entry process.

The PGA Message Set is a harmonized data set containing information that CBP will collect electronically from U.S. importers and brokers for PGAs, like FSIS. This capability will provide a complete import application, which will facilitate FSIS data entry and clearance of shipments presented for reinspection without using the paper forms currently employed. The PGA Message Set will ultimately provide U.S. importers and brokers with a ''single window'' to electronically transmit all required import data to the U.S. Government.

Import inspection application information filed with ACE will be sent to PHIS through a data transfer in advance of a shipment's arrival. The electronic receipt of this import information to PHIS will expedite data entry and shipment clearance by FSIS.

To facilitate the implementation of the electronic filing of FSIS-specific data elements, FSIS has developed the draft compliance guide *Data Samples and Guidelines for Using the PGA Message Set for Electronic Completion of the U.S. Department of Agriculture (USDA), Food Safety Inspection Service (FSIS) Application for Import Inspection(FSIS Form 9540–1).* The draft compliance guide is intended to help U.S. importers and brokers understand the additional FSIS data that will need to be submitted through CBP's ACE system in order to complete the import application process. FSIS has posted this draft compliance guide on its Web page (*http://www.fsis.usda.gov/PDF/Data_Samples_Guidelines_PGA_Message_Set.pdf*) and is requesting comments on the guidance.

Pilot Program

FSIS intends to initiate a pilot program on May 28, 2013 to test the transfer of data from the PGA Message Set in ACE to PHIS. The Agency encourages U.S. importers and brokers to request to join this pilot program. Instead of submitting the paper-based FSIS Form 9540–1, participating U.S. importers and brokers will use the PGA Message Set to send the additional FSIS-specific data elements through ACE to PHIS before their cargo arrives in to the United States. The specific data elements are outlined in the draft compliance guide. FSIS will determine whether sending data from the PGA Message Set in ACE to PHIS expedites the clearance process. FSIS anticipates that this pilot program will help prepare for the efficient transition from the paper-based FSIS Form 9540–1 to PHIS.

Additional Public Notification

FSIS will announce this notice on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals and other individuals who have asked to be included. The Update is available on the FSIS Web page. Through the Listserv and the Web page, FSIS is able to provide information to a much broader and more diverse audience.

In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_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 in Washington, DC on: March 25, 2013.

Alfred V. Almanza,

Administrator.

[FR Doc. 2013–07385 Filed 3–28–13; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Funding Availability for the Rural Energy for America Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: This Notice of Funding Availability (NOFA) announces the acceptance of applications under the Rural Energy for America Program (REAP) for Fiscal Year 2013 for financial assistance as follows: grants, guaranteed loans, and combined grants and guaranteed loans for the development and construction of renewable energy systems and for energy efficiency improvement projects; and grants for conducting renewable energy system feasibility studies. The Notice also announces the availability of up to $20.8 million of Fiscal Year 2013 budget authority to fund these REAP activities, which will support up to $10.4 million in grant program level and up to $43.4 million in guaranteed loan program level.

DATES: In order to be considered for Fiscal Year 2013 funds, complete applications under this Notice must be received by the appropriate USDA Rural Development State Office no later than 4:30 p.m. local time of the dates as follows:

For renewable energy system and energy efficiency improvement grant applications and combination grant and guaranteed loan applications: April 30, 2013.

For renewable energy system and energy efficiency improvement guaranteed loan only applications: On a continuous basis up to July 15, 2013.

For renewable energy system feasibility study applications: April 30, 2013.

Energy audits and renewable energy development assistance, grant funding will not be available for Fiscal Year 2013, due to the statutory timeframe to award and obligate funds by April 1, 2013.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** for addresses concerning applications for the Rural Energy for America Program for Fiscal Year 2013 funds.

FOR FURTHER INFORMATION CONTACT: For information about this Notice, please contact Mr. Kelley Oehler, Branch Chief, USDA Rural Development, Energy Division, 1400 Independence Avenue SW., Washington, DC 20250. Telephone: (202) 720–6819. Email: *kelley.oehler@wdc.usda.gov*.

For further information on this program, please contact the applicable USDA Rural Development Energy Coordinator for your respective State, as provided in the **SUPPLEMENTARY INFORMATION** section of this Notice.

SUPPLEMENTARY INFORMATION:

Fiscal Year 2013 Applications for the Rural Energy for America Program

Applications. Application materials may be obtained by contacting one of Rural Development's Energy Coordinators. In addition, for grant applications, applicants may access the electronic grant application for the Rural Energy for America Program at *http://www.grants.gov*. To locate the downloadable application package for this program, the applicant must use the program's Catalog of Federal Domestic Assistance (CFDA) Number 10.868 or FedGrants Funding Opportunity Number, which can be found at *http://www.grants.gov*.

Application submittal. For renewable energy system, energy efficiency improvement, and feasibility study applications, submit complete paper applications to the Rural Development State Office in the State in which the applicant's proposed project is located.

Submit electronic grant only applications at *http://www.grants.gov*, following the instructions found on this Web site.

Rural Development Energy Coordinators

Note: Telephone numbers listed are not toll-free.

Alabama

Marcia Johnson, USDA Rural Development, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3453, *marcia.johnson@al.usda.gov*

Alaska

Chad Stovall, USDA Rural Development, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7718, *chad.stovall@ak.usda.gov*

American Samoa (See Hawaii)

Arizona

Gary Mack, USDA Rural Development, 230 North First Avenue, Suite 206, Phoenix, AZ 85003–1706, (602) 280–8717, *gary.mack@az.usda.gov*

Arkansas

Laura Tucker, USDA Rural Development, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3280, *laura.tucker@ar.usda.gov*

California

Steven Nicholls, USDA Rural Development, 430 G Street, #4169, Davis, CA 95616, (530) 792–5805, *steven.nicholls@ca.usda.gov*

Colorado

Janice Pond, USDA Rural Development, Denver Federal Center, Building 56, Room 2300, P.O. Box 25426, Denver, CO 80225–0426, (720) 544–2907, *janice.pond@co.usda.gov*

Commonwealth of the Northern Marianas Islands—CNMI (See Hawaii)

Connecticut (see Massachusetts)

Delaware/Maryland

Bruce Weaver, USDA Rural Development, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3629, *bruce.weaver@de.usda.gov*

Federated States of Micronesia (See Hawaii)

Florida/Virgin Islands

Angela Prioleau, USDA Rural Development, 4440 NW. 25th Place, Gainesville, FL 32606, (352) 338–3412, *angela.prioleua@fl.usda.gov*

Georgia

J. Craig Scroggs, USDA Rural Development, 111 E. Spring St., Suite B, Monroe, GA 30655, (770) 267–1413, ext. 113, *craig.scroggs@ga.usda.gov*

Guam (See Hawaii)

Hawaii

Hawaii/Guam/Republic of Palau/Federated States of Micronesia/Republic of the Marshall Islands/American Samoa/Commonwealth of the Northern Marianas Islands—CNMI

Tim O'Connell, USDA Rural Development, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8313, *tim.oconnell@hi.usda.gov*

Idaho

Brian Buch, USDA Rural Development, 9173 W. Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5623, *brian.buch@id.usda.gov*

Illinois

Mary Warren, USDA Rural Development, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6218, *mary.warren@il.usda.gov*

Indiana

Jerry Hay, USDA Rural Development, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (812) 346–3411, ext. 126, *jerry.hay@in.usda.gov*

Iowa

Kate Sand, USDA Rural Development, 909 E. 2nd Avenue, Suite C, Indianola, IA 50125, (515) 961–5365, ext.130, *kate.sand@ia.usda.gov*

Kansas

David Kramer, USDA Rural Development, 1303 SW. First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2736, *david.kramer@ks.usda.gov*

Kentucky

Scott Maas, USDA Rural Development, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7435, *scott.maas@ky.usda.gov*

Louisiana

Kevin Boone, USDA Rural Development, 905 Jefferson Street, Suite 320, Lafayette, LA 70501, (337) 262–6601, ext. 133, *kevin.boone@la.usda.gov*

Maine

Beverly Stone, USDA Rural Development, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9125, *beverly.stone@me.usda.gov*

Maryland (see Delaware)

Massachusetts/Rhode Island/Connecticut

Anne Correia, USDA Rural Development, 15 Cranberry Highway, West Wareham, MA 01002, (508) 295–5151, ext. 3, *anne.correia@ma.usda.gov*

Michigan

Rick Vanderbeek, USDA Rural Development, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5157, *rick.vanderbeek@mi.usda.gov*

Minnesota

Ron Omann, USDA Rural Development, 375 Jackson St., Suite 410, St. Paul,

MN 55101, (651) 602–7796, *ron.omann@mn.usda.gov*

Mississippi

G. Gary Jones, USDA Rural Development, 100 W. Capital Street, Suite 831,Jackson, MS 39269, (601) 965–5457, *george.jones@ms.usda.gov*

Missouri

Matt Moore, USDA Rural Development, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–9321, *matt.moore@mo.usda.gov*

Montana

Bill Barr, USDA Rural Development, 2229 Boot Hill Court, P.O. Box 850, Bozeman, MT 59771, (406) 585–2545, *bill.barr@mt.usda.gov*

Nebraska

Debra Yocum, USDA Rural Development, 100 Centennial Mall North, Room 152, Federal Building, Lincoln, NE 68508, (402) 437–5554, *debra.yocum@ne.usda.gov*

Nevada

Mark Williams, USDA Rural Development, 1390 South Curry Street, Carson City, NV 89703, (775) 887–1222, ext. 116, *mark.williams@nv.usda.gov*

New Hampshire (See Vermont)

New Jersey

Victoria Fekete, USDA Rural Development, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7752, *victoria.fekete@nj.usda.gov*

New Mexico

Jesse Bopp, USDA Rural Development, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4952, *jesse.bopp@nm.usda.gov*

New York

Scott Collins, USDA Rural Development, 9025 River Road, Marcy, NY 13403, (315) 736–3316, ext. 4, *scott.collins@ny.usda.gov*

North Carolina

David Thigpen, USDA Rural Development, 4405 Bland Rd. Suite 260, Raleigh, NC 27609, (919) 873–2065, *david.thigpen@nc.usda.gov*

North Dakota

Dennis Rodin, USDA Rural Development, Federal Building, Room 208, 220 East Rosser Avenue, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2068, *dennis.rodin@nd.usda.gov*

Ohio

Randy Monhemius, USDA Rural Development, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2424, *randy.monhemius@oh.usda.gov*

Oklahoma

Jody Harris, USDA Rural Development, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1036, *jody.harris@ok.usda.gov*

Oregon

Don Hollis, USDA Rural Development, 200 SE Hailey Ave, Suite 105, Pendleton, OR 97801, (541) 278–8049, ext. 129, *don.hollis@or.usda.gov*

Pennsylvania

Amanda Krugh, USDA Rural Development, 1 Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2289, *amanda.krugh@pa.usda.gov*

Puerto Rico

Luis Garcia, USDA Rural Development, IBM Building, 654 Munoz Rivera Avenue, Suite 601, Hato Rey, PR 00918–6106, (787) 766–5091, ext. 251, *luis.garcia@pr.usda.gov*

Republic of Palau (See Hawaii)

Republic of the Marshall Islands (See Hawaii)

Rhode Island (see Massachusetts)

South Carolina

Shannon Legree, USDA Rural Development, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3150, *shannon.legree@sc.usda.gov*

South Dakota

Darlene Bresson USDA Rural Development, 1720 4th Street, NE., Suite 2, Watertown, SD 57201 (605) 886–8202, ext. 120, *darlene.bresson@sd.usda.gov*

Tennessee

Will Dodson, USDA Rural Development, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1350, *will.dodson@tn.usda.gov*

Texas

Billy Curb, USDA Rural Development, Federal Building, Suite 102, 101 South Main Street, Temple, TX 76501, (254) 742–9775, *billy.curb@tx.usda.gov*

Utah

Perry Mathews, USDA Rural Development, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4301, *perry.mathews@ut.usda.gov*

Vermont/New Hampshire

Cheryl Ducharme, USDA Rural Development, 89 Main Street, 3rd Floor, Montpelier, VT 05602, (802) 828–6083, *cheryl.ducharme@vt.usda.gov*

Virginia

Laurette Tucker, USDA Rural Development, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1594, *laurette.tucker@va.usda.gov*

Virgin Islands (see Florida)

Washington

Mary Traxler, USDA Rural Development, 1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512, (360) 704–7762, *mary.traxler@wa.usda.gov*

West Virginia

Lisa Sharp, USDA Rural Development, 1550 Earl Core Road, Suite 101, Morgantown, WV 26505–7500, (304) 284–4871, *lisa.sharp@wv.usda.gov*

Wisconsin

Brenda Heinen, USDA Rural Development, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7615, Ext. 139, *brenda.heinen@wi.usda.gov*

Wyoming

Nancy Veres, USDA Rural Development, Dick Cheney Federal Building, 100 East B Street, Room 1005, P.O. Box 11005, Casper, WY 82602, (307) 233–6710, *nancy.veres@wy.usda.gov.*

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with renewable energy system and energy efficiency improvement grants and guaranteed loans, as covered in this Notice, has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0050. The information collection requirements associated with renewable energy feasibility study grants has also been approved by OMB Control Number 0570–0061, respectively.

Overview

Federal Agency Name: Rural Business-Cooperative Service.

Contract Proposal Title: Rural Energy for America Program.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number. 10.868.

Dates: In order to be considered for Fiscal Year 2013 funds, complete applications under this Notice must be received by the appropriate USDA Rural Development State Office no later than 4:30 p.m. local time of the dates as follows:

For renewable energy system and energy efficiency improvement grant applications and combination grant and guaranteed loan applications: April 30, 2013.

For renewable energy system and energy efficiency improvement guaranteed loan only applications: On a continuous basis up to July 15, 2013.

For renewable energy system feasibility study applications: April 30, 2013.

Energy audits and renewable energy development assistance grants, grant funding will not be available for Fiscal Year 2013, due to the statutory timeframe to award and obligate funds by April 1, 2013.

Any application received after its applicable date and time, regardless of the postmark on the application, will not be considered for Fiscal Year 2013 funds.

Availability of Notice. This Notice for the Rural Energy for America Program is available through the USDA Rural Development Web site at *http://www.rurdev.usda.gov/BCP_Reap.html.*

I. Funding Opportunity Description

A. *Purpose of the Rural Energy for America Program.* The program is designed to help agricultural producers and rural small businesses reduce energy costs and consumption and help meet the Nation's critical energy needs.

B. *Statutory Authority.* This program is authorized under 7 U.S.C. 8107.

C. *Definition of Terms.* The definitions applicable to this Notice are published at 7 CFR 4280.103. In addition, the following definition applies to this Notice.

Hybrid. A combination of two or more renewable energy technologies that are incorporated into a unified system to support a single project.

II. Award Information

A. *Available funds.* The amount of funds available for renewable energy systems and energy efficiency improvements in Fiscal Year 2013 will be up to $53.6 million. For renewable energy system and energy efficiency improvement projects only, there will be an allocation of funds to each State, and the Rural Development's National Office will maintain a reserve of funds.

The amount of grant funds available for renewable energy system feasibility studies in Fiscal Year 2013 will be up to $250,000. The balance of the funds unused for the feasibility study grants may be utilized in any of the renewable energy system and energy efficiency improvement National competitions.

In order to ensure that small projects have a fair opportunity to compete for the funding and are consistent with the priorities set forth in the statute, the Agency will set-aside up to $4.1 million to fund grants of $20,000 or less. Obligations of these funds will take place through June 30, 2013. Any unobligated balances will be moved to the renewable energy budget authority account as of July 1, 2013. These funds may be utilized in any of the renewable energy system and energy efficiency improvement National competitions.

B. *Approximate number of awards.* The number of awards will depend on the amount of funds made available and on the number of eligible applicants participating in this program.

C. *State and National competitions.* Renewable energy system and energy efficiency improvement applications for Fiscal Year 2013 funds will compete for funds allocated to their State for competition. Separate competitions will be held for (1) grant only and grant and guaranteed loan combination applications; (2) grants of $20,000 or less applications, and (3) guaranteed loan only applications. Grant only and grant and guaranteed loan combination applications and grants of $20,000 or less applications will each have one State competition. All unfunded eligible grant only and grant and guaranteed loan combination applications received by April 30, 2013, will be competing against other grant only and grant and guaranteed loan combination applications from other States at a final National competition. However, the Agency reserves the right to hold a separate National competition for grants of $20,000 or less if funding remains after the State competition. Obligations of these funds will take place through June 30, 2013. State competitions will be held bi-weekly for guaranteed loan only applications. A minimum score of 50 is required for guaranteed loan only applications to compete in the State competitions. If a State does not have sufficient funds to make a guaranteed loan award, funding may be obtained from the guaranteed loan reserves held at the National Office. The guaranteed loan application will not have to compete any further. Finally, all unfunded eligible guaranteed loan only applications received by July 15, 2013, will be competed against other guaranteed loan only applications from other States at a final National competition if the guaranteed loan reserves have not been completely depleted. If funds remain after the final guaranteed loan only National competition, the Agency may elect to utilize budget authority to fund additional grant only and grant and guaranteed loan combination applications that competed in the National competition. Renewable energy system feasibility study grant applications will compete in separate National competition.

D. *Type of instrument.* Grant, guaranteed loan, and grant/guaranteed loan combinations.

E. *Funding limitations.* The following funding limitations apply to applications submitted under this Notice.

(1) *Maximum grant assistance to an entity.* For the purposes of this Notice, the maximum amount of grant assistance to an entity will not exceed $750,000 for Fiscal Year 2013 based on the total amount of renewable energy system, energy efficiency improvement, and renewable energy feasibility study grants awarded to an entity under the Rural Energy for America Program.

(2) *Maximum percentage of Agency funding.* The REAP authorizing statute at 7 USC 8107 mandates the maximum percentages of funding that USDA Rural Development will provide. Within the maximum funding amounts specified in this Notice, renewable energy system and energy efficiency improvement funding approved for guaranteed loan only requests and for combination guaranteed loan and grant requests will not exceed 75 percent of eligible project costs, with the grant portion not to exceed 25 percent of total eligible project costs, whether the grant is part of a combination request or is a stand-alone grant.

(3) *Reallocation of loan and grants funds.* The Agency reserves the right, at its discretion, to move funds between grant and loan budget authority after June 29, 2013, based upon the demand of applications received under this Notice.

(4) *Universal identifier and System for Awards Management (SAM).* Unless exempt under 2 CFR 25.110, all grant applicants must:

(a) Be registered in the SAM prior to submitting a grant application or plan;

(b) Maintain an active SAM registration with current information at all times during which it has an active Federal award or grant application or

plan under consideration by the Agency; and

(c) Provide its Dun and Bradstreet Data Universal Numbering System (DUNS) number in each grant application or plan it submits to the Agency.

(5) *Transparency Act Reporting.* All recipients of Federal financial assistance are required to report information about first-tier subawards and executive compensation in accordance with 2 CFR part 170. So long as an entity applicant does not have an exception under 2 CFR 170.110(b), the applicant must have the necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding. See 2 CFR 170.200(b).

(6) *Renewable energy system and energy efficiency improvement grant-only applications.* For renewable energy system grants, the minimum grant is $2,500 and the maximum is $500,000. For energy efficiency improvement grants, the minimum grant is $1,500 and the maximum grant is $250,000.

(7) *Renewable energy system and energy efficiency improvement loan guarantee-only applications.* For renewable energy system and energy efficiency improvement loan guarantees, the minimum guaranteed loan amount is $5,000 and the maximum amount of a guaranteed loan to be provided to a borrower is $25 million.

(8) *Renewable energy system and energy efficiency improvement guaranteed loan and grant combination applications.* Funding for grant and loan combination packages for renewable energy systems and energy efficiency improvement projects are subject to the funding limitations specified in Section II.E.(2). The maximum amount for the grant portion is $500,000 for renewable energy systems and $250,000 for energy efficiency improvements. The minimum amount of the grant portion is $1,500 for either renewable energy systems or energy efficiency improvements. For the guarantee portion, the maximum amount is $25 million and the minimum amount is $5,000.

(9) *Renewable energy system feasibility study grant applications.* The maximum amount of grant funds that will be made available for an eligible feasibility study project under this subpart to any one recipient will not exceed $50,000 or 25 percent of the total eligible project cost of the study, whichever is less.

(10) *Felony Conviction and Tax Delinquent Status.* Applications from corporate applicants submitted under this Notice must include Form AD 3030 Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants. Corporate applicants who receive an award under this Notice will be required to sign Form AD 3031 Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants. Both forms can be found online at *http://www.ocio.usda.gov/forms/ocio_forms.html.*

III. Eligibility Information

A. *Eligible applicants.* To be eligible for this program, an applicant must meet the eligibility requirements specified in 7 CFR 4280.109, 7 CFR 4280.110(c), and, as applicable, 7 CFR 4280.112, 7 CFR 4280.122, 7 CFR 4280.170, or 7 CFR 4280.186.

For the purpose of this Notice, and in addition to meeting the small business size determination as defined under small business in 7 CFR 4280.103, rural small business applicants must demonstrate that the majority (i.e., 51 percent or more) of their past 3 years' annual receipts from their business operation are derived from a rural area. If the rural small business applicant has not engaged in business operations for the past 3 years, then information for as long as the rural small business applicant has been in business must be submitted. To ensure that there is sufficient information for the Agency to make this determination; rural small business applicants, as part of their application requirements in 7 CFR 4280.116(b)(v)(A), should list the physical address, total annual receipts and number of employees for each urban or rural location. The Agency will make this determination for rural small business applicants that do not have any annual receipts (new businesses only) on the location of the rural small business applicant.

B. *Eligible lenders.* To be eligible for this program, lenders must meet the eligibility requirements in 7 CFR 4280.130.

C. *Eligible projects.* To be eligible for this program, a project must meet the eligibility requirements specified in 7 CFR 4280.113, 7 CFR 4280.123, 7 CFR 4280.171, and 7 CFR 4280.187, as applicable.

IV. Fiscal Year 2013 Application and Submission Information

Applicants seeking to participate in this program must submit applications in accordance with this Notice and 7 CFR part 4280, subpart B, as applicable. Applicants must submit complete applications containing all parts necessary for the Agency to determine applicant and project eligibility, to score the application, and to conduct the technical evaluation, as applicable in order to be considered. Due to the competitive nature of this program, information received by the Agency, that would impact the priority score and ranking of an application in Fiscal Year 2013 competitions cannot be considered by the Agency if received after the dates published in the Dates section of this Notice.

A. Where To Obtain Applications

Applicants may obtain applications from any USDA Rural Development Energy Coordinator, as provided in the **SUPPLEMENTARY INFORMATION** section of this Notice. In addition, for grant applications, applicants may access the electronic grant application for the Rural Energy for America Program at *http://www.grants.gov.* To locate the downloadable application package for this program, the applicant must use the program's CFDA Number 10.868 or FedGrants Funding Opportunity Number, which can be found at *http://www.grants.gov.*

When you enter the grants.gov site, you will find information about submitting an application electronically through the site. To use grants.gov, all applicants must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number (unless the applicant is an individual), which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at *http://fedgov.dnb.com/webform.* USDA Rural Development strongly recommends that applicants do not wait until the application deadline date to begin the application process through grants.gov.

B. When To Submit

Complete applications submitted under this Notice must be received by the appropriate USDA Rural Development State Office no later than 4:30 p.m. local time on the applicable date as identified in the **DATES** section of this Notice, in order to be considered for Fiscal Year 2013 funds. Any application received after 4:30 p.m. local time on the applicable date, regardless of the postmark on the application, will not be considered for Fiscal Year 2013 funds.

C. Where To Submit

All renewable energy system, energy efficiency improvement, and renewable energy system feasibility study applications are to be submitted to the USDA Rural Development Energy Coordinator in the State in which the applicant's proposed project is located. A list of USDA Rural Development Energy Coordinators is provided in the **SUPPLEMENTARY INFORMATION** section of

this Notice. Alternatively, for grant only applications, applicants may submit their electronic applications to the Agency via the grants.gov Web site.

D. How To Submit

Applicants may submit their applications either as hard copy or electronically as specified in the following paragraphs. When submitting an application as hard copy, applicants must submit one original.

(1) *Grant applications.* All grant applications may be submitted either as hard copy to the appropriate Rural Development Energy Coordinator or electronically using the Government-wide grants.gov Web site. Users of grants.gov who download a copy of the application package may complete it off line and then upload and submit the application via the grants.gov site, including all information typically included on the application, and all necessary assurances and certifications. After electronically submitting an application through the Web site, the applicant will receive an automated acknowledgement from grants.gov that contains a grants.gov tracking number.

(2) *Guaranteed loan applications.* Guaranteed loan only applications (i.e., those that are not part of a guaranteed loan/grant combination request) must be submitted as hard copy.

(3) *Guaranteed loan/grant combination applications.* Applications for guaranteed loans/grants (combination applications) must be submitted as hard copy.

E. Other Submission Requirements and Information

(1) *Application restrictions.* Applicants may only submit one renewable energy system and one energy efficiency improvement application in Fiscal Year 2013. A renewable energy system application cannot be submitted in Fiscal Year 2013 if a REAP feasibility study grant application for the same renewable energy system is submitted in Fiscal Year 2013 and vice versa.

Applicants may only submit one renewable energy system feasibility study application for Fiscal Year 2013 funds.

(2) *Environmental information.* For the Agency to consider an application, the application must include all environmental review documents with supporting documentation in accordance with 7 CFR part 1940, subpart G. Applications for financial assistance for planning purposes or management and feasibility studies are typically categorically excluded from the environmental review process by 7 CFR 1940.310(e)(1). Any required environmental review must be completed in full prior to obligation of funds or the approval of the application.

(3) *Original signatures.* USDA Rural Development may request that the applicant provide original signatures on forms submitted through grants.gov at a later date.

(4) *Form AD 2106.* Each applicant is requested to submit Form AD 2106, ''Form to Assist in Assessment of USDA Compliance with Civil Rights Laws,'' with their application. This form requests information on the applicant's race, ethnicity, and gender. The information contained in this form will allow the Agency to evaluate its outreach efforts to under-served and under-represented populations. Applicants are encouraged to furnish this form and the information requested with their application, but are not required to do so. Not furnishing this information will neither affect an applicant's eligibility nor the likelihood of an applicant receiving an award.

This form is available from any USDA Rural Development Energy Coordinator, as provided in the **SUPPLEMENTARY INFORMATION** section of this Notice, and from *http://forms.sc.egov.usda.gov/eForms/welcomeAction.do?Home.*

(5) *Award considerations.* In determining the amount of a renewable energy system or energy efficiency improvement grant or loan guarantee, the Agency will consider the six criteria specified in 7 CFR 4280.115(g) or 7 CFR 4280.124(f), as applicable.

(6) *Hybrid projects.* If the application is for a hybrid project, technical reports, as required under 7 CFR 4280.116(b)(7), must be prepared for each technology that comprises the hybrid project.

(7) *Multiple facilities.* Applicants may submit a single application that proposes to apply the same renewable energy system (including the same hybrid project) or energy efficiency improvement across multiple facilities. For example, a rural small business owner owns five retail stores and wishes to install solar panels on each store. The rural small business owner may submit a single application for installing the solar panels on the five stores. However, if this same owner wishes to install solar panels on three of the five stores and wind turbines for the other two stores, the owner can only submit an application for either the solar panels or for the wind turbines in the same fiscal year.

V. Program Provisions

This section of the Notice identifies the provisions of 7 CFR part 4280, subpart B applicable to each type of funding available under REAP.

A. General

The provisions specified in 7 CFR 4280.101 through 4280.111 apply to this Notice.

B. Renewable Energy System and Energy Efficiency Improvement Project Grants

In addition to the other provisions of this Notice, the requirements specified in 7 CFR 4280.112 through 4280.121 apply to renewable energy system and energy efficiency improvement projects grants.

C. Renewable Energy System and Energy Efficiency Improvement Project Guaranteed Loans

In addition to the other provisions of this Notice, the requirements specified in 7 CFR 4280.122 through 4280.160 apply to guaranteed loans for renewable energy system and energy efficiency improvement projects. For Fiscal Year 2013, the guarantee fee amount is 1 percent of the guaranteed portion of the loan and the annual renewal fee is 0.250 percent (one-quarter of 1 percent) of the guaranteed portion of the loan.

D. Renewable Energy System and Energy Efficiency Improvement Project Grant and Guaranteed Loan Combined Requests

In addition to the other provisions of this Notice, the requirements specified in 7 CFR 4280.165 apply to a combined grant and guaranteed loan for renewable energy system and energy efficiency improvement projects. Any applicant that submits a combined grant and guaranteed loan application will not be allowed to modify their application to a grant only or guaranteed loan only application after the applicable submission date and time, as identified in the **DATES** section of this Notice, and remain eligible for Fiscal Year 2013 funds.

E. Renewable Energy System Feasibility Study Grants

In addition to the other provisions of this Notice, the requirements specified in 7 CFR 4280.170 through 4280.182 apply to renewable energy system feasibility study grants. Feasibility studies are required to be prepared by an independent, qualified third party consultant. Applicants cannot prepare their own feasibility study.

F. Resubmittal of Fiscal Year 2012 Renewable Energy System and Energy Efficiency Improvement Applications

If an application for a project was submitted for the first time in Fiscal

Year 2012 and that initial application was determined eligible but was not funded, the Agency will consider that initial Fiscal Year 2012 application for funding in Fiscal Year 2013 as provided in this section. If an applicant has already re-submitted in an earlier fiscal year (i.e. initial application was submitted in Fiscal Year 2011 or earlier), the applicant must submit a new application meeting the requirements of this Notice in order to be considered for Fiscal Year 2013 funds for that project and a new submission date of record will be established.

(1) *Written request.* An applicant must submit a written request for the Agency to consider its Fiscal Year 2012 application for Fiscal Year 2013 funds.

(i) For a guarantee loan and grant combination application, both the lender and grant applicant must submit the written request to the Agency in order to be considered for Fiscal Year 2013 funds.

(ii) Except for simplified applications, the applicant must provide, with the written request, the applicant's current balance sheet and income statement that meets the program requirements outlined in 7 CFR 4280.116(b)(4). Notwithstanding the requirements outlined in 7 CFR 4280.116(b)(4), the current balance sheet and income statement must not be more than 90 days old relative to the date the applicant submits the written request.

(iii) The Agency is requesting that each applicant submit Form AD 2106, ''Form to Assist in Assessment of USDA Compliance with Civil Rights Laws,'' with their written request. This form requests information on the applicant's race, ethnicity, and gender. The information contained in this form will allow the Agency to evaluate its outreach efforts to under-served and under-represented populations. Applicants are encouraged to furnish this form and the information requested with their application, but are not required to do so. An applicant's eligibility or the likelihood of receiving an award will not be impacted by furnishing or not furnishing this information. This form is available from any USDA Rural Development Energy Coordinator, as provided in the **SUPPLEMENTARY INFORMATION** section of this Notice, and from *http://forms.sc.egov.usda.gov/eForms/welcomeAction.do?Home.*

(iv) Written requests to consider Fiscal Year 2012 applications for Fiscal Year 2013 funds may be submitted at any time during Fiscal Year 2013, up to and including 4:30 p.m. local time on April 30, 2013. Written requests received after this time and date will not be accepted by the Agency and the applicant's Fiscal Year 2012 application will not be considered for Fiscal Year 2013 funds and be withdrawn.

(2) *Balance sheet and income statements.* Upon receipt of the balance sheet and income statements required under paragraph F(1)(ii) of this Notice, the Agency will determine whether there is any change to the application's score. If there is a change to the application's score, then the provisions specified in paragraph F(3) apply. If there is no change to the application's score, then the provisions of either paragraph F(3) or F(4) apply as applicable.

(3) *Revisions/change in score to Fiscal Year 2012 applications.* If an applicant plans to make any revisions to its Fiscal Year 2012 application or if the current balance sheet and income statement submitted under paragraph F(1)(ii) of this Notice results in a change to the application's score (even if no other revisions to the Fiscal Year 2012 application are planned), a new application meeting the requirements of this Notice must be submitted in order to be considered for Fiscal Year 2013 funds and a new submission date of record will be established.

(4) *No revisions/changes in score to Fiscal Year 2012 applications.* If an applicant does not plan to make any revisions to its Fiscal Year 2012 application and the current balance and income statement submitted under paragraph F(1)(ii) of this Notice does not result in a change to the application's score, a new application is not required and the submission date of record remains unchanged from its original Fiscal Year 2012 submittal date.

G. Award Process

In addition to the process for awarding funding under 7 CFR part 4280, subpart B, the Agency will make awards using the following considerations:

(1) *Funding renewable energy system and energy efficiency improvement grant and grant/guaranteed loan awards.* Considering the availability of funds, the Agency will fund those grant only applications and grant/guaranteed loan applications that score the highest based on the grant score of the application; that is, the grant score an application receives will be compared to the grant scores of other applications, with higher scoring applications receiving first consideration for funding.

(2) *Guaranteed loan only awards.* Considering the availability of funds, the Agency will fund those guaranteed loan only applications that score the highest compared to the scores of other applications, with higher scoring applications receiving first consideration for funding.

(3) *Evaluation criteria.* Agency personnel will score each application based on the evaluation criteria specified in 7 CFR 4280.117(c), 7 CFR 4280.129(c), 7 CFR 4280.178, or 7 CFR 4280.192, as applicable.

For hybrid applications, each technical report will be evaluated and scored based on its own merit. The scores for the technologies will be consolidated using a weighted average approach based on the percentage of the cost for each system to the total eligible project cost.

Example: A hybrid project contains a wind and solar photovoltaic components. The wind system will cost $30,000 (75 percent of total eligible project cost) and the solar will cost $10,000 (25 percent of total eligible project cost). The wind technical report was evaluated and assigned a total score of 22 points, while the solar report was evaluated and assigned a total score of 31 points. In this scenario, the final technical score would be assigned as follows: (22 × 75 percent) + (31 × 25 percent) = 24.25.

(4) *Applications that receive the same score.* If applications score the same and if remaining funds are insufficient to fund each such application, the Agency may distribute the remaining funds to a lower scoring application. Before this occurs, the Agency will provide the applicant of the higher scoring application the opportunity to reduce the amount of the applicant's request to the amount of funds available. If the applicant agrees to lower its request, the applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project. At its discretion, the Agency may also elect to allow the remaining funds to be carried over to the next fiscal year rather than selecting a lower scoring application or distributing funds on a pro-rata basis.

VI. Administration Information

A. Notifications

(1) *Applicants.* The notification provisions of 7 CFR 4280.111 apply to this Notice.

(2) *Lenders.* The notification provisions of 7 CFR 4280.129(a) apply to this Notice.

B. Administrative and National Policy Requirements

(1) *Exception authority.* The provisions of 7 CFR 4280.104 apply to this Notice.

(2) *Appeals.* A person may seek a review of an Agency decision or appeal

to the National Appeals Division in accordance with 7 CFR 4280.105.

(3) *Conflict of interest.* The provisions of 7 CFR 4280.106 apply to this Notice.

(4) *USDA Departmental Regulations and other laws that contains other compliance requirements.* The provisions of 7 CFR 4280.107 and 7 CFR 4280.108 apply to this Notice.

VII. Agency Contacts

For assistance on this program, please contact a USDA Rural Development Energy Coordinator, as provided in the **SUPPLEMENTARY INFORMATION** section of this Notice.

VIII. Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write to: USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Stop 9410, Washington, DC 20250–9410 or call toll-free at (866) 632–9992 (English) or (800) 877–8339 (TDD) or (866) 377–8642 (English Federal-relay) or (800) 845–6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

Dated: February 27, 2013.

Dallas Tonsager,

Under Secretary, Rural Development.

[FR Doc. 2013–07275 Filed 3–28–13; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; 2013 Company Organization Survey

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before May 28, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Joy P. Pierson, Economic Planning and Coordination Division, U.S. Census Bureau, Room 8K319, Washington, DC 20233–6100 (or by email at *Joy.P.Pierson@census.gov*)

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the annual Company Organization Survey (COS) to update and maintain a central, multipurpose Business Register (BR) database. In particular, the COS supplies critical information on the composition, organizational structure, and operating characteristics of multi-location companies.

The BR serves two fundamental purposes:

First and most important, it provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses, and it serves as an integral part of the statistical foundation underlying those programs. Essential for this purpose is the BR's ability to identify all known United States business establishments and their parent companies. Further, the BR must accurately record basic business attributes needed to control sampling and enumeration. These attributes include industrial and geographic classifications, and name and address information.

Second, it provides establishment data that serve as the basis for the annual County Business Patterns (CBP) statistical series. The CBP publications present data on number of establishments, first quarter payroll, annual payroll, and mid-March employment summarized by industry and employment size class for the United States, the District of Columbia, island areas, counties, and country-equivalents. No other annual or more frequent series of industry statistics provides comparable detail, particularly for small geographic areas.

II. Method of Collection

The Census Bureau will conduct the 2013 COS in a similar manner as the 2011 COS. (In 2012 the COS was conducted in conjunction with the 2012 Economic Census to minimize response burden). The 2013 COS will request company-level information from a selection of multi-establishment enterprises, which comprise roughly 42,000 parent companies and more than 1.4 million establishments. Additionally, the panel will include approximately 5,000 large single-location companies that may have added locations during the year. The primary collection medium for the COS is a paper questionnaire; however, many enterprises will submit automated/electronic COS reports. Electronic reporting will be available to all 2013 COS respondents. Companies will receive and return responses by secure Internet transmission. Companies that cannot use the Internet will receive a CD–ROM containing their electronic data. All respondents will be allowed to mail the data via diskette or CD–ROM or submit their responses via the Internet. COS content is identical for all of the reporting modes.

The instrument will include inquiries on ownership or control by domestic or foreign parent, ownership of foreign affiliates, and leased employment. Further, the instrument will list an inventory of establishments belonging to the company and its subsidiaries, and request updates to these inventories, including additions, deletions, and changes to information on EIN, name and address, and industrial classification, end-of-year operating status, mid-March employment, first quarter payroll, and annual payroll.

Additionally, the Census Bureau will ask certain questions in the 2013 COS in order to enhance content. We will include questions on ownership or control by domestic or foreign parents, ownership of foreign affiliates, research and development, leased employment, and manufacturing activities related to the Enterprise Statistics Program.

III. Data

OMB Control Number: 0607–0444.

Form Number: NC–99001 (for multi-establishment enterprises) and NC–99007 (for single-location companies).

Type of Review: Regular submission.

Affected Public: Business and not-for-profit institutions.

Estimated Number of Respondents: 47,000 enterprises.

Estimated Time per Response: 1.83 hours.

Estimated Total Annual Burden Hours: 143,608.

Estimated Total Annual Cost: $4,339,834.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. Section 182, 195, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 26, 2013.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–07330 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members to Serve on the Federal Economic Statistics Advisory Committee

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Secretary of Commerce is requesting nominations of individuals to the Federal Economic Statistics Advisory Committee. The Secretary will consider nominations received in response to this notice, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides committee and membership criteria.

DATES: Please submit nominations by April 29, 2013.

ADDRESSES: Please submit nominations to B.K. Atrostic, Designated Federal Official for Federal Economic Statistics Advisory Committee, U.S. Census Bureau, Room 2K267, 4600 Silver Hill Road, Washington, DC 20233. Nominations also may be submitted by fax at 301–763–9993, or by email to *barbara.kathryn.atrostic@census.gov.*

FOR FURTHER INFORMATION CONTACT: B.K. Atrostic, Designated Federal Official for Federal Economic Statistics Advisory Committee, U.S. Census Bureau, Room 2K267, 4600 Silver Hill Road, Washington, DC 20233, e-mail *barbara.kathryn.atrostic@census.gov,* or telephone (301) 763–6442.

SUPPLEMENTARY INFORMATION: The Federal Economic Statistics Advisory Committee was established in accordance with the Federal Advisory Committee Act (as amended, Title 5, United States Code, Appendix 2). The following provides information about the committee, membership, and the nomination process.

Objectives and Duties

1. The Federal Economic Statistics Advisory Committee (the ''Committee'') is administratively housed at the Economics and Statistics Administration (ESA), U.S. Department of Commerce. The Committee advises Directors of ESA's two statistical agencies, the Bureau of Economic Analysis (BEA) and the U.S. Census Bureau (Census), and the Commissioner of the Department of Labor's Bureau of Labor Statistics (BLS) (''the agencies'') on statistical methodology and other technical matters related to the collection, tabulation, and analysis of federal economic statistics.

2. The Committee functions solely as an advisory committee to the senior officials of BEA, Census and BLS in consultation with the Committee chairperson.

3. Important aspects of the Committee's responsibilities include, but are not limited to:

a. Recommending research to address important technical problems arising in federal economic statistics.

b. Identifying areas in which better coordination of the agencies'' activities would be beneficial.

c. Establishing relationships with professional associations with an interest in federal economic statistics.

d. Coordinating, in its identification of agenda items, with other existing academic advisory committees chartered to provide agency-specific advice, for the purpose of avoiding duplication of effort.

4. The Committee reports to the Under Secretary for Economic Affairs who, as head of ESA, coordinates and collaborates with the agencies.

Membership

1. The Committee consists of approximately fourteen members who serve at the pleasure of the Secretary of Commerce.

2. Members are nominated by the Department of Commerce, in consultation with the agencies, under the coordination of the Under Secretary for Economic Affairs, and appointed by the Secretary.

3. Committee members are economists, statisticians, survey methodologists, and behavioral scientists, and are chosen to achieve a balanced membership across those disciplines.

4. Members shall be prominent experts in their fields, and recognized for their scientific and professional achievements and objectivity.

a. Members serve as Special Government Employees (SGEs) and are subject to ethics rules applicable to SGEs.

b. Members serve three-year terms. Members may be reappointed to any number of additional three-year terms.

c. Should a committee member be unable to complete a three-year term, a new member may be selected to complete that term for the duration of the time remaining or begin a new term of three years.

d. The agencies, by consensus agreement, shall appoint the chairperson annually from the committee membership. Chairpersons shall be permitted to succeed themselves.

Miscellaneous

1. Members of the Committee will not be compensated for their services, but will be reimbursed for travel expenses upon request.

2. The Committee meets approximately twice a year, budget permitting. Special meetings may be called when appropriate.

Nomination Information

1. Nominations are requested as described above.

2. Nominees must be economists, statisticians, survey methodologists, and behavioral scientists and will be chosen to achieve a balanced membership across those disciplines. Nominees must be prominent experts in their fields, and recognized for their scientific and professional achievements and objectivity. Such knowledge and expertise are needed to advise the agencies on statistical methodology and other technical matters related to the

collection, tabulation, and analysis of federal economic statistics.

3. Individuals, groups, and/or organizations may submit nominations on behalf of an individual candidate. A summary of the candidate's qualifications (reAE1sumeAE1 or curriculum vitae) must be included along with the nomination letter. Nominees must be able to actively participate in the tasks of the Committee, including, but not limited to regular meeting attendance, committee meeting discussant responsibilities, and review of materials, as well as participation in conference calls, webinars, working groups, and special committee activities.

4. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: March 22, 2013.

Thomas L. Mesenbourg, Jr.,

Senior Advisor Performing the Duties of the Director, Bureau of the Census.

[FR Doc. 2013–07344 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–26–2013]

Foreign-Trade Zone 236—Palm Springs, California; Application for Reorganization and Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the City of Palm Springs, grantee of FTZ 236, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on March 25, 2013.

FTZ 236 was approved by the Board on February 3, 1999 (Board Order 1013, 64 FR 7854, 02/17/1999). The current zone includes the following sites: *Site 1* (902 acres)—Palm Springs International Airport, 3400 E. Tahquitz Canyon Way, 410 N. Farrell Drive, 820 Research Drive and adjacent Gene Autry Business Park, Palm Springs; and, *Site 2* (14 acres)—within the 18-acre Palm Springs Rail Station, 63950 Palm Springs Station Road, Palm Springs.

The grantee's proposed service area under the ASF would be a portion of eastern Riverside County, California, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Palm Springs U.S. Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include existing Site 1 as a ''magnet'' site. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. In addition, the applicant is also requesting the approval of the following new magnet site: *Proposed Site 3* (26.72 acres)—Dowling Orchard Business Park, 415 Nicholas Road, 920 4th Street and 4th Street and Nicholas Road, Beaumont (Riverside County). The applicant is also requesting as part of the reorganization that Site 2 be removed from the zone project.

In accordance with the Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is *May 28, 2013.* Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 12, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, 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: March 25, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–07395 Filed 3–28–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Nexiant, LLC, 2531 West Maryland Avenue, Tampa, FL 33629; Order Denying Export Privileges

On October 18, 2012, in the U.S. District Court, Middle District of Florida, Tampa Division, Nexiant, LLC (''Nexiant'') was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)) (''IEEPA''). Specifically, Nexiant was convicted of one count of violating IEEPA by knowingly and willfully conspiring with other individuals to violate IEEPA and the Iranian Transactions Regulations (31 CFR 560.203 and 560.204) by exporting computer and related equipment from the United States through the U.A.E. to Iran without first having obtained the required license from the Office of Foreign Assets Control. Nexiant was sentenced to 12 months of unsupervised probation and a fine of $400.00.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'')[1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. 2410(h). The denial of export privileges under this provision may be for a period of up to

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2012). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 FR 49699 (August 16, 2012)), has continued the Regulations in effect under the IEEPA.

10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Nexiant's conviction for violating the IEEPA, and have provided notice and an opportunity for Nexiant to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from Nexiant. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Nexiant's export privileges under the Regulations for a period of 10 years from the date of Nexiant's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Nexiant had an interest at the time of its conviction.

Accordingly, it is hereby *ordered*

I. Until October 18, 2022, Nexiant, LLC (''Nexiant''), with a last known address at: 2531 West Maryland Avenue, Tampa, FL 33629, and when acting for or on behalf of Nexiant, its successors or assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Nexiant by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until October 18, 2022.

VI. In accordance with Part 756 of the Regulations, Nexiant may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Nexiant. This Order shall be published in the **Federal Register**.

Issued this 22nd day of March, 2013.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2013–07277 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Richard Phillips, Currently Incarcerated at: Inmate No. 81783–079, FCI Ray Brook Federal Correctional Institution, P.O. Box 300, Ray Brook, NY 12977 and with An Address At: 6045 Spencer Avenue, Bronx, NY 11471

Order Denying Export Privileges

On June 21, 2012, in the U.S. District Court, Eastern District of New York, Richard Phillips (''Phillips'') was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)) (''IEEPA''). Specifically, Phillips was convicted of knowingly, intentionally and willfully attempting to export, reexport, sell and supply, directly and indirectly, a spindle of Carbon Fiber (Toray T800SC–12K–50C) from the United States to Iran without obtaining the required export license from the Department of the Treasury. Phillips was sentenced to 92 months in prison followed by three years of supervised release, and fined $100.00.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act ('EAA'), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2012). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 FR 49699 (August 16, 2012)), has continued the Regulations in effect under the IEEPA.

U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest at the time of his conviction.

I have received notice of Phillips's conviction for violating the IEEPA, and have provided notice and an opportunity for Phillips to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from Phillips. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Phillips's export privileges under the Regulations for a period of 10 years from the date of Phillips's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Phillips had an interest at the time of his conviction.

Accordingly, it is hereby

Ordered

I. Until June 21, 2022, Richard Phillips (''Phillips''), with last known addresses at: Currently incarcerated at: Inmate No. 81783–079, FCI Ray Brook, Federal Correctional Institution, P.O. Box 300, Ray Brook, NY 12977, and with an address at:

6045 Spencer Avenue, Bronx, NY 11471, and when acting for or on behalf of Phillips, his representatives, assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Phillips by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until June 21, 2022.

VI. In accordance with Part 756 of the Regulations, Phillips may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Phillips. This Order shall be published in the **Federal Register**.

Issued this 22nd day of March, 2013.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2013–07279 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

P&P Computers, 2531 West Maryland Avenue, Tampa, FL 33629; Order Denying Export Privileges

On October 18, 2012, in the U.S. District Court, Middle District of Florida, Tampa Division, P&P Computers (''P&P'') was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)) (''IEEPA''). Specifically, P&P was convicted of one count of violating IEEPA by knowingly and willfully conspiring with other individuals to violate IEEPA and the Iranian Transactions Regulations by exporting computer and related equipment from the United States through the U.A.E. to Iran without first having obtained the required license from the Office of Foreign Assets Control. P&P was sentenced to 12 months of unsupervised probation and a fine of $400.00.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2012). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 FR 49699 (August 16, 2012)), has continued the Regulations in effect under the IEEPA.

privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of P&P's conviction for violating the IEEPA, and have provided notice and an opportunity for P&P to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from P&P. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny P&P's export privileges under the Regulations for a period of 10 years from the date of P&P's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which P&P had an interest at the time of its conviction.

Accordingly, it is hereby *ordered*

I. Until October 18, 2022, P&P Computers (''P&P''), with a last known address at: 2531 West Maryland Avenue, Tampa, FL 33629, and when acting for or on behalf of P&P, its successors or assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to P&P by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until October 18, 2022.

VI. In accordance with Part 756 of the Regulations, P&P may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to P&P. This Order shall be published in the **Federal Register**.

Issued this 22nd day of March, 2013.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2013–07276 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

RH International, LLC, 2531 West Maryland Avenue, Tampa, FL 33629, Respondent, Mohammad Reza (a/k/a Ray) Hajian, 2531 West Maryland Avenue, Tampa, FL 33629, Related Person; Order Denying Export Privileges

A. Denial of Export Privileges of RH International, LLC

On October 18, 2012, in the U.S. District Court, Middle District of Florida Tampa Division, RH International, LLC (''RH International'') was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)) (''IEEPA''). Specifically, RH International was convicted of knowingly and willfully conspiring with other individuals to violate IEEPA and the Iranian Transactions Regulations (31 CFR 560.203, 560.204) by exporting computer and related equipment from the United States through the U.A.E. to Iran without first having obtained the required license from the Office of Foreign Assets Control. RH was sentenced to 12 months of unsupervised probation and a fine of $400.00.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2012). The Regulations issued pursuant to the EAA (50 U.S.C. app. §§ 2401–2420 (2000)). Since

Continued

part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the EAA, the EAR, of any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of RH International's conviction for violating the IEEPA, and have provided notice and an opportunity for RH International to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from RH International. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny RH International's export privileges under the Regulations for a period of 10 years from the date of RH International's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which RH International had an interest at the time of its conviction.

B. Denial of Export Privileges of Related Person

Pursuant to Sections 766.25(h) and 766.23 of the Regulations, the Director of BIS's Office of Exporter Services, in consultation with the Director of BIS's Office of Export Enforcement, may take action to name persons related to a Respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business in order to prevent evasion of a denial order. Mohammad Reza (a/k/a ''Ray'') Hajian (''Hajian'') is the owner and operator of RH International. Hajian pled guilty under 18 U.S.C. 371 to one count of conspiracy to violate IEEPA for his role in falsifying export control documents in relation to diverting U.S. origin items to Iran via the U.A.E. Hajian was sentenced to 48 months in prison, a $10 million dollar judgment, a special assessment of $100, and one year of supervised probation. Hajian is also the owner and operator of P&P Computers and Nexiant, LLC, which were also convicted of the same crime as RH International in related matters. Therefore, Hajian is related to RH International by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. BIS believes that naming Hajian as a related person to RH International is necessary to avoid evasion of the denial order against RH International.

As provided in Section 766.23 of the Regulations, I gave notice to Hajian that his export privileges under the Regulations could be denied for up to 10 years due to his relationship with RH International and that BIS believes naming him as a person related to RH International would be necessary to prevent evasion of a denial order imposed against RH International. In providing such notice, I gave Hajian an opportunity to oppose his addition to the RH International Denial Order as a related party. Having received no submission from Hajian, I have decided, following consultations with BIS's Office of Export Enforcement, including its Director, to name Hajian as a Related Person to the RH International Denial Order, thereby denying his export privileges for 10 years from the date of RH International's conviction.

I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which the Related Person had an interest at the time of RH International's conviction. The 10 year denial period will end on October 18, 2022.

Accordingly, it is hereby *ordered*

I. Until October 18, 2022, RH International, LLC with last known addresses at: 2531 West Maryland Avenue, Tampa, FL 33629, and when acting for or on behalf of RH International, its successors or assigns, agents or employees (collectively referred to hereinafter as the ''Denied Person''), and the following person related to the Denied Person as defined by Section 766.23 of the Regulations: Mohammad Reza (a/k/a ''Ray'') Hajian (''Hajian''), with a last known address at: 2531 West Maryland Avenue, Tampa, FL 33629, and when acting for or on behalf of Hajian, his representatives, assigns, agents, or employees (''the Related Person'') (together, the Denied Person and the Related Person are ''Persons Subject to this Order''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Persons Subject to this Order any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Persons Subject to this Order of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Persons Subject to this Order acquire or attempt to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Persons Subject to this Order of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Persons Subject to this Order in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

August 21, 2001, the Export Administration Act (''EAA'') has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 FR 49699, August 16, 2012), has continued the Regulations in effect under the IEEPA.

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Persons Subject to this Order, or service any item, of whatever origin, that is owned, possessed or controlled by the Persons Subject to this Order if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. In addition to the Related Person named above, after notice and opportunity for comment as provided in section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until October 18, 2022.

VI. In accordance with Part 756 of the Regulations, RH International may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. In accordance with Part 756 of the Regulations, the Related Person may also file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VIII. A copy of this Order shall be delivered to the Denied Person and the Related Person. This Order shall be published in the **Federal Register**.

Issued this 21st day of March, 2013.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2013–07278 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: Effective Date: March 29, 2013.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. With respect to the antidumping duty orders on Certain Frozen Warmwater Shrimp from India and Thailand, the initiation of the antidumping duty adminstrative review for these cases will be published in a separate initiation notice.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not-collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if

companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

INITIATION OF REVIEWS

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than February 28, 2014.

	Period to be reviewed
Antidumping Duty Proceedings	
Brazil: Certain Frozen Warmwater Shrimp, A–351–825	2/1/12–1/31/13
Amazons Industria Alimenticias S.A.	
Procesadora del Rio S.A. (PRORIOSA)	

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Brazil: Stainless Steel Bar, A–351–825	2/1/12–1/31/13
Villares Metals S.A.	
France: Low Enriched Uranium A–427–818	2/1/12–1/31/13
Eurodif S.A., AREVA NC, and AREVA NC, Inc. (collectively, ''Areva)	
India: Certain Preserved Mushrooms, A–533–813	2/1/12–1/31/13
Agro Dutch Foods Limited (Agro Dutch Industries Limited)	
Himalya International Ltd.	
Hindustan Lever Ltd. (formerly Ponds India, Ltd.)	
Transchem, Ltd.	
Weikfield Foods Pvt. Ltd.	
India: Stainless Steel Bar, A–533–810	2/1/12–1/31/13
Ambica Steels Limited	
Chandan Steel Limited	
Mukand, Ltd., M/S Mukand Sumi Metal Processing Ltd, Mukand International, FZE (collectively, Mukand)	
Japan: Stainless Steel Bar,[3] A–588–833	2/1/10–1/31/11
Republic of Korea: Certain Cut-to-Length Carbon-Quality Steel Plate, A–580–836	2/1/12–1/31/13
Daewoo International Corp.	
Dongbu Steel Co., Ltd.	
Dongkuk Steel Mill Co., Ltd.	
Edgen Murray Corporation	
GS Global Corp.	
Hyosung Corporation	
Hyundai Steel Co.	
Kyoungil Co., Ltd.	
Samsung C&T Corp.	
Samwoo EMC Co., Ltd.	
TCC Steel Corp.	
Socialist Republic of Vietnam: Certain Frozen Warmwater Shrimp, A–552–802	2/1/12–1/31/13
Agrex Saigon	
Amanda Foods (Vietnam) Ltd.	
Amanda Foods (Vietnam) Ltd. Ngoc Tri Seafood Company (Amanda's affiliate)	
Amanda Seafood Co., Ltd.	
Anvifish Co.	
Anvifish Joint Stock Co.	
Bac Lieu Fisheries Company Limited	
Bac Lieu Fisheries Company Limited (''Bac Lieu'')	
Bac Lieu Fisheries Company Limited and/or Bac Lieu Fisheries Company Limited (''Bac Lieu'').	
Bac Lieu Fisheries Joint Stock Company	
Bac Lieu Fisheries Limited Company	
Bentre Aquaproduct Import & Export Joint Stock Company	
Bien Dong Seafood Co., Ltd.	
BIM Seafood Joint Stock Company	
Binh An Seafood Joint Stock Company	
C.P. Vietnam Corporation	
C.P. Vietnam Corporation (''C.P. Vietnam'')	
C.P. Vietnam Livestock Company Limited	
C.P. Vietnam Livestock Company Limited (''C.P. Vietnam'')	
C.P. Vietnam Livestock Corporation	
C.P. Vietnam Livestock Corporation (''C.P. Vietnam'')	
Ca Mau Frozen Seafood Processing Import Export Corporation, or Camau Seafood Factory No.4 (''CAMIMEX'') and/or Camau Frozen Seafood Processing Import Export Corporation (''CARMIMEX'')	
Ca Mau Frozen Seafood Processing Import-Export Corporation (''CAMIMEX'')	
Ca Mau Seafood Joint Stock Company (''Seaprimexco Vietnam'')	
Ca Mau Seafood Joint Stock Company (''SEAPRIMEXCO'')	
Ca Mau Seafood Joint Stock Company (''Seaprimexco'')	
Cadovimex II Seafood Import and Export and/or Cadovimex II Seafood Joint Processing Stock Company	
CADOVIMEX II Seafood Import Export and Processing Joint Stock Company	
CADOVIMEX Seafood Import Export and Processing Joint Stock Company	
Cadovimex Seafood Import-Export and Processing Join Stock Company (''CADOVIMEX'') and/or Cadovimex Seafood Import-Export and Processing Joint-Stock Company (''Cadovimex-Vietnam'')	
Cadovimex Seafood Import-Export and Processing Joint Stock Company (''Cadovimex'')	
Cadovimex Seafood Import-Export and Processing Joint Stock Company (''CADOVIMEX–VIETNAM'')	
Cafatex	
Cafatex Corp	
Cafatex Corporation	
Cafatex Fishery Joint Stock Corporation	
Cafatex Fishery Joint Stock Corporation (''Cafatex Corp.'')	
Cafatex Fishery Joint Stock Corporation (''Cafatex Corp.'') and/or Cafatex Fishery Joint Stock Corporation (''CAFATEX CORP.'')	
Cafatex Saigon	
Cafatex Vietnam	
Cai Doi Vam Seafood	
Cai Doi Vam Seafood Im Ex Co. (''CADOVIMEX'')	

	Period to be reviewed
Cai Doi Vam Seafood Im-Ex Company (Cadovimex)	
Cai Doi Vam Seafood Import-Export Company (''Cadovimex'')	
Cai Doi Vam Seafood Processing Factory	
Caidoivam Seafood Company (Cadovimex)	
Caidoivam Seafood Im-Ex Co.	
Cam Ranh Seafoods	
Cam Ranh Seafoods Processing Enterprise Company (''Camranh Seafoods'')	
Cam Ranh Seafoods Processing Enterprise Company (''Camranh Seafoods'') and/or Cam Ranh Seafoods Processing Enterprise PTE and/or Camranh Seafoods	
Camau Frozen Seafood Processing Import & Export	
Camau Frozen Seafood Processing Import & Export Co.	
Camau Frozen Seafood Processing Import Export Corp. (Camimex)	
Camau Frozen Seafood Processing Import Export Corp. (CAMIMEX–FAC 25)	
Camau Frozen Seafood Processing Import Export Corporation (''Camimex'')	
Camau Frozen Seafood Processing Import Export Corporation (''CAMIMEX'')	
Camau Seafood Factory No.4	
Camau Seafood Factory No.5	
Camau Seafood Processing and Service Joint Stock Company (''CASES'')	
Camau Seafood, Factory No.4	
Camimex	
Camimex Factory 25	
Camranh Seafoods	
Camranh Seafoods Processing & Exporting Company Limited and its branch factory, Branch of Camranh Seafoods Processing Enterprise Pte.	
Camranh Seafoods Processing Enterprise Pte.	
Camranh Seafoods Processing Enterprise Pte. Processing Pte.	
Can Tho Agricultural and Animal Product Import Export Company (''CATACO'') and/or Can Tho Agricultural and Animal Products Import Export Company (''CATACO'')	
Can Tho Agricultural and Animal Products Imex Company	
Can Tho Agricultural and Animal Products Import Export Company (''CATACO'')	
Can Tho Agricultural Products	
Can Tho Imp. Exp. Fishery Ltd.	
Can Tho Import Export Fishery Limited Company (''CAFISH'')	
Can Tho Imprt Export Fishery Limited Company (''CAFISH'')	
Can Tho Import Export Seafood Joint Stock Company (CASEAMEX)	
Cantho Agricultural & Animal Product Import Export Company (''CATACO'') and/or Can Tho Agricultural and Animal Products Import Export Company (''CATACO'')	
Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex)	
Cantho Imp. Exp. Fishery Ltd.	
Cantho Import Export Fishery Co., Ltd. (CAFISH)	
Cantho Import Export Seafood Joint Stock Company (CASEAMEX)	
Cas	
Cas Branch	
CATACO	
Cau Tre Enterprise (C. T. E.)	
Cautre Export Goods Processing Joint Stock Company	
Cautre Export Goods Processing Joint Stock Company (CTSE JSCO)	
CL Fish Co., Ltd. (Cuu Long Fish Company)	
Coastal Fisheries Development Co.	
Coastal Fisheries Development Corp.	
Coastal Fisheries Development Corporation	
Coastal Fisheries Development Corporation (''COFIDEC'')	
Coastal Fisheries Development Corporation (''Cofidec'')	
Coastal Fisheries Development Corporation (Cofidec)	
Coastal Fisheries Development Corporation (Cofidec) and/or Coastal Fisheries Development Corporation (''COFIDEC'')	
Coastal Fishery Development	
COFIDEC	
Cong Ty Tnhh Thong Thuan (Thong Thuan)	
Cuu Long Seapro	
Cuu Long Seaproducts Company	
Cuu Long Seaproducts Company (''Cuu Long Seapro'')	
Cuu Long Seaproducts Limited (''Cuulong Seapro'')	
Cuu Long Seaproducts Limited (Cuulong Seapro)	
Cuulong Seapro	
Cuulong Seaproduct Company	
Cuulong Seaproducts Company (''Cuu Long Seapro'')	
Cuulong Seaproducts Company (''Cuu Long Seapro'') and/or Cuulong Seaproducts Company (''Cuulong Seapro'') and/or Cuulong Seaprodex Company	
Cuulong Seaproducts Company (''Cuulong Seapro'')	
D & N Foods Processing (Danang Company Ltd.)	
Danang Seaproduct Import-Export Corporation	
Danang Seaproducts Import Export	
Danang Seaproducts Import Export Corporation	

	Period to be reviewed
Danang Seaproducts Import Export Corporation (''Seaprodex Danang'')	
Danang Seaproducts Import Export Corporation (''Seaprodex Danang'') and/or Danang Seaproducts Import Export Corporation (and its affiliates) (''Seaprodex Danang'')	
Danang Seaproducts Import Export Corporation (and its affilliate, Tho Quang Seafood Processing and Export Company) (collectively ''Seaprodex Danang'')	
Duy Dai Corporation	
FIMEX VN	
Fimex VN	
Fine Foods Company (FFC)	
Frozen Factory No.4	
Frozen Seafoods Factory No. 32	
Frozen Seafoods Factory No. 32 and/or Frozen Seafoods Fty No. 32	
Gallant Ocean (Quang Ngai) Co., Ltd.	
Gallant Ocean (Vietnam) Co. Ltd.	
Gallant Ocean (Vietnam) Co., Ltd. (''Gallant Ocean Vietnam'')	
Gn Foods	
Grobest	
Grobest & I-Mei Industrial (Vietnam) Co., Ltd.	
Grobest & I-Mei Industrial Vietnam	
Grobest & I-Mei Industry Vietnam	
Hai Thanh Food Company Ltd.	
Hai Viet Corporation (''Havico'')	
Hai Vuong Co., Ltd.	
Headway Co., Ltd.	
Hoa Phat Aquatic Products Processing And Trading Service Co., Ltd.	
Hoang Hai Company Ltd.	
Hoang Phuong Seafood Factory	
Hua Heong Food Industries Vietnam Co. Ltd.	
Huynh Huong Trading and Import Export Joint Stock Company	
Incomfish	
Incomfish Corp.	
Incomfish Corporation	
Interfood Shareholding Co.	
Investment Commerce Fisheries	
Investment Commerce Fisheries Corp.	
Investment Commerce Fisheries Corporation	
Investment Commerce Fisheries Corporation (''Incomfish Corp.'')	
Investment Commerce Fisheries Corporation (''Incomfish'') and/or Investment Commerce Fisheries Corporation (''INCOMFISH'')	
Investment Commerce Fisheries Corporation (''Incomfish'') and/or Investment Fisheries Corporation (''INCOMFISH'')	
Investment Commerce Fisheries Corporation (''Incomfish'')	
Khanh Loi Seafood Factory	
Kien Hung Seafood Company Vn	
Kien Long Seafoods Co. Ltd.	
Kim Anh Co., Ltd.	
Kim Anh Company Limited (''Kim Anh'')	
Kim Anh Company Ltd. (''Kim Anh'')	
Luan Vo Fishery Co., Ltd.	
Lucky Shing Co., Ltd.	
Minh Chau Imp. Exp. Seafood Processing Co., Ltd.	
Minh Hai Export Frozen Seafood Processing Joint-Stock Co.	
Minh Hai Export Frozen Seafood Processing Joint-Stock Company	
Minh Hai Export Frozen Seafood Processing Joint-Stock Company (''Minh Hai Jostoco'')	
Minh Hai Export Frozen Seafood Processing Joint-Stock Company (''Minh Hai Jostoco'') and/or Minh Hai Export Frozen Seafood Processing Joint-Stock Company (''Minh Hai Jostoco'')	
Minh Hai Export Frozen Seafood Processing Joint-Stock Company (''Minh Hai Jostoco'') and/or Minh Hai Export Frozen Seafood Processing Joint-Stock Company (''Minh Hai Sea Products'')	
Minh Hai Joint Stock Seafood Processing Joint-Stock Company	
Minh Hai Joint-Stock Seafoods Processing Company	
Minh Hai Joint-Stock Seafoods Processing Company (''Seaprodex Minh Hai'')	
Minh Hai Joint-Stock Seafoods Processing Company (''Seaprodex Minh Hai'') and/or Minh Hai Joint-Stock Seafoods Processing Company (''Minh Hai Sea Products'')	
Minh Hai Joint-Stock Seafoods Processing Company (''Seaprodex Minh Hai'') and/or Minh Hai Joint-Stock Seafoods Processing Company (''Sea Minh Hai'')	
Minh Hai Jostoco	
Minh Hai Sea Products Import Export Company (''Seaprimex Co'')	
Minh Hai Seaproducts Co Ltd. (Seaprimexco)	
Minh Hai Seaproducts Import Export Corporation	
Minh Phat Seafood	
Minh Phat Seafood and/or Minh Phat Seafood Co., Ltd.	
Minh Phat Seafood Co., Ltd.	
Minh Phu Seafood Corp.	

	Period to be reviewed
Minh Phu Seafood Corporation	
Minh Phu Seafood Corporation (and its affiliates Minh Qui Seafood Co., Ltd., and Minh Phat Seafood Co., Ltd.) (collectively ''Minh Phu Group'')	
Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co. Ltd. and Minh Phat Seafood Co., Ltd.)	
Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) and/or Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) (collectively ''Minh Phu Group'')	
Minh Phu Seafood Pte	
Minh Qui Seafood	
Minh Qui Seafood Co., Ltd.	
Minh Qui Seafood Co., Ltd. and/or Minh Qui Seafood Pte.	
Minh-Hai Export Frozen Seafood Processing Joint-Stock Company	
Mp Consol Co., Ltd.	
My Son Seafoods Factory	
Nam Hai Foodstuff and Export Company Ltd	
Ngoc Chau Co., Ltd. and/or Ngoc Chau Seafood Processing Company	
Ngoc Sinh	
Ngoc Sinh Enterprise Seafoods Processing and Trading	
Ngoc Sinh Fisheries	
Ngoc Sinh Private	
Ngoc Sinh Private Enterprises	
Ngoc Sinh Seafood Processing Company	
Ngoc Sinh Seafood Trading & Processing	
Ngoc Sinh Seafood Trading & Processing Enterprise	
Ngoc Sinh Seafoods	
Ngoc Sinh Seafoods (Private Enterprise)	
Ngoc Sinh Seafoods Processing and Trading Enterprises	
Ngoc Tri Seafood Joint Stock Company	
Nha Trang Fisco	
Nha Trang Fisheries Joint Stock Company	
Nha Trang Fisheries Joint Stock Company (''Nha Trang Fisco'')	
Nha Trang Fisheries Joint Stock Company (''Nha Trang Fisco'') and/or Nha Trang Fisheries Joint Stock Company (''Nha Trang FISCO'')	
Nha Trang Fisheries, Joint Stock	
Nha Trang Seafoods	
Nha Trang Seaproduct Company (''Nha Trang Seafoods'')	
Nha Trang Seaproduct Company (''Nha Trang Seafoods'') and/or Nha Trang Seaproduct Company (''NHA TRANG SEAFOODS'')	
Nha Trang Seaproduct Company (and its affiliates NT Seafoods Corporation, Nha Trang Seafoods-F.89 Joint Stock Company, NTSF Seafoods Joint Stock Company (collectively ''Nha Trang Seafoods Group'')	
Nha Trang Seaproducts Company Nha Trang Seafoods	
Nhat Duc Co., Ltd.	
Nhatrang Fisco	
Nhatrang Fisheries Joint Stock Company	
Nhatrang Seafoods-F.89 Joint Stock Company	
NT Seafoods Corporation	
NT SF Seafoods Joint Stock Company	
Phu Cuong Jostoco Corp.	
Phu Cuong Jostoco Seafood Corporation	
Phu Cuong Jostoco Seafood Corporation, aka Phu Cuong Seafood Processing & Import Export Co., Ltd. (''Phu Cuong Jostoco'')	
Phu Cuong Seafood Processing & Import-Export Company, Limited	
Phu Cuong Seafood Processing And Import Export Company Limited	
Phu Cuong Seafood Processing and Import Export Company Limited	
Phu Cuong Seafood Processing and Import-Export Co., Ltd.	
Phuong Nam Co., Ltd. (''Phuong Nam'')	
Phuong Nam Co., Ltd. and/or Phoung Nam Foodstuff Corp.	
Phuong Nam Foodstuff Corp.	
Phuong Nam Foodstuff Corp. (''Phuong Nam'')	
Quang Ninh Export Aquatic Processing Factory Products	
Quang Ninh Export Aquatic Products Processing Factory	
Quang Ninh Seaproducts Factory	
Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd.	
Quoc Viet Seaproducts Processing Trading Import-Export Co., Ltd.	
Quoc Viet Seaproducts Processing Trading Import and Export Co., Ltd.	
S.R.V. Freight Services Co., Ltd.	
Sao Ta Foods Joint Stock Company	
Sao Ta Foods Joint Stock Company (''Fimex VN'')	
Sao Ta Foods Joint Stock Company (''FIMEX VN'') (and its factory ''Sao Ta Seafoods Factory'')	
Sao Ta Foods Joint Stock Company (''Fimex VN'') and/or Sao Ta Foods Joint Stock Company (''FIMEX'')	
Sao Ta Seafood Factory	
Saota Seafood Factory	

	Period to be reviewed
Sea Minh Hai	
Sea Product	
Seafoods and Foodstuff Factory	
Seaprimexco	
Seaprimexco Vietnam	
Seaprodex Danang	
Seaprodex Min Hai	
Seaprodex Minh Hai	
Seaprodex Minh Hai (Minh Hai Joint Stock Seafoods Processing Co.)	
Seaprodex Minh Hai Factory	
Seaprodex Minh Hai Factory No. 69	
Seaprodex Minh Hai Workshop 1	
Seaprodex Minh Hai-Factory No. 78	
Seavina Joint Stock Company	
Soc Trang Aquatic Products and General Import Export Company	
Soc Trang Aquatic Products and General Import Export Company (''Stapimex'')	
Soc Trang Aquatic Products and General Import Export Company (''Stapimex'') and/or Soc Trang Aquatic Products and General Import-Export Company (''STAPIMEX'') and/or Soc Trang Aquatic Seafood Joint-Stock Company	
Soc Trang Aquatic Products and General Import Export Company-(Stapimex)	
Soc Trang Seafood Joint Stock Company	
Soc Trang Seafood Joint Stock Company (''Stapimex'')	
Stapimex	
Stapimex Soc Trans Aquatic Products and General Import Export Company	
Stapmex	
Sustainable Seafood	
Tan Thanh Loi Frozen Food Co., Ltd.	
Taydo Seafood Enterprise	
Thanh Doan Seaproducts Import & Export Processing Joint-Stock Company (THADIMEXCO)	
Thanh Hung Frozen Seafood Processing Import Export Co., Ltd.	
Thanh Tri Seafood Processing Co. Ltd.	
Tho Quang	
Tho Quang Co.	
Tho Quang Seafood Processing & Export Company	
Tho Quang Seafood Processing And Export Company	
Thong Thuan Company Limited	
Thuan Phuoc Seafoods & Trading Corporation and/or Thuan Phuoc Seafoods and Trading Corporation (and its affiliates)	
Thuan Phuoc Seafoods and Trading Corporation	
Thuan Phuoc Seafoods and Trading Corporation and its separate factories Frozen Seafoods Factory No. 32, Seafoods and Foodstuff Factory, and My Son Seafoods Factory (collectively ''Thuan Phuoc Corp.'')	
Thuan Phuoc Seafoods and Trading Corporation and/or Thuan Phuoc Seafoods and Trading Corporation (and its affiliates)	
Tien Tien Garment Joint Stock Company	
Tithi Co., Ltd.	
Trang Corporation	
UT XI Aquatic Products Processing Company	
UTXI	
UTXI Aquatic Products Processing Company	
UT-XI Aquatic Products Processing Company	
UTXI Aquatic Products Processing Corporation (''UTXICO'')	
UTXI Aquatic Products Processing Corporation (''UTXICO'') (and its branch Hoang Phuong Seafood Factory)	
UTXI Co. Ltd.	
Viet Cuong Seafood Processing Import Export	
Viet Cuong Seafood Processing Import Export Joint-Stock Company	
Viet Foods Co., Ltd.	
Viet Foods Co., Ltd. (''Viet Foods'')	
Viet Hai Seafood Co., Ltd.	
Viet I-Mei Frozen Foods Co., Ltd.	
Vietnam Clean Seafood Corporation (''Vina Cleanfood'')	
Vietnam Clean Seafood Corporation (VINA Cleanfood)	
Vietnam Fish One Co., Ltd.	
Vietnam Fish One Co., Ltd. (''Fish One'')	
Vietnam Northern Viking Technologies Co. Ltd.	
VIMEX	
VIMEXCO	
Vinatex Danang	
Vinh Hoan Corp.	
Vinh Loi Import Export Company (''VIMEX'')	
Vinh Loi Import Export Company (''Vimexco'')	
Vinh loi Import Export Company (''Vimexco'') and/or Vinh Loi Import Export Company (''VIMEX'')	
Vinh Loi Import/Export Co.	
Vinh Loi Import-Export Company	
Vinhloi Import Export Company	

	Period to be reviewed
Western Seafood Processing and Exporting Factory (''Western Seafood'')	
Xi Nghiep Che Bien Thuy Suc San Xuat Kau Cantho	
The People's Republic of China: Certain Frozen Warmwater, Shrimp,[4] A–570–893	2/1/12–1/31/13
Allied Pacific Aquatic Products Zhanjiang Co Ltd	
Allied Pacific Food (Dalian) Co., Ltd	
Aqua Foods (Qingdao) Co., Ltd.	
Asian Seafoods (Zhanjiang) Co., Ltd.	
Beihai Boston Frozen Food Co., Ltd.	
Beihai Evergreen Aquatic Product Science And Technology Co Ltd	
Beihai Wanjing Marine Products Co., Ltd.	
Dalian Hualian Foods Co., Ltd.	
Dalian Shanhai Seafood Co., Ltd.	
Dalian Taiyang Aquatic Products Co., Ltd.	
Dalian Z&H Seafood Co., Ltd.	
Eimskip Logistics (Qingdao) Co., Ltd.	
Eimskip Logistics Inc.	
EZ Logistics Inc.	
EZ Logistics LLC	
Fujian Chaohui International Trading	
Fujian Dongshan County Shunfa Aquatic Product Co., Ltd.	
Fujian Rongjiang Import and Export Corp.	
Fuqing Minhua Trade Co., Ltd	
Fuqing Yihua Aquatic Food Co., Ltd.	
Fuqing Yiyuan Trading Co., Ltd.	
Guangdong Gourmet Aquatic Products Co., Ltd.	
Guangdong Jiahuang Foods Co., Ltd.	
Guangdong Shunxin Sea Fishery Co. Ltd.	
Guangdong Wanshida Holding Corp.	
Guangdong Wanya Foods Fty. Co., Ltd.	
Hai Li Aquatic Co., Ltd.	
Hainan Brich Aquatic Products Co., Ltd.	
Hainan Golden Spring Foods Co., Ltd.	
Hainan Hailisheng Food Co., Ltd.	
Hainan Xiangtai Fishery Co., Ltd.	
Haizhou Aquatic Products Co., Ltd.	
Hangzhou Tianhai Aquatic Products Co., Ltd.	
Hilltop International	
Hua Yang (Dalian) International Transportation Service Co.	
Leizhou Beibuwan Sea Products Co., Ltd.	
Longhai Gelin Seafoods Co., Ltd.	
Longheng (Fuqing) Imp. & Exp. Co., Ltd.	
Longsheng Aquatic Co., Ltd.	
Maoming Xinzhou Seafood Co., Ltd.	
Olanya (Germany) Ltd.	
Qingdao Yuanqiang Foods Co., Ltd.	
Rizhao Smart Foods Company Limited	
Rizhao Xinghe Foodstuff Co., Ltd.	
Rui'an Huasheng Aquatic Products Co., Ltd.	
Savvy Seafood Inc.	
Shandong Meijia Group Co., Ltd.	
Shanghai Linghai Fisheries Trading Co. Ltd.	
Shanghai Lingpu Aquatic Products Co.	
Shanghai Smiling Food Co., Ltd.	
Shanghai Zhoulian Foods Co., Ltd.	
Shantou Haiyou Aquatic Product Foodstuff Co., Ltd	
Shantou Jiazhou Foods Industry Co., Ltd.	
Shantou Jin Cheng Food Co., Ltd.	
Shantou Jintai Aquatic Product Industrial Co., Ltd.	
Shantou Longsheng Aquatic Product Foodstuff Co., Ltd.	
Shantou Ruiyuan Industry Company Ltd.	
Shantou Wanya Foods Fty. Co., Ltd.	
Shantou Yuexing Enterprise Co.	
Shantou Yuexing Enterprises Co.	
Shenzen Allied Aquatic Produce Development Ltd.	
Shenzhen Yudayuan Trade Ltd.	
Thai Royal Frozen Food Zhanjiang Co., Ltd.	
Xiamen Granda Import & Export Co., Ltd.	
Yancheng Hi-king Agriculture Developing Co., Ltd.	
Yanfeng Aquatic Product Foodstuff	
Yangjiang Anyang Food Co., Ltd.	
Yangjiang Wanshida Seafood Co., Ltd.	
Yelin Enterprise Co., Ltd.	
Zhangzhou Xinwanya Aquatic Product Co., Ltd.	

	Period to be reviewed
Zhangzhou Yanfeng Aquatic Product	
Zhangzhou Bo Bo Go Ocean Co., Ltd.	
Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd.	
Zhanjiang Fuchang Aquatic Products Co., Ltd.	
Zhanjiang Go Harvest Aquatic Products Co., Ltd.	
Zhanjiang Haizhou Aquatic Product Co. Ltd.	
Zhanjiang Hengrun Aquatic Co, Ltd.	
Zhanjiang Jinguo Marine Foods Co., Ltd.	
Zhanjiang Join Wealth Aquatic Products Co., Ltd.	
Zhanjiang Longwei Aquatic Products Industry Co., Ltd.	
Zhanjiang Newpro Foods Co., Ltd.	
Zhanjiang Rainbow Aquatic Developemnt	
Zhanjiang Regal Integrated Marine Resources Co., Ltd.	
Zhanjiang Universal Seafood Corp.	
Zhejiang Daishan Baofa Aquatic Products Co., Ltd.	
Zhejiang Evernew Seafood Co., Ltd.	
Zhejiang Xinwang Foodstuffs Ltd.	
Zhejiang Zhoufu Food Co., Ltd.	
Zhoushan Corporation	
Zhoushan Genho Food Co., Ltd.	
Zhoushan Haiwang Seafood Co., Ltd.	
The People's Republic of China: Certain Preserved Mushrooms,[5] A–570–851	2/1/12–1/31/13
Ayecue (Liaocheng) Foodstuff Co., Ltd.	
Blue Field (Sichuan) Food Industrial Co., Ltd.	
China National Cereals, Oils & Foodstuffs Import & Export Corp.	
China Processed Food Import & Export Co.	
Dujiangyan Xingda Foodstuff Co., Ltd.	
Fujian Golden Banyan Foodstuffs Industrial Co., Ltd.	
Fujian Pinghe Baofeng Canned Foods	
Fujian Yuxing Fruits and Vegetables Foodstuffs Development Co., Ltd.	
Fujian Zishan Group Co., Ltd.	
Guangxi Eastwing Trading Co., Ltd.	
Guangxi Hengyong Industrial & Commercial Dev. Ltd.	
Guangxi Jisheng Foods, Inc.	
Inter-Foods (Dongshan) Co., Ltd.	
Linyi City Kangfa Foodstuff Drinkable Co., Ltd.	
Longhai Guangfa Food Co., Ltd.	
Primera Harvest (Xiangfan) Co., Ltd.	
Shandong Fengyu Edible Fungus Corporation Ltd.	
Shandong Jiufa Edible Fungus Corporation, Ltd.	
Shandong Yinfeng Rare Fungus Corporation, Ltd.	
Sun Wave Trading Co., Ltd.	
Xiamen Greenland Import & Export Co., Ltd.	
Xiamen Gulong Import & Export Co., Ltd.	
Xiamen International Trade & Industrial Co., Ltd.	
Xiamen Jiahua Import & Export Trading Co., Ltd.	
Xiamen Longhuai Import & Export Co., Ltd.	
Zhangzhou Gangchang Canned Foods Co., Ltd, (aka Zhangzhou Gangchang Canned Foods Co., Ltd., Fujian)	
Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd.	
Zhangzhou Hongda Import & Export Trading Co., Ltd.	
Zhangzhou Long Mountain Foods Co., Ltd.	
Zhangzhou Tongfa Foods Industry Co., Ltd.	
Zhejiang Iceman Food Co., Ltd.	
Zhejiang Iceman Group Co., Ltd.	
The People's Republic of China: Small Diameter Graphic Electrodes,[6] A–570–929	2/1/12–1/31/13
5-Continent Imp. & Exp. Co., Ltd.	
Acclcarbon Co., Ltd.	
Allied Carbon (China) Co., Limited	
Anssen Metallurgy Group Co., Ltd.	
AMGL	
Apex Maritime (Dalian) Co., Ltd.	
Asahi Fine Carbon (Dalian) Co., Ltd.	
Beijing Fangda Carbon Tech Co., Ltd.	
Beijing Kang Jie Kong Cargo Agent Expeditors (Tianjin Branch)	
Beijing Xinchengze Inc.	
Beijing Xincheng Sci-Tech. Development Inc.	
Brilliant Charter Limited	
Carbon International	
Chang Cheng Chang Electrode Co., Ltd.	
Chengdelh Carbonaceous Elements Factory	
Chengdu Jia Tang Corp.	
Chengdu Rongguang Carbon Co., Ltd.	
China Industrial Mineral & Metals Group	

	Period to be reviewed
China Shaanxi Richbond Imp. & Exp. Industrial Corp. Ltd.	
China Xingyong Carbon Co., Ltd.	
CIMM Group Co., Ltd.	
Dalian Carbon & Graphite Corporation	
Dalian Hongrui Carbon Co., Ltd.	
Dalian Honest International Trade Co., Ltd.	
Dalian Horton International Trading Co., Ltd.	
Dalian LST Metallurgy Co., Ltd.	
Dalian Oracle Carbon Co., Ltd.	
Dalian Shuangji Co., Ltd.	
Dalian Thrive Metallurgy Imp. & Exp. Co., Ltd.	
Datong Carbon	
Datong Carbon Plant	
Datong Xincheng Carbon Co., Ltd.	
Dechang Shida Carbon Co., Ltd.	
De Well Container Shipping Corp.	
Dewell Group	
Dignity Success Investment Trading Co., Ltd.	
Double Dragon Metals and Mineral Tools Co., Ltd.	
Fangda Carbon New Material Co., Ltd.	
Fangda Carbon New Material and Technology Co., Ltd.	
Fangda Lanzhou Carbon Joint Stock Company Co. Ltd.	
Foset Co., Ltd.	
Fushun Carbon Co., Ltd.	
Fushun Carbon Plant	
Fushun Jinly Petrochemical Carbon Co., Ltd.	
Fushun Jinli Petrochemical Carbon Co., Ltd.	
Fushun Orient Carbon Co., Ltd.	
GES (China) Co., Ltd.	
Grameter Shipping Co., Ltd. (Qingdao Branch)	
Guangdong Highsun Yongye (Group) Co., Ltd.	
Guanghan Shida Carbon Co., Ltd.	
Haimen Shuguang Carbon Industry Co., Ltd.	
Handan Hanbo Material Co., Ltd.	
Hanhong Precision Machinery Co., Ltd.	
Hebei Long Great Wall Electrode Co., Ltd.	
Hefei Carbon Co., Ltd.	
Heilongjiang Xinyuan Carbon Products Co., Ltd.	
Heilongjiang Xinyuan Metacarbon Company Ltd.	
Henan Sanli Carbon Products Co., Ltd.	
Hopes (Beijing) International Co., Ltd.	
Huanan Carbon Factory	
Hunan Mec Machinery and Electronics Imp. & Exp. Corp.	
Hunan Yinguang Carbon Factory Co., Ltd.	
Inner Mongolia QingShan Special Graphite and Carbon Co., Ltd.	
Inner Mogolia QingShan Special Graphite and Carbon Co., Ltd.	
Inner Mongolia Xinghe County Hongyuan Electrical Carbon Factory	
Jiang Long Carbon	
Jiangsu Yafei Carbon Co., Ltd.	
Jiaozuo Zhongzhou Carbon Products Co., Ltd.	
Jichun International Trade Co., Ltd. of Jilin Province	
Jiexiu Juyuan Carbon Co., Ltd.	
Jiexiu Ju-Yuan & Coaly Co., Ltd.	
Jilin Carbon Graphite Material Co., Ltd.	
Jilin Carbon Import and Export Company	
Jilin Carbon Import & Export Company	
Jilin Songjiang Carbon Co Ltd.	
Jinneng Group Co., Ltd.	
Jinyu Thermo-Electric Material Co., Ltd.	
JL Group	
Kaifeng Carbon Company Ltd.	
KASY Logistics (Tianjin) Co., Ltd.	
Kimwan New Carbon Technology and Development Co., Ltd.	
Kingstone Industrial Group Ltd.	
L & T Group Co., Ltd.	
Laishui Long Great Wall Electrode Co. Ltd.	
Lanzhou Carbon Co., Ltd.	
Lanzhou Carbon Import & Export Corp.	
Lanzhou Hailong New Material Co.	
Lanzhou Hailong Technology	
Lanzhou Ruixin Industrial Material Co., Ltd.	
LH Carbon Factory of Chengde	
Lianxing Carbon Qinghai Co., Ltd.	

	Period to be reviewed
Lianxing Carbon Science Institute	
Lianxing Carbon (Shandong) Co., Ltd.	
Lianyungang Jinli Carbon Co., Ltd.	
Lianyungang Jianglida Mineral Co., Ltd.	
Liaoning Fangda Group Industrial Co., Ltd.	
Liaoyang Carbon Co. Ltd.	
Linghai Hongfeng Carbon Products Co., Ltd.	
Linyi County Lubei Carbon Co., Ltd.	
Maoming Yongye (Group) Co., Ltd.	
MBI Beijing International Trade Co., Ltd.	
Nantong Dongjin New Energy Co., Ltd.	
Nantong Falter New Energy Co., Ltd.	
Nantong River-East Carbon Co., Ltd.	
Nantong River-East Carbon Joint Stock Co., Ltd.	
Nantong Yangtze Carbon Corp. Ltd.	
Oracle Carbon Co., Ltd.	
Orient (Dalian) Carbon Resources Developing Co., Ltd.	
Orient Star Transport International, Ltd.	
Peixian Longxiang Foreign Trade Co. Ltd.	
Pingdingshan Coal Group	
Pudong Trans USA, Inc. (Dalian Office)	
Qingdao Grand Graphite Products Co., Ltd.	
Qingdao Haosheng Metals Imp. & Exp. Co., Ltd.	
Quingdao Haosheng Metals & Minerals Imp. & Exp. Co., Ltd.	
Qingdao Liyikun Carbon Development Co., Ltd.	
Qingdao Likun Graphite Co., Ltd.	
Qingdao Ruizhen Carbon Co., Ltd.	
Ray Group Ltd.	
Rex International Forwarding Co., Ltd.	
Rt Carbon Co., Ltd.	
Ruitong Carbon Co., Ltd.	
Sea Trade International, Inc.	
Seamaster Global Forwarding (China)	
Shandong Basan Carbon Plant	
Shandong Zibo Continent Carbon Factory	
Shanghai Carbon International Trade Co., Ltd.	
Shanghai GC Co., Ltd.	
Shanghai Jinneng International Trade Co., Ltd.	
Shanghai P.W. International Ltd.	
Shanghai Shen-Tech Graphite Material Co., Ltd.	
Shanghai Topstate International Trading Co., Ltd.	
Shanxi Datong Energy Development Co., Ltd.	
Shanxi Foset Carbon Co. Ltd.	
Shanxi Jiexiu Import and Export Co., Ltd.	
Shanxi Jinneng Group Co., Ltd.	
Shanxi Yunheng Graphite Electrode Co., Ltd.	
Shenyang Jinli Metals & Minerals Imp. & Exp. Co., Ltd.	
Shida Carbon Group	
Shijaizhuang Carbon Co., Ltd.	
Shijiazhuang Huanan Carbon Factory	
Sichuan 5-Continent Imp. & Exp. Co., Ltd.	
Sichuan Dechang Shida Carbon Co., Ltd.	
Sichuan Guanghan Shida Carbon Co., Ltd.	
Sichuan Shida Carbon Co., Ltd.	
Sichuan Shida Trading Co., Ltd.	
Sichuan GMT International Inc.	
Sinicway International Logistics Ltd.	
Sinosteel Anhui Co., Ltd.	
Sinosteel Corp.	
Sinosteel Jilin Carbon Co., Ltd.	
Sinosteel Jilin Carbon Plant	
Sinosteel Jilin Carbon Imp. & Exp. Co., Ltd.	
Sinosteel Sichuan Co., Ltd.	
SK Carbon	
SMMC Group Co., Ltd.	
Sure Mega (Hong Kong) Ltd.	
Tangshan Kimwan Special Carbon & Graphite Co., Ltd.	
Tengchong Carbon Co., Ltd.	
T.H.I. Group (Shanghai), Ltd.	
T.H.I. Global Holdings Corp.	
Tianjin (Teda) Iron & Steel Trade Co., Ltd.	
Tianjin Kimwan Carbon Technology and Development Co., Ltd.	
Tianjin Yue Yang Industrial & Trading Co., Ltd.	

	Period to be reviewed
Tianzhen Jintian Graphite Electrodes Co., Ltd.	
Tielong (Chengdu) Carbon Co., Ltd.	
UK Carbon & Graphite	
United Carbon Ltd.	
United Trade Resources, Inc.	
Weifang Lianxing Carbon Co., Ltd.	
World Trade Metals & Minerals Co., Ltd.	
XC Carbon Group	
Xinghe County Muzi Carbon Co., Ltd.	
Xinghe County Muzi Carbon Plant	
Xinghe Xingyong Carbon Co., Ltd.	
Xinghe Xinyuan Carbon Products Co., Ltd.	
Xinyuan Carbon Co., Ltd.	
Xuanhua Hongli Refractory and Mineral Company	
Xuchang Minmetals & Industry Co., Ltd.	
Xuzhou Carbon Co., Ltd.	
Xuzhou Electrode Factory	
Xuzhou Jianglong Carbon Manufacture Co., Ltd.	
Xuzhou Lianglong Carbon Manufacture Co., Ltd.	
Yangzhou Qionghua Carbon Trading Ltd.	
Yixing Huaxin Imp & Exp Co. Ltd.	
Youth Industry Co., Ltd.	
Zhengzhou Jinyu Thermo-Electric Material Co., Ltd.	
Zibo Continent Carbon Factory	
Zibo DuoCheng Trading Co., Ltd.	
Zibo Lianxing Carbon Co., Ltd.	
Zibo Wuzhou Tanshun Carbon Co., Ltd.	
The People's Republic of China: Uncovered Innerspring Units,[7] A–570–928	2/1/12–1/31/13
Goldon Bedding Manufacturing Sdn. Bhd.	
Goldon International (Singapore) Pte. Ltd.	
Macau Commercial and Industrial Spring	
Ta Cheng Coconut Knitting	
Tai Wa Hong	
Countervailing Duty Proceedings	
Republic of Korea: Certain Cut-to-Length Carbon-Quality Steel Plate, C–580–837	1/1/12–12/31/12
Daewoo International Corp.	
Dongbu Steel Co., Ltd.	
Dongkuk Steel Mill Co., Ltd.	
Edgen Murray Corporation	
GS Global Corp.	
Hyosung Corporation	
Hyundai Steel Co.	
Kyoungil Co., Ltd.	
Samsung C&T Corp.	
Samwoo EMC Co., Ltd.	
TCC Steel Corp.	

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or

[3] On February 14, 2012, Suruga USA Corp. (Suruga) an importer of subject merchandise, requested that we conduct an administrative review of the antidumping duty order on stainless steel bar from Japan with respect to Misumi Corporation covering the 1/2/2011–1/31/2012 POR but defer the administrative review for one year. On March 30, 2012, we stated that we will initiate the 2/11/11–1/31/12 administrative review with respect to Misumi Corporation in the month immediately following the next anniversary month (77 FR 19179). On June 27, 2012, however, we received a timely filed withdrawal request from Suruga for the 2/1/2011–1/13/2012 POR. Therefore, we are not initiating an administrative review covering the 2/1/2011–1/31/2012 POR with respect to Misumi Corporation, as stated in our March 30, 2012 initiation notice.

[4] If one of the above-named companies does not qualify for a separate rate, all other exporters of Certain Frozen Warmwater Shrimp from the People's Republic of China (''PRC'') who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If one of the above-named companies does not qualify or a separate rate, all other exporters of Certain Preserved Mushrooms from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] If one of the above-named companies does not qualify for a separate rate, all other exporters of Small Diameter Graphic Electrodes from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entitiy of which the named exporters are a part.

[7] If one of the above-named companies does not qualify for a separate rate, all other exporters of Uncovered Innerspring Units from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the POR.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that the meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule''*), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

These initiations and this notice are in accordance with section 751(a) of the Act (19 USC 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: March 22, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–07392 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–916]

Laminated Woven Sacks From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 29, 2013, the Department of Commerce (the ''Department'') published the *Preliminary Results* [1] of the 2011–2012 administrative review of the antidumping duty order on laminated woven sacks (''sacks'') from the People's Republic of China (''PRC''). The period of review (''POR'') is August 1, 2011, through July 31, 2012. We gave interested parties an opportunity to comment on the *Preliminary Results,* but none were received. The final weighted-average dumping margin for the PRC-wide entity is listed in the ''Final Results of Review'' section below.

DATES: *Effective Date:* March 29, 2013.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

On January 29, 2013, the Department published the *Preliminary Results.* We invited interested parties to comment on the *Preliminary Results,* but none were received. The Department has conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act'').

Scope of the Order

The merchandise covered by the order is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (''BOPP'') or to an exterior ply of paper that is suitable for high quality print graphics; [2] printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

PRC-Wide Entity

In the *Preliminary Results,* the Department noted that Zibo Aifudi Plastic Packaging Co., Ltd. (''Aifudi''), the only company under review, was unresponsive to the Department's request for information and failed to provide the requested information by the deadline. Thus, we determined that Aifudi failed to establish its eligibility for a separate rate and, consequently, it was treated as part of the PRC-wide

[1] *See Laminated Woven Sacks From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012,* 78 FR 6069 (January 29, 2013) and accompanying Decision Memorandum (''*Preliminary Results''*).

[2] ''Paper suitable for high quality print graphics,'' as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.

entity. As a result, the PRC-wide entity came under review. Further, we preliminarily applied adverse facts available to the PRC-wide entity because an element of the entity, Aifudi, failed to act to the best of its ability in complying with the Department's request for information in this review.[3] After issuing the *Preliminary Results,* the Department did not receive any comments from interested parties. Therefore, for these final results, in accordance with section 776(a) and (b) of the Act, and as explained in more detail in the *Preliminary Results,* the Department continues to find that because Aifudi, as part of the PRC-wide entity, failed to submit any responses to the Department's questionnaire, it is appropriate to apply an adverse inference in selecting from the facts otherwise available to determine a margin for the PRC-wide entity and to assign to the PRC-wide entity the highest dumping margin on the record of any segment of this proceeding, *i.e.,* 91.73 percent.[4] Furthermore, as stated in the *Preliminary Results,* we continue to find that the 91.73 percent rate is both reliable and relevant, and continue to determine that it has probative value.[5] Accordingly, we find that the rate of 91.73 percent, which is the current PRC-wide rate, is in accordance with the requirement of section 776(c) of the Act that secondary information be corroborated (*i.e.,* that it have probative value). Thus, we have assigned this adverse facts available rate to exports of the subject merchandise from the PRC-wide entity, including Aifudi.

Final Results of Review

The Department determines that the following dumping margin exists for the period August 1, 2011, through July 31, 2012:

Exporter	Margin (percent)
PRC-Wide Entity (including Zibo Aifudi Plastic Packaging Co., Ltd.)	91.73

[3] *See Preliminary Results* and accompanying Decision Memorandum at 1, 4–6.

[4] *See Laminated Woven Sacks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 35646 (June 24, 2008); *see also Laminated Woven Sacks From the People's Republic of China: Preliminary Results of the Second Administrative Review,* 75 FR 81218 (December 27, 2010) unchanged in *Laminated Woven Sacks From the People's Republic of China: Final Results of Second Antidumping Duty Administrative Review,* 76 FR 21333 (April 15, 2011).

[5] *See Preliminary Results* and accompanying Decision Memorandum at 6–7.

Assessment

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. The Department recently announced a refinement to its assessment practice in non-market economy (''NME'') cases.[6] Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the NME-wide rate.[7]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (2) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 91.73 percent; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to the administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 25, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–07407 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[7] *See id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–818]

Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2010

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has completed its administrative review of the countervailing duty (CVD) order on corrosion-resistant carbon steel flat products from the Republic of Korea for the period January 1, 2010, through December 31, 2010. On September 21, 2012, we published the preliminary results of this review.[1] In these final results we find that the respondents, Dongbu Steel Co., Ltd. (Dongbu), Hyundai HYSCO Ltd. (HYSCO), and Pohang Iron & Steel Co. Ltd. (POSCO), received subsidies that result in *de minimis* net subsidy rates.

DATES: *Effective Date:* March 29, 2013.

[1] *See Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review,* 77 FR 58512 (September 21, 2012) (*Preliminary Results*).

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Andrew Medley, AD/CVD Operations, Office 8, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2209 and (202) 482–4987, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 21, 2012, we published the *Preliminary Results* in the **Federal Register**. Following the *Preliminary Results,* from January 16 through January 25, 2013, we conducted verification of the questionnaire responses submitted by Dongbu, HYSCO, POSCO, and the Government of the Republic of Korea (GOK). We issued the verification reports in February. We received case briefs from POSCO, HYSCO, and Nucor Corporation (Nucor) on February 27, 2013, and rebuttal briefs from United States Steel Corporation (U.S. Steel), Nucor, and HYSCO on March 4, 2013. We did not hold a hearing in this review, as one was not requested.

Scope of the Order

Products covered by this order are certain corrosion-resistant carbon steel flat products from Korea. The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7210.30.0000, 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.49.0091, 7210.49.0095, 7210.60.0000, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.9030, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.20.1500, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.30.15.0000, 7217.32.5000, 7217.33.5000, 7217.39.1000, 7217.39.5000, 7217.90.1000 and 7217.90.5000.

Although the HTSUS numbers are provided for convenience and customs purposes, the written product description, available in the *Preliminary Results,* remains dispositive.

Analysis of Comments Received

All issues raised in the case briefs and rebuttal briefs are addressed in the Memorandum from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, entitled ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Corrosion-Resistant Carbon Steel Flat Products from Korea; 2010,'' dated March 22, 2013 (Issues and Decision Memorandum), which is hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is available on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Review

In accordance with 19 CFR 351.221(b)(5), we calculated net subsidy rates for Dongbu, POSCO, and HYSCO of 0.12, 0.16, and 0.19 percent *ad valorem,* respectively, which are *de minimis* rates. *See* 19 CFR 351.106(c)(1).

Assessment Rates

The Department intends to issue appropriate assessment instructions directly to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results, to liquidate shipments of subject merchandise by Dongbu, POSCO, and HYSCO entered, or withdrawn from warehouse, for consumption on or after January 1, 2010, through December 31, 2010.

Cash Deposit Instructions

On March 19, 2013, the Department published the *Revocation Notice* in the **Federal Register** in which it explained that 15 days after the publication date of the *Revocation Notice,* the Department would instruct CBP to terminate the suspension of liquidation and to discontinue the collection of cash deposits on entries of the subject merchandise, entered or withdrawn from warehouse, on or after February 14, 2012.[2] Pursuant to the *Revocation Notice* the Department will further instruct CBP to refund with interest all cash deposits on entries made on or after February 14, 2012. Further, as explained in the *Revocation Notice,* entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping and/or countervailing duty deposit requirements and assessments. Lastly, in the *Revocation Notice,* the Department explained that it will complete any pending or requested administrative reviews of these orders covering entries prior to February 14, 2012.[3]

Thus, as a result of the revocation of the order, the Department will not issue cash deposit instructions in connection with this administrative review.

Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: March 22, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comment 1: Whether Two Additional R&D Projects for Which Information Was Collected during POSCO's Verification Should be Included in the Benefit Calculation for the Industrial Technology Innovation Promotion Act (ITIPA) Program

Comment 2: Whether HYSCO's Sales to Cross-Owned Affiliates Should be Included in the Sales Denominators

[2] *See Corrosion-Resistant Carbon Steel Flat Products from Germany and the Republic of Korea: Revocation of Antidumping and Countervailing Duty Orders,* 78 FR 16832 (March 19, 2013) (*Revocation Notice*).

[3] *Id.*

Comment 3: Whether to Apply Adverse Facts Available with Regard to HYSCO's D/A Financing Under KEXIM's Trade Rediscount Program and HYSCO's D/A Loans Issued by the KDB and Other Government-Owned Banks

Comment 4: Whether Three of HYSCO's R&D Grants are Tied to Non-Subject Merchandise

Comment 5: Whether HYSCO's Overseas Development Loans are Tied to Non-Subject Merchandise

[FR Doc. 2013–07402 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC587

Notice of Availability of a Supplemental Draft Environmental Impact Statement for Effects of Oil and Gas Activities in the Arctic Ocean

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

ACTION: Notice of availability of a Supplemental Draft Environmental Impact Statement; request for comments.

SUMMARY: NMFS announces the availability of the ''Supplemental Draft Environmental Impact Statement (Supplemental DEIS) for the Effects of Oil and Gas Activities in the Arctic Ocean.'' Publication of this notice begins the official public comment period for this Supplemental DEIS. The purpose of the Supplemental DEIS is to evaluate, in compliance with the National Environmental Policy Act (NEPA), the potential direct, indirect, and cumulative impacts of implementing the alternative approaches for authorizing the take of marine mammals incidental to oil and gas exploration activities in the Arctic Ocean pursuant to the Marine Mammal Protection Act (MMPA). The U.S. Department of the Interior's Bureau of Ocean Energy Management (BOEM) is a cooperating agency on this DEIS, and as such, this DEIS also evaluates the potential direct, indirect, and cumulative impacts of implementing the alternative approaches for authorizing geological and geophysical (G&G) surveys and ancillary activities under the Outer Continental Shelf Lands Act (OCSLA) in the Arctic Ocean. The North Slope Borough (NSB) is also a cooperating agency on this DEIS. The Environmental Protection Agency is serving as a consulting agency, and NMFS is coordinating with the Alaska Eskimo Whaling Commission pursuant to our co-management agreement under the MMPA.

DATES: Written, telefaxed, or electronic comments must be received on or before May 28, 2013.

ADDRESSES: The Supplemental DEIS is available for review online at *http://www.nmfs.noaa.gov/pr/permits/eis/arctic.htm.* You may submit comments on this document, identified by NOAA–NMFS–2013–0054, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, enter NOAA–NMFS–2013–0054 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Comment Now'' icon on the right of that line.
- *Mail:* Office of Protected Resources, 1315 East-West Highway, Room 13115, Silver Spring, MD 20910
- *Fax:* (301) 713–0376, Attn: Candace Nachman
- *Public Hearings:* Oral and written comments will be accepted during the upcoming public meetings. See **SUPPLEMENTARY INFORMATION,** Public Meetings (below) for more information.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Jolie Harrison, or Michael Payne, Office of Protected Resources, NMFS, at (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101 (a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of proposed authorization is provided to the public for review. The term ''take'' under the MMPA means ''to harass, hunt, capture or kill, or attempt to harass, hunt, capture, or kill.'' Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

NMFS, as the lead federal agency, prepared this Supplemental DEIS to evaluate a broad range of reasonably foreseeable levels of exploration activities and associated mitigation measures that may occur in the U.S. Beaufort and Chukchi Seas. BOEM and the NSB are serving as formal cooperating agencies; the Environmental Protection Agency (EPA) is serving as a consulting agency; and NMFS is coordinating with the Alaska Eskimo Whaling Commission (AEWC) pursuant to our co-management agreement under the MMPA.

NMFS has published this Supplemental DEIS to disclose the potential impacts associated with their issuance of incidental take

authorizations (ITAs) for seismic surveys, ancillary activities, and exploratory drilling under section 101(a)(5) of the MMPA and BOEM's authorization of G&G permits and ancillary activities under the OCSLA.

Process History for this EIS

On February 8, 2010, NMFS, as lead agency, announced its intent to prepare an EIS analyzing the impacts to the human environment from the issuance of MMPA ITAs for the take of marine mammals incidental to oil and gas industry exploration activities in the U.S. Arctic Ocean and BOEM's proposed action of issuing G&G permits and authorization of ancillary activities in the U.S. Arctic Ocean under the OCSLA (75 FR 6175). The 60-day public scoping period ended on April 9, 2010.

On December 30, 2011, NMFS published a Notice of Availability of the DEIS in the **Federal Register** (76 FR 82275). The 2011 DEIS includes an analysis of the proposed actions identified in the 2010 NOI (i.e., NMFS' issuance of MMPA ITAs for take of marine mammals incidental to G&G surveys, ancillary activities, and exploratory drilling in the Chukchi and Beaufort Seas and BOEM's issuance of G&G permits and authorizations of ancillary activities in the Chukchi and Beaufort Seas), the anticipated environmental impacts, and other measures to minimize the impacts associated with these activities. The 60-day public comment period closed on February 28, 2012.

In light of comments received on the 2011 DEIS, NMFS and BOEM determined that the Final EIS would benefit from the inclusion of an additional alternative for analysis that covers a broader range of potential levels of exploratory drilling scenarios in the Beaufort and Chukchi Seas. NMFS published an NOI to prepare a Supplemental DEIS in the **Federal Register** on January 30, 2013 (78 FR 6303). Additional information about the NOI can be found in that notice.

Alternatives

The alternatives analyzed in the 2011 DEIS are summarized in the DEIS Notice of Availability (76 FR 82275, December 30, 2011). However, as noted previously NMFS and BOEM concluded that an additional activity level scenario should be considered in the Supplemental DEIS. Consistent with the 2011 DEIS, the alternatives assess a reasonable range of G&G, ancillary, and exploratory drilling activities expected to occur, as well as a reasonable range of mitigation measures, in order to accurately assess the potential consequences of issuing ITAs under the MMPA and permits under the OCSLA. Each alternative includes an analysis of a suite of standard and additional mitigation measures that have been identified to help reduce impacts to marine mammals and to ensure no unmitigable adverse impact on the availability of marine mammals for subsistence uses.

The primary difference between this Supplemental DEIS and the 2011 DEIS is in the treatment of alternatives. In particular, NMFS and BOEM analyze an additional alternative that considers up to *four* exploratory drilling programs in the Beaufort Sea and up to *four* exploratory drilling programs in the Chukchi Sea per year. In the 2011 Draft EIS, the maximum level of exploratory drilling considered in the alternatives was two exploratory drilling programs in the Beaufort Sea and two exploratory drilling programs in the Chukchi Sea per year. Table 1 outlines the activity levels considered in each action alternative. Activity levels noted are a maximum for each alternative.

TABLE 1—LEVELS OF G&G, ANCILLARY, AND EXPLORATORY DRILLING ACTIVITIES PROPOSED FOR CONSIDERATION IN THE ALTERNATIVES IN THE SUPPLEMENTAL DEIS ON THE EFFECTS OF OIL AND GAS ACTIVITIES IN THE ARCTIC OCEAN. ACTIVITY LEVELS NOTED ARE A MAXIMUM, AND ANY COMBINATION UP TO THAT AMOUNT COULD BE ALLOWED UNDER EACH ALTERNATIVE.

	2D/3D seismic surveys	Site clearance and shallow hazards surveys	On-ice seismic surveys	Exploratory drilling
Alternative 1 (No Action)	0	0	0	0
Alternative 2 (Level 1)	4 in Beaufort	3 in Beaufort	1 in Beaufort	1 in Beaufort.
	3 in Chukchi	3 in Chukchi	0 in Chukchi	1 in Chukchi.
Alternative 3 (Level 2)	6 in Beaufort	5 in Beaufort	1 in Beaufort	2 in Beaufort.
	5 in Chukchi	5 in Chukchi	0 in Chukchi	2 in Chukchi.
Alternative 4 (Level 3)	6 in Beaufort	5 in Beaufort	1 in Beaufort	4 in Beaufort.
	5 in Chukchi	5 in Chukchi	0 in Chukchi	4 in Chukchi.
Alternative 5 (Level 3 with required time/area closures).	6 in Beaufort	5 in Beaufort	1 in Beaufort	4 in Beaufort.
	5 in Chukchi	5 in Chukchi	0 in Chukchi	4 in Chukchi.
Alternative 6 (any level with required use of alternative technologies).	6 in Beaufort	5 in Beaufort	1 in Beaufort	Any level up to the maximum, as the technology only relates to seismic surveys.
	5 in Chukchi	5 in Chukchi	0 in Chukchi	

Alternatives 5 and 6 differ from Alternatives 2, 3, and 4 in the fact that each one considers required mitigation measures not contemplated in the other action alternatives. Certain time/area closures considered for mitigation on a case-by-case basis under the other action alternatives would be required under Alternative 5. The time/area closures would be for specific areas important to biological productivity, life history functions for specific species of concern, and subsistence activities. Activities would not be permitted to occur in any of the time/area closures during the specific identified periods. Additionally, buffer zones around these time/area closures could potentially be included.

In addition to contemplating the same suite of standard and additional mitigation measures analyzed in the other action alternatives, Alternative 6 also includes specific additional mitigation measures that focus on the use of alternative technologies that have the potential to augment or replace traditional airgun-based seismic exploration activities in the future.

Summary of Sections With Substantive Changes From the 2011 DEIS

The following is a brief overview of the major changes in the Supplemental DEIS from the DEIS released in December 2011. This overview is provided to aid the public in their review of the full document. A more detailed overview can be found online

on the project Web site at: *http://www.nmfs.noaa.gov/pr/permits/eis/arctic.htm.*

Alternatives (Chapter 2)

- Section 2.4.7 contains the description of the newly added alternative.
- Sections 2.4.8 and 2.4.9 are the new Alternatives 5 and 6, previously described as Alternatives 4 and 5 in the 2011 DEIS.
- Section 2.4.8.2 contains the updated list of time/area closures contemplated under Alternative 5 and as additional mitigation measures under Alternatives 2, 3, 4, and 6.

Baseline Information (Chapter 3)

- Sections 3.2.4 and 3.3.2 contained updated information regarding marine mammals and subsistence resources based on literature and data provided during the public comment period.

Mitigation Measure Analysis (Chapter 4)

- Sections 4.5.2.4.15 and 4.5.2.4.16 contain the updated analysis of standard and additional mitigation measures, respectively, with the primary purpose of reducing impacts to marine mammals.
- Sections 4.5.3.2.3 and 4.5.3.2.5 contain the updated analysis of standard and additional mitigation measures, respectively, with the primary purpose of reducing impacts to subsistence uses of marine mammals.
- For each measure, we outlined activities to which it applies (e.g. just seismic surveys or just exploratory drilling or all activities), the purpose of the measure, the science, support for reduction of impacts to marine mammals or subsistence availability of marine mammals, the likelihood of effectiveness, the history of implementation of the measure, practicability for applicant implementation, and recommendation for how, and if, to apply the measure in future MMPA ITAs.

Impact Analyses (Chapter 4)

- Table 4.5–19, page 4–91, and Table 4.5–25, page 4–184 contain revised impact criteria for the assessment of potential impacts to marine mammals and subsistence resources to include additional factors that more closely align with analyses conducted under the MMPA.
- Section 4.2.6 is a new section in this Supplemental DEIS. This section includes information regarding the process NMFS has initiated to revise the acoustic criteria, which are currently used by NOAA to determine the received sound level at which injury or behavioral harassment of marine mammals from seismic airguns may occur. The acoustic criteria process will (separate from this EIS process) include both a public and external peer review process. At this time, we are still in the internal review process for the acoustic criteria, but we have included key basic information about the likely nature of the revisions to the criteria that adds value to the environmental analysis contained in this Supplemental DEIS. We refer the public to the separate acoustic criteria document for comment when it is made available in the coming months. The schedules for finalization of the Final EIS and the acoustic criteria are similar.

Public Meetings

Comments will be accepted at public meetings and during the public comment period, and must be submitted to NMFS by the comment deadline (see **DATES**). We request that you include background documents to support your comments as appropriate.

Public meetings will be held the week of April 8, 2013, in the communities of Barrow and Kotzebue and in Anchorage. Dates, times, and locations of each meeting will be announced in advance in local media. Comments will be accepted at all public meetings, as well as during the public comment period and can be submitted via the methods described earlier in this document (see **ADDRESSES**).

Dated: March 26, 2013.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–07312 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC583

Fisheries of the Exclusive Economic Zone Off Alaska; Monitoring Requirements for American Fisheries Act Catcher Vessels Subject to Amendment 91; Public Workshops

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

ACTION: Notice of public workshop.

SUMMARY: NMFS announces a workshop to solicit input from owners and operators of American Fisheries Act (AFA) catcher vessels and shoreside processors participating in the pollock fishery in the Bering Sea off Alaska. The workshop concerns accurate accounting of Chinook salmon bycatch in the Bering Sea pollock fishery under Amendment 91 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands. The workshop will discuss potential regulatory changes to address (1) the practice of leaving significant amounts of loose fish on the deck not contained inside the codend; (2) the installation of software and communication equipment to enhance observer data collection; and (3) the definition of directed fishing for pollock. The meeting is open to the public, but NMFS is particularly seeking participation by people who are knowledgeable about AFA catcher vessel operations in the Bering Sea pollock fishery and who can discuss with NMFS the potential operational impacts of the proposed monitoring requirements.

DATES: The workshop will be held on Thursday, May 16, 2013, from 9 a.m. to 12 p.m. Pacific daylight savings time.

ADDRESSES: The workshop will be held at the Swedish Cultural Center, 1920 Dexter Avenue N., Seattle, WA 98109. Directions to the Swedish Cultural Center are on its Web site at *http://www.swedishculturalcenter.org/contacts.htm.*

FOR FURTHER INFORMATION CONTACT: Jennifer Watson, 907–586–7537, or Michael Camacho, 907–586–7471.

SUPPLEMENTARY INFORMATION: NMFS is developing proposed revisions to some monitoring components of Amendment 91 for AFA catcher vessels in the Bering Sea pollock fishery. Currently, all salmon are required to be stored in refrigerated saltwater tanks prior to delivery to a shoreside processor. The intent of this requirement is to reduce the potential for sorting of catch, to prevent unlawful discarding of salmon, and to make all salmon available to the observer for census and sampling at delivery. However, loose fish on deck not contained inside the codend creates numerous challenges to the intent of this requirement.

In addition to the agency's concerns about loose fish on deck not contained inside the codend, there are additional revisions that will improve the monitoring and enforcement of Chinook salmon bycatch regulations under Amendment 91. These revisions include a requirement for all AFA catcher vessels to maintain a computer and an electronic transmission system for use by an observer and a change to specify that the Amendment 91 monitoring requirements apply when a catcher

vessel named in the AFA is using pelagic gear in the Bering Sea.

This meeting is open to the public, but NMFS is particularly seeking participation by people who are knowledgeable about operations aboard AFA catcher vessels and the feasibility of preventing loose fish from remaining on deck outside the codend.

Special Accommodations

The meeting will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jennifer Watson, 907–586–7537, at least 10 workdays prior to the meeting date.

Dated: March 26, 2013.

Kara Meckley,

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

[FR Doc. 2013–07351 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC601

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Council's Atlantic Mackerel, Squid, and Butterfish (MSB) Advisory Panel (AP) will meet to develop Fishery Performance Reports for the Atlantic Mackerel, Squid, and Butterfish fisheries in preparation for the Council's setting of specifications for 2014.

DATES: The meeting will be held on Wednesday, April 17, 2013, from 10:30 a.m. to 6 p.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn Baltimore/Arundel Mills; 7491 New Ridge Rd., Hanover, MD 21076; telephone: (410) 878–7200

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to create Fishery Performance Reports by the Council's Atlantic Mackerel, Squid, and Butterfish (MSB) Advisory Panel (AP). The intent of these reports is to facilitate structured input from the Advisory Panel members into the Atlantic Mackerel, Squid, and Butterfish specifications process. The Advisory Panel will also review the findings of a recent workshop on squid management and may develop related recommendations.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: March 26, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–07361 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC603

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Stock Assessment Review Panels (STAR Panels) will hold work sessions to review stock assessments using data-moderate methods, as well as tier 1 benchmark stock assessments for petrale sole and darkblotched rockfish, rougheye rockfish and aurora rockfish, shortspine thornyhead and longspine thornyheads, and cowcod and Pacific sanddabs, all of which are open to the public.

DATES: The meetings will be held April 22–26, 2013; May 13–17, 2013; July 8–12, 2013; July 22–26, 2013; and August 5–9, 2013. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Santa Cruz, CA and Seattle, WA. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: Pacific Fishery Management Council (Pacific Council), 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Stacey Miller, NMFS Northwest Fisheries Science Center; telephone: (541) 961–8475; or Mr. John DeVore, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The meetings will be held in April, May, July and August. The meeting dates and times are listed below.

The Stock Assessment Review Panel for data moderate assessments will be held beginning at 8:30 a.m., Monday, April 22, 2013 and end at 5:30 p.m. or as necessary to complete business for the day. The Panel will reconvene on Tuesday, April 23, 2013 and will continue through Friday, April 26, 2013 beginning at 8:30 a.m. and ending at 5:30 p.m. each day, or as necessary to complete business. The Panel will adjourn on Friday, April 26.

The Stock Assessment Review Panel for Petrale sole and darkblotched rockfish stock assessments will be held beginning at 8:30 a.m., Monday, May 13, 2013 and end at 5:30 p.m. or as necessary to complete business for the day. The Panel will reconvene on Tuesday, May 14, 2013 and will continue through Friday, May 17, 2013 beginning at 8:30 a.m. and ending at 5:30 p.m. each day, or as necessary to complete business. The Panel will adjourn on Friday, May 17.

The Stock Assessment Review Panel for the rougheye rockfish and aurora rockfish stock assessments will be held beginning at 8:30 a.m., Monday, July 8, 2013 and end at 5:30 p.m. or as necessary to complete business for the day. The Panel will reconvene on Tuesday, July 9, 2013 and will continue through Friday, July 12, 2013 beginning at 8:30 a.m. and ending at 5:30 p.m. each day, or as necessary to complete business. The Panel will adjourn on Friday, July 12.

The Stock Assessment Review Panel for the shortspine thornyhead and longspine thornyhead stock assessments will be held beginning at 8:30 a.m., Monday, July 22, 2013 and end at 5:30 p.m. or as necessary to complete

business for the day. The Panel will reconvene on Tuesday, July 23, 2013 and will continue through Friday, July 26, 2013 beginning at 8:30 a.m. and ending at 5:30 p.m. each day, or as necessary to complete business. The Panel will adjourn on Friday, July 26.

The Stock Assessment Review Panel for the cowcod and Pacific sanddabs stock assessments will be held beginning at 8:30 a.m., Monday, August 5, 2013 and end at 5:30 p.m. or as necessary to complete business for the day. The Panel will reconvene on Tuesday, August 6, 2013 and will continue through Friday, August 9, 2013 beginning at 8:30 a.m. and ending at 5:30 p.m. each day, or as necessary to complete business. The Panel will adjourn on Friday, August 9.

The meetings will be held in Santa Cruz, CA and Seattle, WA. The specific meetings and their locations are listed below.

The Stock Assessment Review Panel for the data moderate stock assessments will be held at the National Marine Fisheries Service, Southwest Fisheries Science Center, Santa Cruz Laboratory, 110 Shaffer Road, Santa Cruz, CA 95060; telephone: (831) 420–3900.

The Stock Assessment Review Panel for the Petrale sole and darkblotched rockfish stock assessments will be held at the Silver Cloud University Inn, 5036 25th Avenue NE., Seattle, WA 98105; telephone: (206) 526–5200.

The Stock Assessment Review Panel for the rougheye rockfish and aurora rockfish stock assessments will be held at the National Marine Fisheries Service, Northwest Fisheries Science, The Auditorium, 2725 Montlake Blvd. East, Seattle, WA 98112–2097; telephone: (206) 860–3200.

The Stock Assessment Review Panel for the shortspine thornyhead and longspine thornyhead stock assessments will be held at the National Marine Fisheries Service, Northwest Fisheries Science, The Auditorium, 2725 Montlake Blvd. East, Seattle, WA 98112–2097; telephone: (206) 860–3200.

The Stock Assessment Review Panel for the cowcod and Pacific sanddabs stock assessments will be held at the National Marine Fisheries Service, Southwest Fisheries Science Center, Santa Cruz Laboratory, 110 Shaffer Road, Santa Cruz, CA 95060; telephone: (831) 420–3900.

The purpose of the Stock Assessment Review Panels is to review draft 2013 stock assessment documents and any other pertinent information for stock assessments using data-moderate methods as well as category 1 benchmark stock assessments for petrale sole, darkblotched rockfish, rougheye rockfish, aurora rockfish, shortspine thornyhead, longspine thornyhead, cowcod and Pacific sanddabs, work with the Stock Assessment Teams to make necessary revisions; and produce Stock Assessment Review Panel reports for use by the Pacific Council family and other interested persons for developing management recommendations for 2015–16 fisheries. No management actions will be decided by the STAR Panels. The Panel's role will be development of recommendations and reports for consideration by the Pacific Council at its June meeting in Garden Grove, CA and its September meeting in Boise, ID.

Although non-emergency issues not contained in the meeting agenda may come before the STAR Panels participants for discussion, those issues may not be the subject of formal Stock Assessment Review Panel action during these meetings. Panel action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Panel participants' intent to take final action to address the emergency.

All visitors to the National Marine Fisheries Service science centers should bring photo identification to the meeting location. Visitors who are foreign nationals (defined as a person who is not a citizen or national of the United States) will require additional security clearance to access the NOAA facilities. Foreign national visitors should contact Ms. Stacey Miller at (541) 961–8475 at least 2 weeks prior to the meeting date to initiate the security clearance process.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: March 26, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–07364 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC602

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) announces its intent to hold a workshop in conjunction with a joint meeting of the Mackerel, Squid, Butterfish and Ecosystems and Ocean Planning Advisory Panels. The purpose of the workshop is to facilitate development of spatial alternatives for deep sea coral protection areas for inclusion in Amendment 16 to the Mackerel, Squid, and Butterfish Fishery Management Plan.

DATES: The workshop will be held on Thursday, April 18, 2013, from 9 a.m. to 5 p.m.

ADDRESSES: The workshop will be held at the Hilton Garden Inn Baltimore/Arundel Mills, 7491–A New Ridge Road, Hanover, MD, 21076; telephone: (410) 878–7200.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: This workshop will address the need for a refined set of deep sea coral protection area options for inclusion in Amendment 16 to the Mackerel, Squid, and Butterfish Fishery Management Plan (Protections for Deep Sea Corals). The Council will solicit the input of the Mackerel, Squid, and Butterfish Advisory Panel, the Ecosystems and Ocean Planning Advisory Panel, additional deep sea coral experts, and additional fishing industry participants with an interest in or knowledge of fishing occurring in potential protection areas. Goals of the workshop include an enhanced understanding of fishing effort in relation to deep sea coral distribution in the Mid-Atlantic, and production of a jointly developed set of alternatives for deep sea coral protection

zones to be considered at future public hearings and Council meetings.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: March 26, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–07362 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA713

Endangered Species; File No. 16547–01

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

ACTION: Notice, issuance of permit modification

SUMMARY: Notice is hereby given that the United States Fish and Wildlife Service, 11110 Kimages Road; Charles City, Virginia 23030 [Albert Spells: Responsible Party], has been issued a permit modification to take Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) for purposes of scientific research.

ADDRESSES: The permit modification and related documents are available for review upon written request or by appointment in the following offices:

- Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and
- Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Colette Cairns, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On December 7, 2012, notice was published in the **Federal Register** (77 FR 73024) that a request for a scientific research permit modification to take Atlantic sturgeon had been submitted by the above-named applicant. The requested permit modification has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 16547 currently authorizes the permit holder to: evaluate the abundance of Atlantic sturgeon within the Chesapeake Distinct Population Segment (DPS); including the Chesapeake Bay and its tributaries above and below 22 parts per thousand salinity. Researchers are currently authorized to capture adult, juvenile and early life stages (ELS) of Atlantic sturgeon using gill nets, trawls, fyke nets, trammel nets, pound nets and egg mats; and to measure, weigh, tissue sample, Passive Integrated Transponder (PIT) Tag, and Floy tag appropriately sized animals. A subset can be tagged either externally or internally with telemetry tags dependent on the life stage (adult, sub-adult and juvenile) and the salinity level where captured; or also externally satellite tagged.

The permit holder now is authorized to: telemetry tag adult or juvenile Atlantic sturgeon with either internal or external telemetry tags without respect to salinity level in the waters of Virginia and Maryland. All previous activities are authorized; however, the numbers of adult and sub-adult Atlantic sturgeon taken will be reduced from 425 to 350 per year, while numbers of juvenile Atlantic sturgeon taken will be reduced from 175 to 125 annually. The permit holder is also authorized to internally telemetry tag 50 juvenile Atlantic sturgeon. The numbers of ELS will also be increased from 25 to 50 annually while using a film crew to document the activity. The modification will be valid until the permit expires on April 5, 2017.

Dated: March 26, 2013.

Helen Golde,

Acting Chief, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–07342 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC430

Small Takes of Marine Mammals Incidental to Specified Activities; Cape Wind's High Resolution Survey in Nantucket Sound, MA

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Cape Wind Associates (CWA) to take marine mammals, by harassment, incidental to pre-construction high resolution survey activities in Nantucket Sound.

DATES: Effective April 1, 2013, through March 31, 2014.

ADDRESSES: A copy of the IHA and application are available by writing to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

An electronic copy of the application containing a list of references used in this document may be obtained by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* NMFS prepared its own Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) in 2011, which are available at the same internet address. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specific geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed

authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment, provided that there is no potential for serious injury or mortality to result from the activity. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS to review an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On December 19, 2012, NMFS received an application from CWA for the taking of marine mammals incidental to high resolution survey activities. NMFS determined that the application was adequate and complete on December 31, 2012.

CWA plans to conduct a high resolution geophysical survey in Nantucket Sound, Massachusetts. The survey would occur during daylight hours over an estimated 109-day period beginning in April 2013. The following equipment used during the survey is likely to result in the take of marine mammals: shallow-penetration subbottom profiler and medium-penetration subbottom profiler. Take, by Level B harassment only, of individuals of five species is anticipated to result from the specified activity. This is basically an extension of the authorization issued on January 1, 2012 for survey activities that were not completed under the previous IHA. CWA's survey activities will not change from what they originally proposed in their 2011 IHA application. However, the geotechnical portion of the survey was completed in 2012 and will not be continued during the 2013–2014 season.

Acoustic stimuli (i.e., increased underwater sound) generated during operation of the shallow-penetration and medium-penetration subbottom profilers may have the potential to cause short-term behavioral disturbance for marine mammals in the survey area. This is the principal means of marine mammal taking associated with these activities. NMFS does not expect take to result from collision with survey vessels because they will be moving at relatively slow speeds (3 knots) during seismic acquisition and there is not a high density of marine mammals within Nantucket Sound. It is likely that any marine mammal in the vicinity would be able to avoid the vessel.

Description of the Specified Activity

CWA plans to conduct a high resolution geophysical survey in order to acquire remote-sensing data around Horseshoe Shoal which would be used to characterize resources at or below the seafloor. The purpose of the survey is to identify any submerged cultural resources that may be present and to generate additional data describing the geological environment within the survey area. The survey will satisfy the mitigation and monitoring requirements for ''cultural resources and geology'' in the environmental stipulations of the Bureau of Ocean Energy Management, Regulation, and Enforcement's lease. The survey is part of the first phase of a larger Cape Wind energy project, which involves the installation of 130 wind turbine generators on Horseshoe Shoal over a 2-year period. The survey will collect data along predetermined track lines using a towed array of instrumentation, which will include a side scan sonar, magnetometer, shallow-penetration subbottom profiler, multibeam depth sounder, and medium-penetration subbottom profiler. Survey activities will not result in any disturbance to the sea floor.

Dates and Duration

Survey activities are necessary prior to construction of the wind turbine array and are scheduled to begin in the spring of 2013, continuing on a daily basis for up to 5 months. Survey vessels will operate during daytime hours only and CWA estimates that one survey vessel will cover about 17 Nautical miles (31 kilometers) of track line per day. Therefore, CWA conservatively estimates that survey activities will take 109 days (28 days less than what was expected under the 2012 IHA). However, if more than one survey vessel is used, the survey duration will be considerably shorter. NMFS is issuing an authorization that extends from April 1, 2013, to March 31, 2014.

Location

Survey vessels are expected to depart from Falmouth Harbor, Massachusetts, or another nearby harbor on Cape Cod. In total, the survey will cover approximately 110 square kilometers (km^2). This area includes the future location of the wind turbine generators—an area about 8.4 km from Point Gammon, 17.7 km from Nantucket Island, and 8.9 km from Martha's Vineyard—and cables connecting the wind park to the mainland. The survey area within the wind park will be transited by survey vessels towing specialized equipment along primary track lines and perpendicular tie lines. Preliminary survey designs include primary track lines with northwest-southeast orientations and assume 30-meter (m) line spacing. Preliminary survey designs also call for tie lines to likely run in a west-east orientation covering targeted areas of the construction footprint where wind turbine generators would be located. The survey area along the interconnecting submarine cable route includes a construction and anchoring corridor, as part of the wind farm's area of potential effect. The total track line distance covered during the survey is estimated to be about 3,432 km (as opposed to the 4,292 km included in the 2012 IHA).

Multiple survey vessels may operate within the survey area and will travel at about 3 knots during data acquisition and approximately 15 knots during transit between the survey area and port. If multiple vessels are used at the same time, they will be far enough apart that sounds from the chirp and boomer will not overlap. The survey vessels will acquire data continuously throughout the survey area during the day and terminate survey activities before dark, prior to returning to port. NMFS

believes that the likelihood of a survey vessel striking a marine mammal is low considering the low marine mammal densities within Nantucket Sound, the relatively short distance from port to the survey site, the limited number of vessels, and the small vessel size. Vessel sounds during survey activities will result from propeller cavitation, propeller singing, propulsion, flow noise from water dragging across the hull, and bubbles breaking in the wake. The dominant sound source from vessels will be from propeller cavitation; however, sounds resulting from survey vessel activity are considered to be no louder than the existing ambient sound levels and sound generated from regular shipping and boating activity in Nantucket Sound (MMS, 2009).

NMFS expects that acoustic stimuli resulting from the operation of the survey equipment have the potential to harass marine mammals. Background information on the characteristics and measurement of sound are provided later in this document. The dominant sources of sound during the proposed survey activities will be from the towed equipment used to gather seafloor data. Two of the seismic survey devices used during the high resolution geophysical survey emit sounds within the hearing range of marine mammals in Nantucket Sound: shallow-penetration and medium-penetration subbottom profilers (known as a ''chirp'' and ''boomer,'' respectively). CWA will use a chirp to provide high resolution data of the upper 15 m of sea bottom. An EdgeTech 216S or similar model will be used. The chirp will be towed near the center of the survey vessel directly adjacent to the gunwale of the boat, about 1 to 1.5 m beneath the water's surface. Sources such as the chirp are considered non-impulsive, intermittent (as opposed to continuous) sounds. The frequency range for this instrument is generally 2 to 16 kilohertz (kHz)—a range audible by all marine mammal species in Nantucket Sound. The estimated sound pressure level at the source will be 201 dB re 1 μPa at 1 m with a typical pulse length of 32 milliseconds and a pulse repetition rate of 4 per second. NMFS does not consider the chirp to be a continuous sound source (best represented by vibratory pile driving or drilling). CWA will use a boomer to obtain deeper resolution of geologic layering that cannot be imaged by the chirp. An AP3000 (dual plate) boomer, or similar model will be used. The boomer will be towed about 3 to 5 m behind the survey vessel's stern at the water's surface. Unlike the chirp, the boomer emits an impulse sound, characterized by a relatively rapid rise-time to maximum pressure followed by a period of diminishing and oscillating pressures (Southall *et al.,* 2007). The boomer has a broad frequency range of 0.3 to 14 kHz—a range audible by all marine mammal species in Nantucket Sound. CWA performed sound source verification monitoring in 2012 on the type of chirp and boomer that will be used during the 2013–2014 survey season. Underwater sound was recorded with two Autonomous Multichannel Acoustic Recorders, deployed 100 m apart, in the vicinity of the project area. The received 90-percent rms sound pressure levels (SPLs) from the subbottom profilers did not exceed 175 dB re 1uPa. The loudest source, the dual-plate boomer, produced a received 90-percent rms SPL of less than 140 dB re 1 uPa at a 500-m range. The distance to the 160-dB isopleth was 12 m for the dual-plate boomer and 10 m for the chirp.

Comments and Responses

A proposed authorization and request for public comments was published in the **Federal Register** on February 1, 2013 (78 FR 7042). During the 30-day public comment period, NMFS only received comments from the Marine Mammal Commission (Commission) and Save Our Sound/Alliance to Protect Nantucket Sound (Alliance; in conjunction with the Public Employees for Environmental Responsibility, Lower Laguna Madre Foundation, 3 Bays Preservation, Cetacean Society International, Pegasus Foundation, Californians for Renewable Energy (CARE), Oceans Public Trust Initiative, and a private citizen). All comments have been compiled and posted at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Any application-specific comments that address the statutory and regulatory requirements or findings NMFS must make to issue an IHA are addressed in this section of the **Federal Register** notice.

Comment 1: The Commission requested that NMFS require CWA to recalculate the buffer zone for the shallow-penetration sub-bottom profiler based on the 120-dB threshold and: (1) Consult with experts in the field of sound propagation and marine mammal hearing to revise the acoustic criteria as necessary to specify threshold levels that would be more appropriate for a wider variety of sound sources, including the shallow-penetration sub-bottom profiler; and (2) encourage CWA and others to conduct research on the impacts of such technology on marine mammals.

Response: Recalculating the buffer zone for the shallow-penetration sub-bottom profiler based on a 120-dB threshold is not consistent with NMFS' acoustic threshold criteria, or with previously authorized activities. The shallow-penetration sub-bottom profiler (''chirper'') is a non-impulsive, but intermittent (as opposed to continuous), sound source. Continuous sound sources are best represented by vibratory pile driving or drilling and produce sounds that are quite different sound sources compared to sub-bottom profilers. NMFS has previously applied the 160-dB threshold to non-tactical sonar sources used in conjunction with seismic surveys. The pseudo-random noise stimulus and tactical sonar-like signals that were used in the SOCAL–10 behavioral response study are also considered non-impulsive intermittent sources and were authorized by NMFS using the 160-dB threshold. NMFS believes that the 160-dB threshold is appropriately applied to the shallow-penetration sub-bottom profiler and there is no need for CWA to recalculate their buffer zone.

NMFS is in the process of developing revised acoustic guidelines for assessing the effects of anthropogenic sound on marine mammals. Until these guidelines have been peer reviewed, made available for public review and comment, and finalized, NMFS will continue to rely on the existing criteria.

In response to encouraging CWA to conduct research on the impacts of sub-bottom profilers on marine mammals, CWA's monitoring plan includes monitoring for marine mammal behavioral reactions in response to the sub-bottom profilers.

Comment 2: The Commission requested that CWA re-estimate the number of takes for gray and harbor seals based on both haul-out counts and at-sea sightings data, with appropriate corrections for availability and perception biases.

Response: Density estimates for seals based on haul out counts were not used due to the distance of haul outs from the activity area (12.7 miles to Monomoy Island and 7.4 miles to Muskeget Island). Gray seals and harbor seals congregating in these locations are not expected to hear sounds from the survey equipment at 160 dB or higher. The seals most likely to be exposed to potentially disturbing sounds are the individuals swimming and/or foraging within 444 m of the activated medium-penetration subbottom profiler. CWA calculated seal density estimates based on aerial survey counts for seals

observed swimming and/or foraging in open water within the activity area. CWA included an adjustment factor in these density calculations for seals not seen, but considered present during aerial surveys. Seal density estimates were not based on seal haul-out counts because it is highly improbable that all seals (i.e., those seen swimming and/or foraging, as well as those found at the haul out sites) would be in the activity area simultaneously. Using the haul out counts to estimate take would misrepresent the number of seals potentially exposed to sounds at or above 160 dB.

Comment 3: The Commission requested that NMFS include proposed IHA language at the end of its **Federal Register** notices and ensure that the language is consistent with that referenced in the main body of the **Federal Register** notice.

Response: NMFS will include the proposed IHA language at the end of future proposed **Federal Register** notices.

Comment 4: The Alliance suggested that NMFS cannot issue an IHA for the proposed activity because CWA is attempting to segment their larger wind energy project and avoid the issuance of a Letter of Authorization (LOA) and associated regulations.

Response: CWA requested an IHA for a discrete, specified activity, a high resolution geophysical survey that is required prior to construction of CWA's long-term energy project. The MMPA directs NMFS to allow, upon request, the incidental taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity within a specified geographical region if certain findings are made. All statutory requirements have been met in this instance. The issuance of regulations and an LOA is only required if the proposed activity has the potential to result in incidental takings of marine mammals by serious injury or mortality. Applicants have the option of applying for a 1-year IHA if their specified activity (in this case, the high resolution geophysical survey) would not result in the serious injury or mortality of marine mammals. Based on factors addressed in the application and proposed IHA (e.g., estimated sound propagation, slow vessel speeds, and monitoring and mitigation measures,) CWA does not anticipate, nor is NMFS authorizing, the incidental taking of marine mammals by serious injury or mortality. Therefore, an IHA is appropriate. NMFS has notified CWA that future activities may also require separate authorization(s) under the MMPA.

Comment 5: The Alliance also suggested that NMFS' authorization must be supported by a full NEPA review that has been subjected to public comment.

Response: In accordance with NEPA, NMFS prepared an EA in 2011 to analyze the environmental effects of authorizing Level B incidental take of marine mammals during CWA's high resolution geophysical survey in Nantucket Sound. During the development of this action, including the EA, several documents were available to the public, all of which provided a detailed description of the action and potential environmental impacts. For example, the analysis of impacts to marine mammals from the proposed high resolution geophysical survey activities was contained in NMFS' proposed issuance of an IHA dated September 1, 2011 (76 FR 56735) and is similar to what is contained in the EA. Additional environmental information was contained in CWA's 2011 IHA application, which was also made available to the public. Other documents used to inform the EA included the Biological Opinion (issued December 30, 2010 by NMFS Northeast Regional Office, and available at http://www.epa.gov/region1/communities/pdf/CapeWind/CapeWindBiological Opinion-12–30–10.pdf) and the Final Environmental Impact Statement (published by the Bureau of Ocean Energy Management) on January 21, 2009 [74 FR 3635]) for the long-term Cape Wind energy project. The EA describes potential environmental impacts from the limited action for which an IHA was requested—the take of marine mammals incidental to CWA's high resolution geophysical survey—which is similar to numerous other survey activities that NMFS has analyzed in the past. NMFS believes that sufficient environmental information was presented to the public and comments on the proposed IHA were taken into consideration during preparation of the EA.

The analysis contained in the 2011 EA is still considered relevant for this authorization because CWA's proposed activity has not changed. The EA is available on the NFMS Web site listed in the beginning of this document.

Comment 6: The Alliance believes that CWA's survey activities are likely to result in the take of right whales, presumably by ship strike, and refers to right whale sightings around Nantucket Sound.

Response: The presence of right whales in Nantucket Sound is not common and NMFS believes that the possibility of a survey vessel striking a right whale is unlikely. In 2008, NMFS published a final rule in the **Federal Register** instituting Mid-Atlantic Seasonal Management Areas with a mandatory 10-knot speed restriction to reduce the threat of ship collisions with right whales. The Seasonal Management Areas were established to provide additional protection for right whales and the timing, duration, and geographic extent of the speed restrictions were specifically designed to reflect right whale movement, distribution, and aggregation patterns. Nantucket Sound is not considered a Seasonal Management Area; however, Nantucket Sound is included as part of a Dynamic Management Area (with a voluntary 10-knot speed zone) through March 13, 2013.

The very qualities that make right whales susceptible to being struck by vessels in certain areas also make them highly detectable. NMFS believes that the size of right whales, their slow movements, and the amount of time they spend at the surface would make them extremely likely to be spotted by PSOs before they are exposed to sounds that constitute harassment. Whenever survey activities are underway, at least one PSO will be monitoring the 500-m exclusion zone—which is larger than both the Level A (30 m) and Level B (444 m) harassment isopleths—and will call for a shutdown if any marine mammal is observed within or moving toward the exclusion zone. Furthermore, right whales are not common in Nantucket Sound and there are no known foraging grounds or other important habitats for right whales in Nantucket Sound. However, as stated in the Biological Opinion for the long-term Cape Wind energy project, CWA will monitor the Right Whale Sighting Advisory System and can modify their survey schedule in the unlikely event that whales are present within Nantucket Sound. CWA did not propose, and NMFS is not authorizing, the take of right whales from survey activities. Although there have been a limited number of right whale sightings in Nantucket Sound over the past 10 years (as seen on NMFS Northeast Fisheries Science Center Web site: *http://www.nefsc.noaa.gov/psb/surveys/*), these have not overlapped with Horseshoe Shoal, likely due to the shallower water depths.

Description of Marine Mammals in the Area of the Specified Activity

Marine mammals with known occurrences in Nantucket Sound that could be harassed by high resolution geophysical survey activity in Nantucket Sound are listed in Table 1.

These are the species for which take is being authorized. While other marine mammal species are present in the New England region (e.g., humpback, fin, and right whales), they are not common in Nantucket Sound; this is likely due to the shallow depths of Nantucket Sound and its location outside of the coastal migratory corridor. NFMS has presented a more detailed discussion of the status of these stocks and their occurrence in Nantucket Sound in the notice of the proposed IHA (78 FR 7402, February 1, 2013).

TABLE 1—MARINE MAMMALS THAT COULD BE IMPACTED BY SURVEY ACTIVITIES IN NANTUCKET SOUND.

Common name	Scientific name	MMPA Status [1]	Time of year in New England
Whales and Dolphins (Cetaceans)			
Minke whale	*Balaenoptera actuorostrata*	N–D	April through October.
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	N–D	October through December.
Harbor porpoise	*Phocoena phocoena*	N–D	Year-round (peak Sept-Apr).
Seals (Pinnipeds)			
Gray seal	*Halichoerus grypis*	N–D	Year-round.
Harbor seal	*Phoca vitulina*	N–D	October through April.

[1] N–D = non-depleted. None of the species are listed under the Endangered Species Act.

Potential Effects of the Specified Activity on Marine Mammals

Acoustic stimuli generated by the operation of the shallow-penetration and medium-penetration subbottom profilers, which introduce sound into the marine environment, have the potential to cause Level B behavioral harassment of marine mammals in the survey area. The effects of sounds from this type of survey equipment might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.,* 2007). Although the possibility cannot be entirely excluded, it is unlikely that the project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Based on the available data and studies described here and in the proposed IHA notice, some behavioral disturbance is expected, but NMFS expects the disturbance to be localized and short-term.

The notice of the proposed IHA (78 FR 7402, February 1, 2013) included a discussion of the effects of sounds from subbottom profilers on cetaceans and pinnipeds. NMFS refers the reader to CWA's application and NMFS' EA for additional information on the behavioral reactions (or lack thereof) by all types of marine mammals to geophysical surveys.

Anticipated Effects on Marine Mammal Habitat

NMFS does not expect impacts on marine mammal habitat from CWA's survey activities. The high resolution geophysical survey equipment would not come in contact with the seafloor and would not be a source of air or water pollution. Marine mammals may avoid the survey area temporarily due to ensonification, but survey activities are not expected to result in long-term abandonment of marine mammal habitat. Overall, CWA's survey activities are not expected to cause significant impacts on marine mammal habitat or marine mammal prey species in the survey area. Therefore, NMFS has determined impacts to marine mammal habitat are negligible.

Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for subsistence uses where relevant.

To reduce the potential for disturbance from acoustic stimuli associated with the specified activity, CWA will implement the following mitigation measures for marine mammals:

Establishment of an Exclusion Zone

During all survey activities involving the shallow-penetration and medium-penetration subbottom profilers, CWA will maintain a 500-m radius exclusion zone around each survey vessel. This area will be monitored for marine mammals 60 minutes (as stipulated by the BOEM lease) prior to starting or restarting surveys, during surveys, and 60 minutes after survey equipment has been turned off. Typically, the exclusion zone is based on the area in which marine mammals could be exposed to injurious (Level A) levels of sound. CWA's lease specifies a 500-m exclusion zone, which exceeds both the Level A (30 m) and Level B (444 m) isopleths for marine mammal harassment. CWA's exclusion zone will minimize impacts to marine mammals from increased sound exposures. The exclusion zone must not be obscured by fog or poor lighting conditions.

Shut Down and Delay Procedures

If a protected species observer sees a marine mammal within or approaching the exclusion zone prior to the start of surveying, the observer will notify the appropriate individual who will then be required to delay surveying or shut down survey equipment until the marine mammal moves outside of the exclusion zone or if the animal has not been resighted for 60 minutes. If a protected species observer sees a marine mammal within or approaching the exclusion zone during survey activities, the observer will notify the appropriate individual who will then be required to shut down surveying until the marine mammal moves outside of the exclusion

zone or if the animal has not been resighted for 60 minutes.

Soft-start Procedures

A ''soft-start'' technique will be used at the beginning of survey activities each day (or following a shut down) to allow any marine mammal that may be in the immediate area to leave before the sound sources reach full energy. Surveys shall not commence at nighttime or when the exclusion zone cannot be effectively monitored.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

The practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has determined that the mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an incidental take authorization for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, where applicable, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

Visual Monitoring

CWA will designate at least one biologically trained, on-site individual, approved in advance by NMFS, to monitor the area for marine mammals 60 minutes before, during, and 60 minutes after all survey activities and call for delay or shutdown if any marine mammal is observed approaching or within the 500-m exclusion zone. Should a marine mammal not included in an incidental take authorization be observed at any time within the 500-m exclusion zone, shut down and delay procedures would be followed.

CWA will also provide additional monitoring efforts to increase knowledge of marine mammal species in Nantucket Sound. At least one NMFS-approved protected species observer will conduct behavioral monitoring from the survey vessel at least twice a week to estimate take and evaluate the behavioral impacts that survey activities have on marine mammals outside of the 500-m exclusion zone. In addition, CWA will send out a separate vessel with a NMFS-approved protected species observer to collect data on species presence and behavior before surveys begin and once a month during survey activities.

Protected species observers will be provided with the equipment necessary to effectively monitor for marine mammals (e.g., high-quality binoculars, compass, and range-finder) in order to determine if animals have entered into the harassment isopleths and to record marine mammal sighting information. Protected species observers must be able to effectively monitor the 500-m exclusion zone whenever the subbottom profilers are in use. Survey efforts will only take place during daylight hours and visibility must not be obscured by fog, lighting conditions, etc.

Reporting

CWA will submit a report to NMFS within 90 days of expiration of the IHA or completion of surveying, whichever comes first. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. More specifically, the report will include the following information when a marine mammal is sighted:

Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort sea state and wind force), and associated activities during all survey operations and marine mammal sighting;

Species, number, location, distance from the vessel, and behavior of any marine mammals, as well as associated survey activity (number of shut-downs or delays), observed throughout all monitoring activities;

An estimate of the number (by species) of marine mammals that are known to have been exposed to the survey activity (based on visual observation) at received levels greater than or equal to 160 dB re 1 μPa (rms) and/or 180 dB re 1 μPa (rms) for cetaceans and 190 dB re 1 μPa (rms) for pinnipeds with a discussion of any specific behaviors those individuals exhibited; and

A description of the implementation and effectiveness of the mitigation measures of the IHA.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as an injury (Level A harassment), serious injury, or mortality (e.g., ship-strike, gear interaction, and/or entanglement), CWA shall immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Michael.Payne@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Northeast Regional Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with CWA to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. CWA may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that CWA discovers an injred or dead marine mammal, and the lead PSO determines that the cause of the injury or death in unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition

as described in the next paragraph), CWA will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Michael.Payne@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Northeast Regional Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with CWA to determine whether modifications in the activities are appropriate.

In the event that CWA discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), CWA will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Michael.Payne@noaa.gov* and *ITP.Magliocca@noaa.gov* and the Northeast Regional Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*), within 24 hours of the discovery. CWA will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

Summary of Past Monitoring and Reporting

CWA complied with the requirements under their 2012 IHA. CWA completed 28 days and 459 nautical transect miles of survey activity during 2012 and no living marine mammals were sighted. On July 10, 2012, a deceased harbor seal was seen by two protected species observers and survey equipment was immediately shut down. The observers determined that the seal had been deceased for 24–48 hours, based on signs of scavenger damage and bloating, which suggest moderate decomposition (Pugliares *et al.,* 2007). Both observers concurred that the animal was not injured due to survey activities; however, a 60-minute post watch was performed to ensure that no other protected species were in the vicinity. A full report was submitted to NMFS on July 11, 2012, within 24 hours of the initial sighting. No marine mammal takes were reported during the 2012 season. CWA's monitoring report is available online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Based on CWA's application and NMFS' subsequent analysis, the impact of the described survey activities may result in, at most, short-term modification of behavior by small numbers of marine mammals within the action area. Marine mammals may avoid the area or change their behavior at time of exposure to elevated sound levels. Take by injury, serious injury, or mortality is neither anticipated nor authorized. NMFS has determined that the required mitigation and monitoring measures will minimize any potential risk for injury or mortality.

A detailed discussion of the methods used to calculate marine mammal densities and take estimates in the survey area was included in notice for the proposed IHA (78 FR 7409, February 1, 2013). In summary, sightings per unit effort (SPUE) data were used to estimate species density within the survey area and take estimates were calculated by multiplying the density values (n) measured in individuals per square kilometers, by the area of the zone of influence in square kilometers, times the total number of survey days (d = 109). The zone of influence was calculated as a function of the distance a survey vessel with deployed boomer would travel in one survey day and the area around the boomer where sound levels reach or exceed 160 dB.

CWA requested incidental take based on the highest estimated possible species exposures to potentially disturbing levels of sound from the boomer. No marine mammals are expected to be exposed to injurious levels of sound in excess of 180 dB during survey activities. NMFS is authorizing the Level B harassment of 9 minke whales, 185 Atlantic white-sided dolphins, 110 harbor porpoises, 314 gray seals, and 79 harbor seals. These numbers overestimate the number of animals likely to be taken because they are based on the highest density estimates and do not account for mitigation measures (such as the 500-m exclusion zone, marine mammal monitoring, and ramp up procedures). More specifically, CWA's 500-m exclusion zone means that they will be shutting down before an animal ever enters the Level B harassment isopleth (444 m), so take numbers should be notably less. The authorized take numbers indicate the maximum number of animals expected to occur within the largest Level B harassment isopleth (444 m) and take into account the possibility that an animal may not be seen before it enters the 500-m exclusion zone. Estimated and proposed level of take of each species is less than one percent of each affected stock and therefore is considered small in relation to the stock estimates previously set forth.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a number of factors which include, but are not limited to, number of anticipated injuries or mortalities (none of which would be authorized here), number, nature, intensity, and duration of Level B harassment, and the context in which takes occur (for instance, will the takes occur in an area or time of significance for marine mammals, or are takes occurring to a small, localized population?).

As described above, marine mammals will not be exposed to activities or sound levels which will result in injury (for instance, PTS), serious injury, or mortality. Anticipated impacts of survey activities on marine mammals are temporary behavioral changes due to avoidance of the area. All marine mammals in the vicinity of survey operations will be transient as no known breeding, calving, pupping, nursing, or haul-outs overlap with the survey area. The closest pinniped haul-outs are 23.5 km (12.7 NM) and 13.7 km (7.4 NM) away on Monomoy Island and Muskeget Island, respectively. Marine mammals approaching the survey area will likely be traveling or opportunistically foraging. The amount of take authorized is considered small (less than one percent) relative to the estimated populations of 8,987 minke whales, 63,368 Atlantic white-sided dolphins, 89,504 harbor porpoises, 250,000 gray seals, and 99,340 harbor seals. Furthermore, the amount of take CWA requested and NMFS authorizes

likely overestimates the actual take that would occur; no marine mammal takes were observed during 28 days of survey activity in 2012. No affected marine mammals are listed under the ESA or considered strategic under the MMPA. Marine mammals are expected to avoid the survey area, thereby reducing exposure and impacts. No disruption to reproductive behavior is anticipated and there is no anticipated effect on annual rates of recruitment or survival of affected marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS determines that CWA's survey activities may result in the incidental take of small numbers of marine mammals, by Level B harassment, and that the total taking will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

No marine mammal species listed under the ESA are anticipated to occur within the action area. Therefore, section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS prepared an Environmental Assessment (EA) to consider the direct, indirect, and cumulative effects to marine mammals and other applicable environmental resources resulting from issuance of a 1-year IHA to and the potential issuance of additional authorization for incidental harassment. This analysis is still considered relevant for the proposed IHA because the applicant's proposed activity has not changed. The EA is available on the NMFS Web site listed in the beginning of this document concurrently with this notice.

Dated: March 25, 2013.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–07304 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC486

Taking of Marine Mammals Incidental to Specified Activities; U.S. Marine Corps Training Exercises at Air Station Cherry Point

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

ACTION: Notice; proposed incidental harassment authorization; receipt of application for letter of authorization; request for comments.

SUMMARY: We have received an application from the U.S. Marine Corps (Marine Corps) requesting an incidental harassment authorization (Authorization) to take marine mammals incidental to various training exercises at Marine Corps Air Station (MCAS) Cherry Point Range Complex, North Carolina for a period of one year.

The Marine Corps' activities are military readiness activities pursuant to the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act (NDAA) for Fiscal Year 2004. Per the MMPA, we are requesting comments on our proposal to issue an authorization to the Marine Corps to incidentally harass by Level B harassment only, bottlenose dolphins (*Tursiops truncatus*), during the training exercises that would occur within the proposed effective period of May 20, 2013 through May 19, 2014. We are also requesting comments on our intent to promulgate regulations governing the take of marine mammals over a 5-year period incidental to the activities described in this notice.

DATES: Comments and information must be received no later than April 29, 2013.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *ITP.Cody@noaa.gov.* Please include 0648–XC486 in the subject line. We are not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size.

Instructions: All submitted comments are a part of the public record and we would post to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

To obtain an electronic copy of the application, write to the previously mentioned address, telephone the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or visit the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

The following associated document is also available at the same internet address: The Marine Corps' Environmental Assessment (EA) titled, ''Environmental Assessment MCAS Cherry Point Range Operations,'' for their federal action of supporting and conducting current and emerging training operations. Their EA evaluates the effects of the proposed training operations on the human environment including impacts to marine mammals and their 2009 Finding of No Significant Impact (FONSI) for the activities.

This notice and the referenced document present detailed information on the scope of our federal action and resultant environmental impacts for purposes of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) (i.e., potential impacts to marine mammals from issuing the proposed Authorization including measures for mitigation, and monitoring). We solicit and would consider comments submitted in response to this notice when determining whether to prepare additional NEPA analysis. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of

small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after notice of a proposed authorization to the public for review and public comment: (1) We make certain findings; and (2) the taking is limited to harassment.

We shall grant authorization for the incidental taking of small numbers of marine mammals if we find that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking; other means of effecting the least practicable adverse impact on the species or stock and its habitat; and requirements pertaining to the mitigation, monitoring and reporting of such taking. We have defined ''negligible impact'' in 50 CFR 216.103 as '' * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for our review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, we must either issue or deny the authorization and must publish a notice in the **Federal Register** within 30 days of our determination to issue or deny the authorization.

The National Defense Authorization Act of 2004 (NDAA; (Public Law 108–136)) amended section 101(a)(5)(A) of the MMPA by removing the small numbers and specified geographic region provisions; revising the definition of harassment as it applies to a military readiness activity; and explicitly requiring that our determination of ''least practicable adverse impact'' include consideration of: (1) Personnel safety; (2) the practicality of implementation; and (3) impact on the effectiveness of the military readiness activity.

The NDAA's definition of harassment as it applies to a military readiness activity is: (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

We received a request from the Marine Corps on January 28, 2013, requesting that we issue we issue an Incidental Harassment Authorization (Authorization) for the take, by Level B harassment only, of small numbers of Atlantic bottlenose dolphins (*Tursiops truncatus*) incidental to air-to-surface and surface-to-surface training exercises conducted around two bombing targets within southern Pamlico Sound, North Carolina, at MCAS Cherry Point. We received a complete and adequate application requesting Authorization on March 19, 2013.

To date, we have issued two, 1-year Authorizations to the Marine Corps for the conduct of the same activities from 2010 to 2012 (75 FR 72807, November 26, 2010; 77 FR January 3, 2012). This is the Marine Corps' third request for an Authorization. We intend to proceed to rulemaking after a final determination is made on whether or not to issue this Authorization. This document also serves as Notice of Receipt of a request for rulemaking and subsequent Letter of Authorization.

Project Purpose—The Marine Corps plan to conduct weapon delivery training at two bombing targets: Brant Island Target (BT–9) and Piney Island Bombing Range (BT–11). Training at BT–9 would involve air-to-surface (from aircraft to in-water targets) and surface-to-surface (from vessels to in-water targets) warfare training, including bombing, strafing, special (laser systems) weapons; surface fires using non-explosive and explosive ordnance; and mine laying exercises (inert). Training at BT–11 would involve air- to-surface exercises to provide training in the delivery of conventional (non-explosive) and special (laser systems) weapons. Surface-to-surface training by small military watercraft would also be executed here. The types of ordnances proposed for use at BT–9 and BT–11 include small arms, large arms, bombs, rockets, missiles, and pyrotechnics. All munitions used at BT–11 are inert, practice rounds. No live firing occurs at BT–11. Training for any activity may occur year-round. Active sonar is not a component of these specified training exercises; therefore, we have not included a discussion of marine mammal harassment from active sonar operations within this notice.

Description of the Specified Activity

The Marine Corps is requesting authorization to harass bottlenose dolphins from ammunition firing conducted at two bombing targets within MCAS Cherry Point. The authorization would be valid for a period of one year from the date of issuance. The bombing targets are located at the convergence of the Neuse River and Pamlico Sound, North Carolina.

BT–9 is a water-based target located approximately 52 kilometers (km) (32.3 miles (mi); 28 nautical miles (nm)) northeast of MCAS Cherry Point. The BT–9 target area ranges in depth from 1.2 to 6.1 meters (m) (3.9 to 20 feet (ft)), with the shallow areas concentrated along the Brandt Island Shoal (which runs down the middle of the restricted area in a northwest to southeast orientation). The target itself consists of three ship hulls grounded on Brant Island Shoals, located approximately 4.8 km (3.0 mi) southeast of Goose Creek Island. Inert (non-explosive) ordnance up to 454 kilograms (kg) (1,000 pounds (lbs) and live (explosive) ordnance up to 45.4 kg (100 lbs) trinitrotoluene (TNT) equivalent, including ordnance released during strafing, are authorized for use at this target range. The target is defined by a 6 statute-mile diameter prohibited area designated by the U.S. Army Corps of Engineers, Wilmington District (33 CFR 334.420). Non-military vessels are not permitted within the prohibited area, which is delineated by large signs located on pilings surrounding the perimeter of the BT. BT–9 also provides a mining exercise area; however, all mine exercises are simulation only and do not involve detonations. BT–9 standard operating procedures limit live ordnance deliveries to a maximum explosive weight of 100 lbs TNT equivalent. The USMC estimates that it could conduct up to approximately 1,554 aircraft-based and 322 vessel-based sorties, annually, at BT–9. The standard sortie consists of two aircraft per bombing run or an average of two and maximum of six vessels.

BT–11 is a 50.6 square kilometers (km^2) (19.5 square miles (mi^2)) complex of land- and water-based targets on Piney Island. The BT–11 target area ranges in depth from 0.3 m (1.0 ft) along the shoreline to 3.1 m (10.1 ft) in the center of Rattan Bay (BA, 2001). The in-water stationary targets of BT–11 consist

of a barge and patrol (PT) boat located in roughly the center of Rattan Bay. The barge target is approximately 41.1 by 12.2 m (135 by 40 ft) in dimension. The PT boat is approximately 33.5 by 10.7 ft (110 ft by 35 ft) in dimension. Water depths in the center of Rattan Bay are estimated as 2.4 to 3 m (8 to 10 ft) with bottom depths ranging from 0.3 to 1.5 m (1 to 5 ft) adjacent to the shoreline of Piney Island. A shallow ledge, with substrate expected to be hard-packed to hard bottom, surrounds Piney Island. No live firing occurs at BT–11; all munitions used are inert, non-explosive practice rounds. Only 36 percent of all munitions fired at BT–11 occur over water; the remaining munitions are fired to land based targets on Piney Island. The USMC estimates that it could conduct up to approximately 6,727 aircraft-based and 51 vessel-based sorties, annually, at BT–11.

All inert and live-fire exercises at MCAS Cherry Point ranges are conducted so that all ammunition and other ordnances strike and/or fall on the land or water based target or within the existing danger zones or water restricted areas. A danger zone is a defined water area that is closed to the public on an intermittent or full-time basis for use by military forces for hazardous operations such as target practice and ordnance firing. A water restricted area is a defined water area where public access is prohibited or limited in order to provide security for government property and/or to protect the public from the risks of injury or damage that could occur from the government's use of that area (33 CFR 334.2). Surface danger zones are designated areas of rocket firing, target practice, or other hazardous operations (33 CFR 334.420). The surface danger zone (prohibited area) for BT–9 is a 4.8 km (3.0 mi) radius centered on the south side of Brant Island Shoal. The surface danger zone for BT–11 is a 2.9 km (1.8 mi) radius centered on a barge target in Rattan Bay.

According to the application, the Marine Corps is requesting take of marine mammals incidental to specified activities at MCAS Cherry Point Range Complex, located within Pamlico Sound, North Carolina. These activities include gunnery; mine laying; bombing; or rocket exercises and are classified into two categories here based on delivery method: (1) Surface-to-surface gunnery and (2) air-to-surface bombing. Exercises may occur year round, day or night (approximately 15 percent of training occurs at night).

Surface-to-Surface Gunnery Exercises

Surface-to-surface fires are fires from boats at sea to targets at sea. These can be direct (targets are within sight) or indirect (targets are not within sight). Gunnery exercise employing only direct fire is the only category of surface-to-surface activity currently conducted within the MCAS Cherry Point bombing targets. An average of two and maximum of six small boats (7.3–26.0 m; 24–85 ft), or fleet of boats, typically operated by Special Boat Team personnel, use a machine gun to attack and disable or destroy a surface target that simulates another ship, boat, swimmer, floating mine or near shore land targets. Vessels would travel between 0–20 knots (kts) (0–23 miles per hour (mph)) with an average of two vessels actually conducting surface-to-surface firing activities. Typical munitions would be 7.62 millimeter (mm) or .50 caliber (cal) machine guns; and/or 40 mm grenade machine guns. This exercise is usually a live-fire exercise, but at times blanks would be used so that the boat crews could practice their ship handling skills. The goal of training is to hit the targets; however, some munitions may bounce off the targets and land in the water or miss the target entirely. Additionally, the personnel would use G911 concussion hand grenades (inert and live); however, these are not aimed at targets, as the goal is to learn how to throw them into the water.

Table 1 includes the estimated amount of munitions expended at BT–9 and BT–11 in 2011 and 2012. Historically, boat sorties have been conducted at BT–9 and BT–11 year round with equal distribution of training effort throughout the seasons. Live fires constitute approximately 90 percent of all surface-to-surface gunnery events. The majority of sorties originated and practiced at BT–9 as no live fire is conducted at BT–11. The Marine Corps has indicated a comparable number of sorties would occur throughout the IHA timeframe. There is no specific schedule associated with the use of ranges by the small boat teams. However, exercises tend to be scheduled for 5-day blocks with exercises at various times throughout that timeframe. There is no specific time of year or month training occurs as variables such as deployment status, range availability, and completion of crew specific training requirements influence schedules.

TABLE 1—AIRCRAFT AND BOAT SORTIES, BY MISSION TYPE, CONDUCTED IN 2011 AND 2012

Mission type	BT–9		BT–11	
	2011	2012	2011	2012
Air-to-Surface	1,554	.....	4,251	.....
Surface-to-Surface	223	322	105	106
Total	1,777	.....	4,356	.....

A number of different types of boats are used during surface-to-surface exercises depending on the unit using the boat and their mission and include versions of Small Unit River Craft, Combat Rubber Raiding Craft, Rigid Hull Inflatable Boats, Patrol Craft. They are inboard or outboard, diesel or gasoline engines with either propeller or water jet propulsion. Boat crews approach, at a maximum of 20 kts (23 mph), and engage targets simulating other boats, swimmers, floating mines, or near shore land targets with 7.62 mm or .50 cal machine guns; 40 mm grenade machine guns; or M3A2 concussion hand grenades (approximately 200, 800, 10, and 10 rounds respectively). Vessels typically travel in linear paths and do not operate erratically. Other vessels may be located within the BTs; however, these are support craft and do not participate in munitions expenditures. The purpose of the support craft is to remotely control High Speed Maneuvering Surface Targets (HSMSTs) or to conduct maintenance on electronic equipment located in the towers at BT–9. Support craft are typically anchored or tied to marker pilings during HSMST operations or tied to equipment towers. When underway, vessels do not typically travel faster than 12–18 kts (13.8–20.7 mph) or in an erratic manner.

Air-to-Surface

Air-to-surface training involves ordnance delivered from aircraft and aimed at targets on the water's surface or on land in the case of BT–11. We provide a description of the types of targets used at MCAS Cherry Point in the previous section. There are four types of air-to-surface activities conducted within the MCAS Cherry Point BTs: mine laying; bombing, gunnery, or rocket exercises which are carried out via fixed- or rotary-wing aircraft.

Mine Laying Exercises

Mine warfare includes the strategic, operational, and tactical use of mines and mine countermine measures. Mine warfare is divided into two basic subdivisions: (a) The laying of mines to degrade the enemy's capabilities to wage land, air, and maritime warfare, and (b) the countering of enemy-laid mines to permit friendly maneuver or use of selected land or sea areas (DoN, 2007). MCAS Cherry Point would only engage in mine laying exercises as described below in the waters around BT–9. No detonations of any mine device are involved with this training.

During mine laying, a fixed-wing or maritime patrol aircraft (P–3 or P–8) typically drops a series of about four inert mine shapes in an offensive or defensive pattern, making multiple passes along a pre-determined flight azimuth, and dropping one or more shapes each time. Mine simulation shapes include MK76, MK80 series, and BDU practice bombs ranging from 25 to 2,000 pounds in weight. There is an attempt to fly undetected to the area where the mines are laid with either a low or high altitude tactic flight. The shapes are scored for accuracy as they enter the water and the aircrew is later debriefed on their performance. The training shapes are inert (no detonations occur) and expendable.

Bombing Exercises

The purpose of bombing exercises is to train pilots in destroying or disabling enemy ships or boats. During training, fixed wing or rotary wing aircraft deliver bombs against surface maritime targets at BT–9 or BT–11,day or night, using either unguided or precision-guided munitions. Unguided munitions include MK–76 and BDU–45 inert training bombs, and MK–80 series of inert bombs (no cluster munitions authorized). Precision-guided munitions consist of laser-guided bombs (inert) and laser-guided training rounds (inert). Typically, two aircraft approach the target (principally BT–9) from an altitude of approximately 914 m (3,000 ft) up to 4,572 m (15,000 ft) and, when on an established range, the aircraft adhere to designated ingress and egress routes. Typical bomb release altitude is 914 m (3,000 ft) for unguided munitions or above 4,572 m (15,000 ft) and in excess of 1.8 km (1 nm) for precision-guided munitions. However, the lowest minimum altitude for ordnance delivery (inert bombs) would be 152 m (500 ft).

Onboard laser designators or laser designators from a support aircraft or ground support personnel are used to illuminate certified targets for use when using laser guided weapons. Due to target maintenance issues, live bombs have not been dropped at the BT–9 targets for the past few years although these munitions are authorized for use. For the effective IHA timeframe, the Marine Corps would not use live bombs. Live rockets and grenades; however, have been expended at BT–9.

Air-to-surface bombing exercises have the potential to occur on a daily basis. The standard sortie consists of two aircraft per bombing run. The frequency of these exercises is dependent on squadron level training requirements, deployment status, and range availability; therefore, there is no set pattern or specific time of year or month when this training occurs. Normal operating hours for the range are 8 a.m. to 11 p.m., Monday through Friday; however, the range is available for use 365 days per year.

Gunnery Exercises

During gunnery training, fixed- and rotary-wing aircraft expend smaller munitions targeted at the bombing targets with the purpose of hitting them. However, some small arms may land in the water. Rotary wing exercises involve either CH–53, UH–1, CH–46, MV–22, or H–60 rotary-wing aircraft with mounted 7.62 mm or .50 cal machine guns. Each gunner expends approximately 800 rounds of 7.62 mm and 200 rounds of .50 cal ammunition in each exercise. These may be live or inert.

Fixed wing gunnery exercises involve the flight of two aircraft that begin to descend to the target from an altitude of approximately 914 m (3,000 ft) while still several miles away. Within a distance of 1,219 m (4,000 ft) from the target, each aircraft fires a burst of approximately 30 rounds before reaching an altitude of 305 m (1,000 ft), then breaks off and repositions for another strafing run until each aircraft expends its exercise ordnance allowance of approximately 250 rounds. In total, about 8–12 passes are made by each aircraft per exercise. Typically these fixed wing exercise events involve an F/A–18 and AH–1 with Vulcan M61A1/A2, 20 mm cannon; AV–8 with GAU–12, 25 mm cannon.

Rocket Exercises

Rocket exercises are carried out similar to bombing exercises. Fixed- and rotary-wing aircraft crews launch rockets at surface maritime targets, day and night, to train for destroying or disabling enemy ships or boats. These operations employ 2.75-inch and 5-inch rockets. Generally, the average number of rockets delivered per sortie is approximately 14. As with the bombing exercise, there is no set level or pattern of amount of sorties conducted.

Munitions Descriptions

We refer the reader to Tables 2 and 3 for a complete list of the ordnance authorized for use at BT–9 and BT–11, respectively. There are several varieties and net explosive weights (for live munition used at BT–9) can vary according to the variety. All practice bombs are inert and used to simulate the same ballistic properties of service type bombs. They are manufactured as either solid cast metal bodies or thin sheet metal containers. Since practice bombs contain no explosive filler, a practice bomb signal cartridge (smoke) is used for visual observation of weapon target impact. Practice bombs provide a low cost training device for pilot and ground handling crews. Due to the relatively small amount of explosive material in practice bombs (small signal charge), the availability of ranges for training is greatly increased.

When a high explosive detonates, it is converted almost instantly into a gas at very high pressure and temperature. Under the pressure of the gases thus generated, the weapon case expands and breaks into fragments. The air surrounding the casing is compressed and shock (blast) wave is transmitted into it. Typical initial values for a high-explosive weapon are 200 kilobars of pressure (1 bar = 1 atmosphere) and 5,000 degrees Celsius (9,032 degrees Fahrenheit). There are five types of explosive sources used at BT–9: 2.75-inch Rocket High Explosives, 5-inch Rocket High Explosives, 30 mm High Explosives, 40 mm High Explosives, and G911 grenades. No live munitions are used at BT–11.

TABLE 2—DESCRIPTION OF MUNITIONS USED AT BT–9

Ordnance	Description	Net explosive weight
MK–76 Practice Bomb (inert)	25-pound teardrop-shaped cast metal bomb, with a bore tube for installation of a signal cartridge.	(of signal cartridge) varies, maximum 0.083800 lbs.
BDU–33 Practice Bomb (inert)	Air Force MK 76 practice bomb	same as above.
BDU–48 Practice Bomb (inert)	10-pound metal cylindrical bomb body with a bore tube for installation of a signal cartridge.	same as above.
BDU–45 Practice Bomb (inert)	500-pound metal bomb either sand or water filled. Two signal cartridges..	(of signal cartridges, total 0.1676 lbs.
BDU–50 Practice Bomb (inert)	500-pound metal bomb either sand or water filled. Two signal cartridges..	same as above.
MK–81 Practice Bomb (inert)	250-pound bomb	0.
MK–82 Practice Bomb (inert)	500-pound bomb	0.
MK–83 Practice Bomb (inert)	1,000-pound bomb configured like BDU 45	0.1676 lbs.
MK–84 Practice Bomb (inert) (special exception use only).	2,000-pound bomb configured like BDU 45	0.1676 lbs.
2.75-inch (inert)	Unguided 2.75 inch diameter rocket	0.
5-inch Zuni (inert)	Unguided 5 inch diameter rocket	0.
5-inch Zuni (live)	Unguided 5-inch diameter rocket	15 lbs.
2.75wp (inert)	2.75-inch rocket containing white phosphorous	0.
2.75HE	High Explosive, 2.75 inch rocket	4.8 lbs.
0.50 cal (inert)	Machine gun rounds	0.
7.62 mm (inert)		
20 mm (inert)		
25mm (inert)		
30 mm (inert)		
40 mm (inert)		
25 mm HE (live)	High Explosive Incendiary, Live machine gun rounds	0.269 lbs.
Self Protection Flare	Aerial flare	0.
Chaff	18-pound chaff canister	0.
LUU–2	30-pound high intensity illumination flare	0.
Laser Guided Training Round (LGTR) (inert).	89-pound inert training bomblet	0.

TABLE 3—DESCRIPTION OF MUNITIONS USED AT BT–11

Ordnance	Description
MK76 Practice Bomb	25-pound teardrop-shaped cast metal bomb body, with a bore tube for installation of a signal cartridge.
BDU 33 Practice Bomb	Air Force designation for MK 76 practice bomb.
BDU 48 Practice Bomb	10-pound metal cylindrical bomb body with a bore tube for installation of a signal cartridge.
BDU 45 Practice Bomb	500-pound metal bomb body either sand or water filled. Configured with either low drag conical tail fins or high drag tail fins for retarded weapons delivery. Two signal cartridges installed.
MK 81 Practice Bomb	250-pound inert bomb
MK 82 Practice Bomb	500-pound inert bomb.
2.75-inch	Unguided 2.75 inch diameter rocket.
5-inch Zuni	5 inch diameter rocket.
WP–2.75-inch	White phosphorous 7-pound rocket.
0.50 cal	Inert machine gun rounds.
7.62 mm	
5.56 mm	
20 mm	
30 mm	
40 mm	
TOW	Wire guided 56-pound anti-tank missile.
Self Protection Flare	Aerial flare.
SMD SAMS	1.5-pound smoking flare.
LUU–2	30-pound high-intensity illumination flare.
Laser Guided Training Round (LGTR)	89-pound inert training bomblet.

The amounts of all ordnance to be expended at BT–9 and BT–11 (both surface-to-surface and air-to-surface) are 1,225,815 and 1,254,684 rounds, respectively (see Table 4 and 5).

TABLE 4—AMOUNT OF LIVE AND INERT MUNITIONS THAT WOULD BE EXPENDED AT BT–9, ANNUALLY

Proposed munitions [1]	Proposed total No. of rounds	Proposed number of explosive rounds having an impact on the water	Net explosive weight (lb)
Small Arms Rounds Excluding .50 cal	525,610	N/A	N/A.
.50 Cal	568,515	N/A	N/A.
Large Arms Rounds—Live	5,000	40mm HE: 5,000	0.1199.
Large Arms Rounds—Inert	117,051	N/A	N/A.
Rockets—Live	48	2.75" Rocket: 48	4.8
	20	5" Rocket: 20	15.0.
Rockets—Inert	876	N/A	N/A.
Bombs and Grenades—Live	0	G911 Grenade: N/A	0.5.
Bombs and Grenades—Inert	4,199	N/A	N/A.
Pyrotechnics	4,496	N/A	N/A.
Total	1,225,815		N/A.

[1] Munitions may be expended from aircraft or small boats.

TABLE 5—AMOUNT OF INERT MUNITIONS THAT WOULD BE EXPENDED AT BT–11

Proposed munitions [1]	Proposed total No. of rounds
Small Arms Rounds Excluding .50 Cal	610,957
.50 Cal	366,775
Large Arms Rounds	240,334
Rockets	5,592
Bombs and Grenades	22,114
Pyrotechnics	8,912
Total	1,254,684

[1] Munitions may be expended from aircraft or small boats.

Description of Marine Mammals in the Area of the Specified Activity

Forty marine mammal species occur within the nearshore and offshore waters of North Carolina; however, the majority of these species are solely oceanic in distribution. Only one marine mammal species, the bottlenose dolphin, has been repeatedly sighted in Pamlico Sound, while an additional species, the endangered West Indian manatee (*Trichechus manatus*), has been sighted rarely (Lefebvre *et al,* 2001; DoN 2003). The U.S. Fish and Wildlife Service oversees management of the manatee; therefore, we would not include a proposed authorization to harass manatees and we will not discuss this species further in this notice.

No sightings of the endangered North Atlantic right whale (*Eubalaena glacialis*) or other large whales have been observed within Pamlico Sound or in vicinity of the bombing targets (Kenney, 2006). No suitable habitat exists for these species in the shallow Pamlico Sound or bombing target vicinity; therefore, whales would not be affected by the specified activities. Thus, we will not discuss them further in this notice. Other dolphins, such as Atlantic spotted (*Stenella frontalis*) and common dolphins (*Delphinus delphis),* are oceanic in distribution and do not venture into the shallow, brackish waters of southern Pamlico Sound.

The specified activity has the potential to affect only one marine mammal species under our jurisdiction: the bottlenose dolphin. We refer the public to Waring *et al.* (2011) for general information on this species which is presented below this section. The publication is available at *http://www.nmfs.noaa.gov/pr/pdfs/sars/ao2011.pdf.* We present a summary of information on the species below this section.

Bottlenose Dolphin

California sea lions are not listed as threatened or endangered under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*), however, they are categorized as depleted (and thus strategic) under the MMPA.

Four out of the seven designated coastal stocks for bottlenose dolphins may occur in North Carolina waters at some part of the year: the Northern Migratory stock (NM; winter); the Southern Migratory stock (SM; winter); the Northern North Carolina Estuarine stock (NNCE; resident, year round); and the more recently identified Southern North Carolina Estuarine stock (SNCE; resident, year round).

Dolphins encountered at the BTs likely belong to the NNCE and SNCE stock; however, this may not always be the case. NMFS' 2011 stock assessment report provides further detail on stock delineation.

NMFS provides abundance estimates for the four aforementioned migratory and resident coastal stocks in its 2011 stock assessment report. The best available abundance estimate for the NNCE stock is the combined abundance from estuarine (Read *et al.,* 2003) and coastal (aerial survey data dating from 2002) waters. This combined estimate is 1,387 (Waring *et al.,* 2011). Similarly, the best available abundance estimate for the SNCE stock is the combined abundance from estuarine and coastal waters. This combined estimate is 2,454 (Waring *et al.,* 2011). The best abundance estimate for the NM stock, resulting from 2002 aerial surveys, is 9,604 (Waring *et al.,* 2011). Using the same information, the resulting best abundance estimate for the SM stock is 12,482 (Waring *et al.,* 2011).

From July 2004 through April 2006, the Services Southeast Fisheries Science Center conducted 41 aerial surveys to document the seasonal distribution and estimated density of sea turtles and dolphins within Core Sound and portions of Pamlico Sound, and coastal waters extending one mile offshore (Goodman *et al,* 2007). Pamlico Sound was divided into two survey areas: western (encompassing BT–9 and BT–11) and eastern (including Core Sound and the eastern portion of restricted air space R–5306). In total, 281 dolphins were sighted in the western range. To account for animals likely missed during sightings (i.e., those below the surface), Goodman *et al.* (2007) estimate that, in reality, 415 dolphins were present. Densities for bottlenose dolphins in the western part of Pamlico Sound were calculated to be 0.0272 per square kilometer (km^2) in winter and 0.2158 per km^2 in autumn. Dolphins were sighted throughout the entire range when mean sea surface temperature was 7.60° C to 30.82° C (45.6 to 87.5 °F), with fewer dolphins sighted as water temperatures increased. Like in Mayer (2003), dolphins were found in higher numbers around BT–11, a range where no live firing occurs.

In 2000, Duke University Marine Lab (DUML), conducted a boat-based mark-recapture survey throughout the estuaries, bays and sounds of North Carolina (Read *et al.,* 2003). This summer survey yielded a dolphin density of 0.183/km^2 (0.071 mi^2) based on an estimate of 919 dolphins for the northern inshore waters divided by an

estimated 5,015 km² (1,936 mi²) survey area. Additionally, from July 2002–June 2003, the USMC supported DUML to conduct dolphin surveys specifically in and around BT–9 and BT–11. During these surveys, one sighting in the restricted area surrounding BT–9 and two sightings in proximity to BT–11 were observed, as well as seven sightings in waters adjacent to the BTs. In total, 276 bottlenose dolphins were sighted ranging in group size from two to 70 animals with mean dolphin density in BT–11 more than twice as large as the density of any of the other areas; however, the daily densities were not significantly different (Maher, 2003). Estimated dolphin density at BT–9 and BT–11 based on these surveys were calculated to be 0.11 dolphins/km², and 1.23 dolphins/km², respectively, based on boat surveys conducted from July 2002 through June 2003 (excluding April, May, Sept. and Jan.). However, the Marine Corps choose to estimate take of dolphins based on the higher density reported from the summer 2000 surveys (0.183/km²). Although the aerial surveys were conducted year round and therefore provide for seasonal density estimates, the average year-round density from the aerial surveys is 0.0936, lower than the 0.183/km² density chosen to calculate take for purposes of this MMPA authorization. Additionally, Goodman *et al.* (2007) acknowledged that boat based density estimates may be more accurate than the uncorrected estimates derived from the aerial surveys.

In Pamlico Sound, bottlenose dolphins concentrate in shallow water habitats along shorelines, and few, if any, individuals are present in the central portions of the sounds (Gannon, 2003; Read *et al.,* 2003a, 2003b). The dolphins utilize shallow habitats, such as tributary creeks and the edges of the Neuse River, where the bottom depth is less than 3.5 m (Gannon, 2003). Fine-scale distribution of dolphins seems to relate to the presence of topography or vertical structure, such as the steeply-sloping bottom near the shore and oyster reefs, which may be used to facilitate prey capture (Gannon, 2003). Results of a passive acoustic monitoring effort conducted from 2006–2007 by Duke University researchers validated this information. Vocalizations of dolphins in the BT–11 vicinity were higher in August and September than vocalization detection at BT–9, an open water area (Read *et al.,* 2007). Additionally, detected vocalizations of dolphins were more frequent at night for the BT–9 area and during early morning hours at BT–11.

Unlike migrating whales which display strong temporal foraging and mating/birthing periods, many bottlenose dolphins in Pamlico Sound are residents and mate year round. However, dolphins in the southeast U.S. do display some reproductive seasonality. Based on neonate stranding records, sighting data, and births by known females, the populations of dolphins that frequent the North Carolina estuarine waters have calving peaks in spring but calving continues throughout the summer and is followed by a smaller number of fall births (Thayer *et al.,* 2003).

Bottlenose dolphins can typically hear within a broad frequency range of 0.04 to 160 kiloHertz (kHz) (Au, 1993; Turl, 1993). Electrophysiological experiments suggest that the bottlenose dolphin brain has a dual analysis system: one specialized for ultrasonic clicks and another for lower-frequency sounds, such as whistles (Ridgway, 2000). Scientists have reported a range of highest sensitivity between 25 and 70 kHz, with peaks in sensitivity at 25 and 50 kHz (Nachtigall *et al.,* 2000). Recent research on the same individuals indicates that auditory thresholds obtained by electrophysiological methods correlate well with those obtained in behavior studies, except at some lower (10 kHz) and higher (80 and 100 kHz) frequencies (Finneran and Houser, 2006).

Sounds emitted by bottlenose dolphins have been classified into two broad categories: pulsed sounds (including clicks and burst-pulses) and narrow-band continuous sounds (whistles), which usually are frequency modulated. Clicks have a dominant frequency range of 110 to 130 kHz and a source level of 218 to 228 decibels (dB) re: 1 μPa (peak-to-peak) (Au, 1993) and 3.4 to 14.5 kHz at 125 to 173 dB re 1 μPa (peak-to-peak) (Ketten, 1998). Whistles are primarily associated with communication and can serve to identify specific individuals (i.e., signature whistles) (Caldwell and Caldwell, 1965; Janik *et al.,* 2006). Up to 52 percent of whistles produced by bottlenose dolphin groups with mother-calf pairs can be classified as signature whistles (Cook *et al.,* 2004). Sound production is also influenced by group type (single or multiple individuals), habitat, and behavior (Nowacek, 2005). Bray calls (low-frequency vocalizations; majority of energy below 4 kHz), for example, are used when capturing fish, specifically sea trout (Salmo trutta) and Atlantic salmon (Salmo salar), in some regions (i.e., Moray Firth, Scotland) (Janik, 2000). Additionally, whistle production has been observed to increase while feeding (Acevedo-Gutiérrez and Stienessen, 2004; Cook *et al.,* 2004).

Potential Effects on Marine Mammals

As mentioned previously, with respect to military readiness activities, Section 3(18)(B) of the MMPA defines ''harassment'' as: (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

The Marine Corps concluded that Level B harassment to marine mammals may occur incidental to munitions firing noise and pressure at the bombing targets. These military readiness activities would result in increased noise levels, explosions, and munitions debris within bottlenose dolphin habitat. In addition, we also considered the potential for harassment from vessel and aircraft operation. Our analysis of potential impacts from these factors, including consideration of the Marine Corps' analysis in its application, is outlined in the following sections.

Anthropogenic Sound

Marine mammals respond to various types of anthropogenic sounds introduced in the ocean environment. Responses are highly variable and depend on a suite of internal and external factors which in turn results in varying degrees of significance (NRC, 2003; Southall *et al.,* 2007). Internal factors include: (1) Individual hearing sensitivity, activity pattern, and motivational and behavioral state (e.g., feeding, traveling) at the time it receives the stimulus; (2) past exposure of the animal to the noise, which may lead to habituation or sensitization; (3) individual noise tolerance; and (4) demographic factors such as age, sex, and presence of dependent offspring. External factors include: (1) non-acoustic characteristics of the sound source (e.g., if it is moving or stationary); (2) environmental variables (e.g., substrate) which influence sound transmission; and (3) habitat characteristics and location (e.g., open ocean vs. confined area). To determine whether an animal perceives the sound, the received level, frequency, and duration of the sound are compared to ambient noise levels and the species'

hearing sensitivity range. That is, if the frequency of an introduced sound is outside of the species' frequency hearing range, it cannot be heard. Similarly, if the frequency is on the upper or lower end of the species hearing range, the sound must be louder in order to be heard.

Marine mammal responses to anthropogenic noise are typically subtle and can include visible and acoustic reactions such as avoidance, altered dive patterns and cessation of pre-exposure activities and vocalization reactions such as increasing or decreasing call rates or shifting call frequency. Responses can also be unobservable, such as stress hormone production and auditory trauma or fatigue. It is not always known how these behavioral and physiological responses relate to significant effects (e.g., long-term effects or individual/population consequences); however, individuals and populations can be monitored to provide some insight into the consequences of exposing marine mammals to noise. For example, Haviland-Howell *et al.* (2007) compared sighting rates of bottlenose dolphins within the Wilmington, NC stretch of the Atlantic Intracoastal Waterway (ICW) on weekends, when recreational vessel traffic was high, to weekdays, when vessel traffic was relatively minimal. The authors found that dolphins were less often sighted in the ICW during times of increased boat traffic (i.e., on weekends) and theorized that because vessel noise falls within the frequencies of dolphin communication whistles and primary energy of most fish vocalizations, the continuous vessel traffic along that stretch of the ICW could result in social and foraging impacts. However, the extent to which these impacts affect individual health and population structure is unknown.

A full assessment of marine mammal responses and disturbances when exposed to anthropogenic sound can be found in our proposed rulemaking for the Navy Cherry Point Range Complex (74 FR 11057, March 16, 2009). That rulemaking was made final on June 15, 2009 (74 FR 28370). In summary, sound exposure may result in physiological impacts, stress responses, and behavioral responses which could affect proximate or ultimate life functions. Proximate life history functions are the functions that the animal is engaged in at the time of acoustic exposure. The ultimate life functions are those that enable an animal to contribute to the population (or stock, or species, etc.).

I. Physiology-Hearing Threshold Shift

In mammals, high-intensity sound may rupture the eardrum, damage the small bones in the middle ear, or over stimulate the electromechanical hair cells that convert the fluid motions caused by sound into neural impulses that are sent to the brain. Lower level exposures may cause a loss of hearing sensitivity, termed a threshold shift (TS) (Miller, 1974). Incidence of TS may be either permanent, referred to as permanent threshold shift (PTS), or temporary, referred to as temporary threshold shift (TTS). The amplitude, duration, frequency, and temporal pattern, and energy distribution of sound exposure all affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, generally, so does the amount of TS and recovery time. Human non-impulsive noise exposure guidelines are based on exposures of equal energy (the same SEL) producing equal amounts of hearing impairment regardless of how the sound energy is distributed in time (NIOSH 1998). Until recently, previous marine mammal TTS studies have also generally supported this equal energy relationship (Southall *et al.,* 2007). Three newer studies, two by Mooney *et al.* (2009a, 2009b) on a single bottlenose dolphin either exposed to playbacks of Navy MFAS or octave-band noise (4–8 kHz) and one by Kastak *et al.* (2007) on a single California sea lion exposed to airborne octave-band noise (centered at 2.5 kHz), concluded that for all noise exposure situations the equal energy relationship may not be the best indicator to predict TTS onset levels. Generally, with sound exposures of equal energy, those that were quieter (lower sound pressure level [SPL]) with longer duration were found to induce TTS onset more than those of louder (higher SPL) and shorter duration (more similar to noise from AS Cherry Point exercises). For intermittent sounds, less TS will occur than from a continuous exposure with the same energy (some recovery will occur between exposures) (Kryter *et al.,* 1966; Ward, 1997). Additionally, though TTS is temporary, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). However, these studies highlight the inherent complexity of predicting TTS onset in marine mammals, as well as the importance of considering exposure duration when assessing potential impacts.

PTS consists of non-recoverable physical damage to the sound receptors in the ear, which can include total or partial deafness, or an impaired ability to hear sounds in specific frequency ranges; PTS is considered Level A harassment. TTS is recoverable and is considered to result from temporary, non-injurious impacts to hearing-related tissues; TTS is considered Level B harassment.

Permanent Threshold Shift

Auditory trauma represents direct mechanical injury to hearing related structures, including tympanic membrane rupture, disarticulation of the middle ear ossicles, and trauma to the inner ear structures such as the organ of Corti and the associated hair cells. Auditory trauma is irreversible and considered to be an injury that could result in PTS. PTS results from exposure to intense sounds that cause a permanent loss of inner or outer cochlear hair cells or exceed the elastic limits of certain tissues and membranes in the middle and inner ears and result in changes in the chemical composition of the inner ear fluids. In some cases, there can be total or partial deafness across all frequencies, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges. There is no empirical data for onset of PTS in any marine mammal, and therefore, PTS-onset must be estimated from TTS-onset measurements and from the rate of TTS growth with increasing exposure levels above the level eliciting TTS-onset. PTS is presumed to be likely if the hearing threshold is reduced by ≥ 40 dB (i.e., 40 dB of TTS). Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals.

Temporary Threshold Shift

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter, 1985). Southall *et al.* (2007) indicate that although PTS is a tissue injury, TTS is not because the reduced hearing sensitivity following exposure to intense sound results primarily from fatigue, not loss, of cochlear hair cells and supporting structures and is reversible. Accordingly, NMFS classifies TTS as Level B Harassment, not Level A Harassment (injury); however, NMFS does not consider the onset of TTS to be the lowest level at which Level B Harassment may occur (see *III. Behavior* section below this section).

Southall *et al.* (2007) considers a 6 dB TTS (*i.e.,* baseline hearing thresholds

are elevated by 6 dB) sufficient to be recognized as an unequivocal deviation and thus a sufficient definition of TTS onset. TTS in bottlenose dolphin hearing have been experimentally induced. For example, Finneran *et al.* (2002) exposed a trained captive bottlenose dolphin to a seismic watergun simulator with a single acoustic pulse. No TTS was observed in the dolphin at the highest exposure condition (peak: 207 kPa [30psi]; peak-to-peak: 228 dB re: 1 microPa; SEL: 188 dB re 1 microPa^2-s). Schludt *et al.* (2000) demonstrated temporary shifts in masked hearing thresholds in five bottlenose dolphins occurring generally between 192 and 201 dB rms (192 and 201 dB SEL) after exposure to intense, non-pulse, 1–s tones at, 3kHz, 10kHz, and 20 kHz. TTS onset occurred at mean sound exposure level of 195 dB rms (195 dB SEL). At 0.4 kHz, no subjects exhibited threshold shifts after SPL exposures of 193dB re: 1 microPa (192 dB re: 1 microPa^2-s). In the same study, at 75 kHz, one dolphin exhibited a TTS after exposure at 182 dB SPL re: 1 microPa but not at higher exposure levels. Another dolphin experienced no threshold shift after exposure to maximum SPL levels of 193 dB re: 1 microPa at the same frequency. Frequencies of explosives used at MCAS Cherry Point range from 1–25 kHz; the range where dolphin TTS onset occurred at 195 dB rms in the Schlundt *et al.* (2000) study.

Preliminary research indicates that TTS and recovery after noise exposure are frequency dependent and that an inverse relationship exists between exposure time and sound pressure level associated with exposure (Mooney *et al.,* 2005; Mooney, 2006). For example, Nachtigall *et al.* (2003) measured TTS in a bottlenose dolphin and found an average 11 dB shift following a 30 minute net exposure to OBN at a 7.5 kHz center frequency (max SPL of 179 dB re: 1 microPa; SEL: 212–214 dB re:1 microPa^2-s). No TTS was observed after exposure to the same duration and frequency noise with maximum SPLs of 165 and 171 dB re:1 microPa. After 50 minutes of exposure to the same 7.5 kHz frequency OBN, Natchigall *et al.* (2004) measured a 4–8 dB shift (max SPL: 160dB re 1microPa; SEL: 193–195 dB re:1 microPa^2-s). Finneran *et al.* (2005) concluded that a sound exposure level of 195 dB re 1 μPa2-s is a reasonable threshold for the onset of TTS in bottlenose dolphins exposed to mid-frequency tones.

II. Stress Response

An acoustic source is considered a potential stressor if, by its action on the animal, via auditory or non-auditory means, it may produce a stress response in the animal. Here, the stress response will refer to an increase in energetic expenditure that results from exposure to the stressor and which is predominantly characterized by either the stimulation of the sympathetic nervous system (SNS) or the hypothalamic-pituitary-adrenal (HPA) axis (Reeder and Kramer, 2005). The SNS response to a stressor is immediate and acute and is characterized by the release of the catecholamine neurohormones norepinephrine and epinephrine (i.e., adrenaline). These hormones produce elevations in the heart and respiration rate, increase awareness, and increase the availability of glucose and lipids for energy. The HPA response is ultimately defined by increases in the secretion of the glucocorticoid steroid hormones, predominantly cortisol in mammals. The presence and magnitude of a stress response in an animal depends on a number of factors. These include the animal's life history stage (e.g., neonate, juvenile, adult), the environmental conditions, reproductive or developmental state, and experience with the stressor. Not only will these factors be subject to individual variation, but they will also vary within an individual over time. The stress response may or may not result in a behavioral change, depending on the characteristics of the exposed animal. However, provided a stress response occurs, we assume that some contribution is made to the animal's allostatic load. Any immediate effect of exposure that produces an injury is assumed to also produce a stress response and contribute to the allostatic load. Allostasis is the ability of an animal to maintain stability through change by adjusting its physiology in response to both predictable and unpredictable events (McEwen and Wingfield, 2003). If the acoustic source does not produce tissue effects, is not perceived by the animal, or does not produce a stress response by any other means, we assume that the exposure does not contribute to the allostatic load. Additionally, without a stress response or auditory masking, it is assumed that there can be no behavioral change.

III. Behavior

Changes in marine mammal behavior in response to anthropogenic noise may include altered travel directions, increased swimming speeds, changes in dive, surfacing, respiration and feeding patterns, and changes in vocalizations. As described above, lower level physiological stress responses could also co-occur with altered behavior; however, stress responses are more difficult to detect and fewer data exist relative to specific received levels of sound.

Acoustic Masking

Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000). Masking, or auditory interference, generally occurs when sounds in the environment are louder than, and of a similar frequency as, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

Southall *et al.* (2007) defines auditory masking as the partial or complete reduction in the audibility of signals due to the presence of interfering noise with the degree of masking depending on the spectral, temporal, and spatial relationships between signals and masking noise, as well as the respective received levels. Masking of sender communication space can be considered as the amount of change in a sender's communication space caused by the presence of other sounds, relative to a pre-industrial ambient noise condition (Clark *et al.,* 2009). Unlike auditory fatigue, which always results in a stress response because the sensory tissues are being stimulated beyond their normal physiological range, masking may or may not result in a stress response, depending on the degree and duration of the masking effect. Masking may also result in a unique circumstance where an animal's ability to detect other sounds is compromised without the animal's knowledge. This could conceivably result in sensory impairment and subsequent behavior change; in this case, the change in behavior is the lack of a response that would normally be made if sensory impairment did not occur. For this reason, masking also may lead directly to behavior change without first causing a stress response. Projecting noise into the marine environment which causes acoustic masking is considered Level B harassment as it can disrupt natural behavioral patterns by interrupting or

limiting the marine mammal's receipt or transmittal of important information or environmental cues. To compensate for masking, marine mammals, including bottlenose dolphins, are known to increase their levels of vocalization as a function of background noise by increasing call repetition and amplitude, shifting calls higher frequencies, and/or changing the structure of call content (Lesage *et al.,* 1999; Scheifele *et al.,* 2005; McIwem, 2006).

While it may occur temporarily, we do not expect auditory masking to result in detrimental impacts to an individual's or population's survival, fitness, or reproductive success. Dolphins are not confined to the BT ranges; allowing for movement out of area to avoid masking impacts. The Marine Corps would also conduct visual sweeps of the area before any training exercise and implement training delay mitigation measures if a dolphin is sighted within designated zones (see *Proposed Mitigation Measures* section). As discussed previously, the Marine Corps has been working with DUML to collect baseline information on dolphins in Pamlico Sound, specifically dolphin abundance and habitat use around the BTs.

Assessment of Marine Mammal Impacts from Explosive Ordnances

MCAS Cherry Point plans to use five types of explosive sources during its training exercises: 2.75-inch Rocket High Explosives, 5-inch Rocket High Explosives, 30 mm High Explosives, 40 mm High Explosives, and G911 grenades. The underwater explosions from these weapons would send a shock wave and blast noise through the water, release gaseous by-products, create an oscillating bubble, and cause a plume of water to shoot up from the water surface. The shock wave and blast noise are of most concern to marine animals. In general, potential impacts from explosive detonations can range from brief effects (such as short term behavioral disturbance), tactile perception, physical discomfort, slight injury of the internal organs and the auditory system, to death of the animal (Yelverton *et al.,* 1973; O'Keeffe and Young, 1984; DoN, 2001).

Explosives produce significant acoustic energy across several frequency decades of bandwidth (i.e., broadband). Propagation loss is sufficiently sensitive to frequency as to require model estimates at several frequencies over such a wide band. The effects of an underwater explosion on a marine mammal depend on many factors, including the size, type, and depth of both the animal and the explosive charge; the depth of the water column; and the standoff distance between the charge and the animal, as well as the sound propagation properties of the environment. The net explosive weight (or NEW) of an explosive is the weight of TNT required to produce an equivalent explosive power. The detonation depth of an explosive is particularly important due to a propagation effect known as surface-image interference. For sources located near the sea surface, a distinct interference pattern arises from the coherent sum of the two paths that differ only by a single reflection from the pressure-release surface. As the source depth and/or the source frequency decreases, these two paths increasingly, destructively interfere with each other, reaching total cancellation at the surface (barring surface-reflection scattering loss). Marine Corps conservatively estimates that all explosives would detonate at a 1.2 m (3.9 ft) water depth. This is the worst case scenario as the purpose of training is to hit the target, resulting in an in-air explosion.

The firing sequence for some of the munitions consists of a number of rapid bursts, often lasting a second or less. The maximum firing time is 10–15 second bursts. Due to the tight spacing in time, each burst can be treated as a single detonation. For the energy metrics, the impact area of a burst is computed using a source energy spectrum that is the source spectrum for a single detonation scaled by the number of rounds in a burst. For the pressure metrics, the impact area for a burst is the same as the impact area of a single round. For all metrics, the cumulative impact area of an event consisting of a certain number of bursts is merely the product of the impact area of a single burst and the number of bursts, as would be the case if the bursts are sufficiently spaced in time or location as to insure that each burst is affecting a different set of marine wildlife.

Physical damage of tissues resulting from a shock wave (from an explosive detonation) is classified as an injury. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000) and gas containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible to damage (Goertner, 1982; Hill 1978; Yelverton *et al.,* 1973). Nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Severe damage (from the shock wave) to the ears can include tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear.

Non-lethal injury includes slight injury to internal organs and the auditory system; however, delayed lethality can be a result of individual or cumulative sublethal injuries (DoN, 2001). Immediate lethal injury would be a result of massive combined trauma to internal organs as a direct result of proximity to the point of detonation (DoN, 2001). Exposure to distance explosions could result only in behavioral changes. Masked underwater hearing thresholds in two bottlenose dolphins and one beluga whale have been measured before and after exposure to impulsive underwater sounds with waveforms resembling distant signatures of underwater explosions (Finneran *et al.,* 2000). The authors found no temporary shifts in masked-hearing thresholds, defined as a 6–dB or larger increase in threshold over pre-exposure levels, had been observed at the highest impulse level generated (500 kg at 1.7 km, peak pressure 70 kPa); however, disruptions of the animals' trained behaviors began to occur at exposures corresponding to 5 kg at 9.3 km and 5 kg at 1.5 km for the dolphins and 500 kg at 1.9 km for the beluga whale.

Generally, the higher the level of impulse and pressure level exposure, the more severe the impact to an individual. While, in general, dolphins could sustain injury or mortality if within very close proximity to in-water explosion, monitoring and mitigation measures employed by the Marine Corps before and during training exercises, as would be required under any Authorization issued, are designed to avoid any firing if a marine mammal is sighted within designated BT zones (see Proposed Mitigation and Monitoring section). No marine mammal injury or death has been attributed to the specified activities described in the application. As such, and due to implementation of the proposed mitigation and monitoring measures, bottlenose dolphin injury, serious injury or mortality is not anticipated nor would any be authorized.

Inert Ordnances

The potential risk to marine mammals from non-explosive ordnance entails two possible sources of impacts: elevated sound levels or the ordnance physically hitting an animal. The latter is discussed below in the *Munition Presence* section. The USMC provided information that the noise fields

generated in water by the firing of non-explosive ordnance indicate that the energy radiated is about 1 to 2 percent of the total kinetic energy of the impact. This energy level (and likely peak pressure levels) is well below the TTS-energy threshold, even at 1-m from the impact and is not expected to be audible to marine mammals. As such, the noise generated by the in-water impact of non-explosive ordnance will not result in take of marine mammals.

Training Debris

In addition to behavioral and physiological impacts from live fire and ammunition testing, we have preliminarily analyzed impacts from presence of munition debris in the water, as described in the Marine Corps' application and 2009 EA. These impacts include falling debris, ingestion of expended ordnance, and entanglement in parachute debris.

Ingestion of marine debris by marine mammals can cause digestive tract blockages or damage the digestive system (Gorzelany, 1998; Stamper *et al.,* 2006). Debris could be either the expended ordnance or non-munition related products such as chaff and self protection flares. Expended ordnance would be small and sink to the bottom. Chaff is composed of either aluminum foil or aluminum-coated glass fibers designed to act as a visual smoke screen; hiding the aircraft from enemy radar. Chaff also serves as a decoy for radar detection, allowing aircraft to maneuver or egress from the area. The foil type currently used is no longer manufactured, although it remains in the inventory and is used primarily by B–52 bombers. Both types of chaff are cut into dipoles ranging in length from 0.3 to over 2.0 inches. The aluminum foil dipoles are 0.45 mils (0.00045 inches) thick and 6 to 8 mils wide. The glass fiber dipoles are generally 1 mil (25.4 microns) in diameter, including the aluminum coating. Chaff is packed into about 4-ounce bundles. The major components of chaff are silica, aluminum, and stearic acid; all naturally prevalent in the environment.

Based on the dispersion characteristics of chaff, concentrations around the BTs would be low. For example, Hullar *et al.* (1999) calculated that a 4.97-mile by 7.46-mile area (37.1 km^2) would be affected by deployment of a single cartridge containing 150 grams of chaff; however, concentration would only be about 5.4 grams per square nautical mile. This corresponds to fewer than 179,000 fibers per square nautical mile or fewer than 0.005 fibers per square foot.

Self-protection flares are deployed to mislead or confuse heat-sensitive or heat-seeking anti-aircraft systems. The flares are magnesium pellets that, when ignited, burn for a short period of time (less than 10 seconds) at 2,000 degrees Fahrenheit. Air-deployed LUU–2 high-intensity illumination flares are used to illuminate targets, enhancing a pilot's ability to see targets while using Night Vision Goggles. The LUU–2B Flare has a light output rating of 1.8 x 10(6) candlepower and at 1,000 feet altitude illuminates a circle on the ground of 500 meters. The LUU–2 is housed in a pod or canister and is deployed by ejection. The mechanism has a timer on it that deploys the parachute and ignites the flare candle. The flare candle burns magnesium at high temperature, emitting an intense bright white light. The LUU–2 has a burn time of approximately 5 minutes while suspended from a parachute. The pyrotechnic candle consumes the flare housing, reducing flare weight, which in turn slows the rate of fall during the last 2 minutes of burn time. At candle burnout an explosive bolt is fired, releasing one parachute support cable, which causes the parachute to collapse.

Ingestion of debris by dolphins is not likely, as dolphins typically eat fish and other moving prey items. We solicited information on evidence of debris ingestion from two marine mammal veterinarians who have performed many necropsies on the protected species of North Carolina's waters. In their experience, no necropsies of bottlenose dolphins have revealed evidence of munition, parachute, or chaff ingestion (pers. comm., Drs. C. Harms and D. Rostein, November 14, 2009). However, it was noted evidence of chaff ingestion would be difficult to detect. In the chance that dolphins do ingest chaff, the filaments are so fine they would likely pass through the digestive system without complication. However, if the chaff is durable enough, it might act as a linear foreign body. In such case, the intestines bunch up on the line restricting movement of the line resulting in an obstruction. The peristalsis on an immovable thin line can cause intestinal lacerations and perforations (pers. comm., C. Harms, November 14, 2009). This is a well-known complication in cats when they ingest thread and which occurs occasionally with sea turtles ingesting fishing line. The longevity of chaff filaments, based upon dispersion rates, is unclear. Chaff exposed to synthetic seawater and aqueous environments in the pH range of 4–10 exhibited varying levels of degradation suggesting a short lifespan for the outer aluminum coating (Farrell and Siciliano, 1998). The underlying filament is a flexible silica core and composed of primarily silica dioxide. While no studies have been conducted to evaluate the effects of chaff ingestion on marine mammals, the effects are expected to be negligible based upon chaff concentration in the environment, size of fibers, and available toxicity data on fiberglass and aluminum. Given that the size of chaff fibers are no more than 2 inches long, tidal flushing reduces concentration in the environment, and chaff degradation rate, the chance of chaff ingestions is unlikely; however, if swallowed, impacts would be negligible.

Given that there is no evidence that dolphins ingest military debris; dolphins in the Sound forage on moving prey suspended in the water column while expended munition would sink; the property and dispersion characteristics of chaff make potential for ingestion discountable; and that Pamlico Sound is a tidal body of water with continuing flushing, we have preliminarily determined that the presence of training debris would not have an effect on dolphins in Pamlico Sound.

Although sometimes large, expended parachutes (e.g., those from the flares) are flimsy and structurally simple. Thus, we have preliminarily determined that the probability of entanglement with a dolphin is low. There are no known reports of live or stranded dolphins entangled in parachute gear; fishing gear is usually the culprit of reported entanglements. The Service's Marine Mammal Stranding Network (Network) has established protocol for reporting marine mammals in peril. Should any injured, stranded or entangled marine mammal be observed by USMC personnel during training exercises, the sighting would be reported to the Network within 24 hours of the observation.

Vessel and Aircraft Presence

The marine mammals most vulnerable to vessel strikes are slow-moving and/or spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (e.g., right whales, fin whales (*Balaenoptera physalus*), and sperm whales (*Physeter macrocephalus*)). Smaller marine mammals such as bottlenose dolphins (the only marine mammal that would be encountered at the BTs) are agile and move more quickly through the water, making them less susceptible to ship strikes. We are not aware of any vessel strikes of bottlenose dolphins in Pamlico Sound

during training operations. Therefore, we do not anticipate that Marine Corps vessels engaged in the specified activity would strike any marine mammals and no take from ship strike would be authorized in the proposed Authorization.

Behaviorally, marine mammals may or may not respond to the operation of vessels and associated noise. Responses to vessels vary widely among marine mammals in general, but also among different species of small cetaceans. Responses may include attraction to the vessel (Richardson *et al.,* 1995); altering travel patterns to avoid vessels (Constantine, 2001; Nowacek *et al.,* 2001; Lusseau, 2003, 2006); relocating to other areas (Allen and Read, 2000); cessation of feeding, resting, and social interaction (Baker *et al.,* 1983; Bauer and Herman, 1986; Hall, 1982; Krieger and Wing, 1984; Lusseau, 2003; Constantine *et al.,* 2004); abandoning feeding, resting, and nursing areas (Jurasz and Jurasz 1979; Dean *et al.,* 1985; Glockner-Ferrari and Ferrari 1985, 1990; Lusseau, 2005; Norris *et al.,* 1985; Salden, 1988; Forest, 2001; Morton and Symonds, 2002; Courbis, 2004; Bejder, 2006); stress (Romano *et al.,* 2004); and changes in acoustic behavior (Van Parijs and Corkeron, 2001). However, in some studies marine mammals display no reaction to vessels (Watkins, 1986; Nowacek *et al.,* 2003) and many odontocetes show considerable tolerance to vessel traffic (Richardson *et al.,* 1995). Dolphins may actually reduce the energetic cost of traveling by riding the bow or stern waves of vessels (Williams *et al.,* 1992; Richardson *et al.,* 1995).

Dolphins within Pamlico Sound are continually exposed to recreational, commercial, and military vessels. Richardson *et al.* (1995) addresses in detail three responses that marine mammals may experience when exposed to anthropogenic activities: tolerance; habituation; and sensitization. More recent publications provide variations on these themes rather than new data (NRC, 2003). Marine mammals are often seen in regions with much human activity; thus, certain individuals or populations exhibit some tolerance of anthropogenic noise and other stimuli. Animals will tolerate a stimulus they might otherwise avoid if the benefits in terms of feeding, mating, migrating to traditional habitats, or other factors outweigh the negative aspects of the stimulus (NRC, 2003). In many cases, tolerance develops as a result of habituation. The NRC (2003) defines habituation as a gradual waning of behavioral responsiveness over time as animals learn that a repeated or ongoing stimulus lacks significant consequences for the animals. Contrarily, sensitization occurs when an animal links a stimulus with some degree of negative consequence and as a result increases responsiveness to that human activity over time (Richardson *et al.,* 1995). For example, seals and whales are known to avoid previously encountered vessels involved in subsistence hunts (Walker, 1949; Ash, 1962; Terhune, 1985) and bottlenose dolphins that had previously been captured and released from a 7.3 m boat involved in health studies were documented to flee when that boat approached closer than 400 m, whereas dolphins that had not been involved in the capture did not display signs of avoidance of the vessel (Irvine *et al.,* 1981). Because dolphins in Pamlico Sound are continually exposed to vessel traffic that does not present immediate danger to them, it is likely animals are both tolerant and habituated to vessels.

The specified activities also involve aircraft, which marine mammals are known to react (Richardson *et al.,* 1995). Aircraft produce noise at frequencies that are well within the frequency range of cetacean hearing and also produce visual signals such as the aircraft itself and its shadow (Richardson *et al.,* 1995, Richardson & Würsig, 1997). A major difference between aircraft noise and noise caused by other anthropogenic sources is that the sound is generated in the air, transmitted through the water surface and then propagates underwater to the receiver, diminishing the received levels to significantly below what is heard above the water's surface. Sound transmission from air to water is greatest in a sound cone 26 degrees directly under the aircraft.

Reactions of odontocetes to aircraft have been reported less often than those of pinnipeds. Responses to aircraft include diving, slapping the water with pectoral fins or tail fluke, or swimming away from the track of the aircraft (Richardson *et al.,* 1995). The nature and degree of the response, or the lack thereof, are dependent upon nature of the flight (e.g., type of aircraft, altitude, straight vs. circular flight pattern). Würsig *et al.* (1998) assessed the responses of cetaceans to aerial surveys in the northcentral and western Gulf of Mexico using a DeHavilland Twin Otter fixed-wing airplane. The plane flew at an altitude of 229 m at 204 km/hr. A minimum of 305 m straight line distance from the cetaceans was maintained. Water depth was 100–1000m. Bottlenose dolphins most commonly responded by diving (48 percent), while 14 percent responded by moving away. Other species (e.g., beluga whale (*Delphinapterus leucas*), sperm whale) show considerable variation in reactions to aircraft but diving or swimming away from the aircraft are the most common reactions to low flights (less than 500 m).

Anticipated Effects on Habitat

Detonations of live ordnance would result in temporary modification to water properties. As described above, an underwater explosion from these weapon would send a shock wave and blast noise through the water, release gaseous by-products, create an oscillating bubble, and cause a plume of water to shoot up from the water surface. However, these would be temporary and not expected to last more than a few seconds. Because dolphins are not expected to be in the area during live firing, due to monitoring and mitigation measure implementation, they would not be subject to any short term habitat alterations.

Similarly, no long term impacts with regard to hazardous constituents are expected to occur. MCAS Cherry Point has an active Range Environmental Vulnerability Assessment (REVA) program in place to monitor impacts to habitat from its activities. One goal of REVA is to determine the horizontal and vertical concentration profiles of heavy metals, explosives constituents, perchlorate nutrients, and dissolved salts in the sediment and seawater surrounding BT–9 and BT–11. The preliminary results of the sampling indicate that explosive constituents (e.g., trinitrotoluene (TNT), cyclotrimethylenetrinitramine (RDX), and hexahydro-trinitro-triazine (HMX), as described in Hazardous Constituents [Subchapter 3.2.7.2] of the MCAS Cherry Point Range Operations EA, were not detected in any sediment or water sample surrounding the BTs. Metals were not present above toxicity screening values. Perchlorate was detected in a few sediment samples above the detection limit (0.21 ppm), but below the reporting limit (0.6 ppm). The ongoing REVA would continue to evaluate potential munitions constituent migration from operational range areas to off-range areas and MCAS Cherry Point.

While it is anticipated that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat and prey resources is temporary and reversible and considered in further detail earlier in this document, as behavioral modification. The main impact associated with the proposed activity would be temporarily elevated noise levels and the associated direct

effects on marine mammals, previously discussed in this notice.

Summary of Previous Monitoring

The Marine Corps complied with the mitigation and monitoring required under the previous authorizations (2010–2012). In accordance with the 2010–11 IHA, USMC submitted a final monitoring report, which described the activities conducted and observations made. USMC did not record observations of any marine mammals during training exercises. The only recorded observations—which were of bottlenose dolphins—were on two occasions by maintenance vessels engaged in target maintenance. No marine mammals were observed during range sweeps, air to ground activities, surface to surface activities (small boats), or ad hoc via range cameras. Table 6 details the number of sorties conducted, by air and water, at each target. The number of sorties conducted does not relate to the total amount of munitions expended, as the training requirements for the specific military unit conducting the sortie determine the munitions loading for the air platform or watercraft during each sortie. In addition, munitions expenditures may be determined by the loading specifications of the specific aircraft and vessels used in the training exercise.

TABLE 6—SORTIES CONDUCTED AT BT–9 AND BT–11

Mission type	BT–9	BT–11
Air-to-surface	1,554	4,251
Surface-to-surface (water-to-water)	223	105
Total	1,777	4,356

The total amount of ordnance expended at BT–9 and BT–11 under the 2010–11 IHA was 878,625 and 693,612 respectively (Table 7). These amounts represent 98 and 62 percent of the estimated annual maximum ordnance expenditures. The amounts of ordnance expended at the BTs account for all use of the targets. There are five types of explosive sources used at BT–9: 2.75-inc Rocket High Explosives, 5-inch Rocket High Explosives, 30 mm High Explosives, 40 mm High Explosives, and G911 grenades. No explosive munitions are used at BT–11. Based on this information, the Marine Corps did not exceed the authorized level of take.

TABLE 7—ORDNANCE USAGE AT BT–9

Munitions expenditures	Total rounds		Percentage of maximum	
	BT–9	BT–11	BT–9	BT–11
Small arms, excluding .50 cal	355,718	363,899	68	72
.50 cal	410,815	246,255	160	75
Large arms (Live)	480 (all 40 mm)	N/A	4	N/A
Large arms (Inert)	108,811	79,531	117	33
Rockets (Live)	48 (all 2.75 in)	N/A	20	N/A
Rockets (Inert)	185	2,018	26	44
Bombs/Grenades (Live)	0	N/A	0	N/A
Bombs/Grenades (Inert)	2,086	1,697	51	8
Pyrotechnics	482	212	11	2
Total	878,625	693,612	98	62

The Marine Corps will submit a monitoring report for the 2012 training season which expired on December 31, 2012, to us no later than March 31, 2013.

Proposed Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, we must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

The NDAA of 2004 amended the MMPA as it relates to military-readiness activities and the ITA process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. The training activities described in the Marine Corp's application are considered military readiness activities.

The Marine Corps, in collaboration with us, has worked to identify potential practicable and effective mitigation measures, which include a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the ''military-readiness activity''. These proposed mitigation measures are listed below.

(1) *Range Sweeps:* The VMR–1 squadron, stationed at MCAS Cherry Point, includes three specially equipped HH–46D helicopters. The primary mission of these aircraft, known as PEDRO, is to provide search and rescue for downed 2d Marine Air Wing aircrews. On-board are a pilot, co-pilot, crew chief, search and rescue swimmer, and a medical corpsman. Each crew member has received extensive training in search and rescue techniques, and is therefore particularly capable at spotting objects floating in the water.

PEDRO crew would conduct a range sweep the morning of each exercise day prior to the commencement of range operations. The primary goal of the pre-exercise sweep is to ensure that the target area is clear of fisherman, other personnel, and protected species. The sweep is flown at 100–300 meters above the water surface, at airspeeds between 60–100 knots. The path of the sweep runs down the western side of BT–11, circles around BT–9 and then continues down the eastern side of BT–9 before leaving. The sweep typically takes 20–30 minutes to complete. The PEDRO crew is able to communicate directly with range personnel and can provide immediate notification to range operators. The PEDRO aircraft would remain in the area of a sighting until clear if possible or as mission requirements dictate.

If marine mammals are sighted during a range sweep, sighting data will be collected and entered into the US

Marine Corps sighting database, web-interface, or report generator and this information would be relayed to the training Commander. Sighting data includes the following (collected to the best of the observer's ability): (1) Species identification; (2) group size; (3) the behavior of marine mammals (e.g., milling, travel, social, foraging); (4) location and relative distance from the BT; (5) date, time and visual conditions (e.g., Beaufort sea state, weather) associated with each observation; (6) direction of travel relative to the BT; and (7) duration of the observation.

(2) *Cold Passes:* All aircraft participating in an air-to-surface exercise would be required to perform a ''cold pass'' immediately prior to ordnance delivery at the BTs both day and night. That is, prior to granting a ''First Pass Hot'' (use of ordnance), pilots would be directed to perform a low, cold (no ordnance delivered) first pass which serves as a visual sweep of the targets prior to ordnance delivery to determine if unauthorized civilian vessels or personnel, or protected species, are present. The cold pass is conducted with the aircraft (helicopter or fixed-winged) flying straight and level at altitudes of 200–3000 feet over the target area. The viewing angle is approximately 15 degrees. A blind spot exists to the immediate rear of the aircraft. Based upon prevailing visibility, a pilot can see more than one mile forward upon approach. The aircrew and range personnel make every attempt to ensure clearance of the area via visual inspection and remotely operated camera operations (see Proposed Monitoring and Reporting section). The Range Controller may deny or approve the First Pass Hot clearance as conditions warrant.

(3) *Delay of Exercises:* An active range would be considered ''fouled'' and not available for use if a marine mammal is present within 1000 yards (914 m) of the target area at BT–9 or anywhere within Rattan Bay (BT–11). Therefore, if a marine mammal is sighted within 1000 yards (914 m) of the target at BT–9 or anywhere within Rattan Bay at BT–11 during the cold pass or from range camera detection, training would be delayed until the marine mammal moves beyond and on a path away from 1000 yards (914 m) from the BT–9 target or out of Rattan Bay at BT–11. This mitigation applies to both air-to-surface and surface-to-surface exercises.

(4) *Range Camera Use:* To increase the safety of persons or property near the targets, Range Operation and Control personnel monitor the target area through tower mounted safety and surveillance cameras. The remotely operated range cameras are high resolution and, according to range personnel, allow a clear visual of a duck floating near the target. The cameras allow viewers to see animals at the surface and breaking the surface, but not underwater.

A new, enhanced camera system has been purchased and will be installed on BT–11 towers 3 and 7, and on both towers at BT–9. The new camera system has night vision capabilities with resolution levels near those during daytime. Lenses on the camera system have focal lengths of 40 mm to 2200 mm (56x), with view angles of 18° 10′ and 13° 41′, respectively. The field of view when zoomed in on the Rattan Bay targets will be 23 ft wide by 17 ft high, and on the mouth of Rattan Bay itself 87 ft wide by 66 ft high.

Again, in the event that a marine mammal is sighted within 1000 yards (914 m) of the BT–9 target, or anywhere within Rattan Bay, the target would be declared fouled. Operations may commence in the fouled area after the animal(s) have moved 1000 yards (914 m) from the BT–9 target and/or out of Rattan Bay.

(5) *Vessel Operation:* All vessels used during training operations would abide by the Service's Southeast Regional Viewing Guidelines designed to prevent harassment to marine mammals (*http://www.nmfs.noaa.gov/pr/education/southeast/*).

(6) *Stranding Network Coordination:* The USMC would coordinate with the local NMFS Stranding Coordinator for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that may occur at any time during training activities or within 24 hours after completion of training.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that we must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Proposed Monitoring

The Marine Corps proposes to conduct the following to fulfill the necessary monitoring and reporting that would result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals expected to be present within the action area:

(1) *Protected Species Observer Training:* Pilots, operators of small boats, and other personnel monitoring for marine mammals would be required to take the Marine Species Awareness Training (Version 2), maintained and promoted by the Department of the Navy. This training would make personnel knowledgeable of marine mammals, protected species, and visual cues related to the presence of marine mammals and protected species.

(2) *Weekly and Post-Exercise Monitoring:* Post-exercise monitoring would be conducted concomitant to the next regularly scheduled pre-exercise sweep. Weekly monitoring events would include a maximum of five pre-exercise and four post-exercise sweeps. The maximum number of days that would elapse between pre- and post-exercise monitoring events would be approximately three days, and would normally occur on weekends. If marine mammals are observed during this monitoring, sighting data identical to those collected by PEDRO crew would be recorded.

(3) *Long-term Monitoring:* The Marine Corps has awarded DUML duties to obtain abundance, group dynamics (e.g., group size, age census), behavior, habitat use, and acoustic data on the bottlenose dolphins which inhabit Pamlico Sound, specifically those around BT–9 and BT–11. DUML began conducting boat-based surveys and passive acoustic monitoring of bottlenose dolphins in Pamlico Sound in 2000 (Read *et al.,* 2003) and specifically at BT–9 and BT–11 in 2003 (Mayer, 2003). To date, boat-based surveys indicate that bottlenose dolphins may be resident to Pamlico Sound and use BT restricted areas on a frequent basis. Passive acoustic monitoring (PAM) is providing more detailed insight into how dolphins use the two ranges, by monitoring for their vocalizations year-round, regardless of weather conditions or darkness. In addition to these surveys, DUML scientists are testing a real-time passive acoustic monitoring system at BT–9 that will allow automated detection of bottlenose dolphin whistles, providing yet another method of detecting dolphins prior to training operations. Although it is unlikely this PAM system would be active for purposes of implementing mitigation measures before an exercise prior to expiration of the proposed Authorization, it could be operational for future MMPA incidental take authorizations and would be

evaluated for effectiveness at the appropriate time.

(4) *Reporting:* The Marine Corps would submit a report to us within 90 days after expiration of the Authorization or, if a subsequent incidental take authorization is requested, within 120 days prior to expiration of the Authorization. The report would summarize the type and amount of training exercises conducted, all marine mammal observations made during monitoring, and if mitigation measures were implemented. The report would also address the effectiveness of the monitoring plan in detecting marine mammals.

General Notification of Injured or Dead Marine Mammals

The Marine Corps would systematically observe training operations for injured or disabled marine mammals. In addition, the Marine Corps would monitor the principal marine mammal stranding networks and other media to correlate analysis of any dolphin strandings that could potentially be associated with MCAS Cherry Point training operations.

Marine Corps personnel would ensure that we are notified immediately or as soon as clearance procedures allow if an injured, stranded, or dead marine mammal is found during or shortly after, and in the vicinity of, any training operations. The Marine Corps would provide us with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that an injured, stranded, or dead marine mammal is found by Marine Corps personnel that is not in the vicinity of, or found during or shortly after operations, the Marine Corps personnel would report the same information as listed above as soon as operationally feasible and clearance procedures allow.

General Notification of a Ship Strike

In the event of a vessel strike, at any time or place, the Marine Corps shall do the following:

- Immediately report to us the species identification (if known), location (lat/long) of the animal (or the strike if the animal has disappeared), and whether the animal is alive or dead (or unknown);
- Report to us as soon as operationally feasible the size and length of the animal, an estimate of the injury status (e.g., dead, injured but alive, injured and moving, unknown, etc.), vessel class/type and operational status;
- Report to us the vessel length, speed, and heading as soon as feasible; and
- Provide us a photo or video, if equipment is available.

Estimated Take by Incidental Harassment

The following provides the Marine Corps' model for take of dolphins from explosives (without consideration of mitigation and the conservative assumption that all explosives would land in the water and not on the targets or land) and potential for direct hits and our analysis of potential harassment from small vessel and aircraft operations.

Acoustic Take Criteria

For the purposes of an MMPA incidental take authorization, three levels of take are identified: Level B harassment; Level A harassment; and mortality (or serious injury leading to mortality). The categories of marine mammal responses (physiological and behavioral) that fall into harassment categories were described previously in this notice. A method to estimate the number of individuals that will be taken, pursuant to the MMPA, based on the proposed action has been derived. To this end, we use acoustic criteria that estimate at what received level Level B harassment, Level A harassment, and mortality (or serious injury) of marine mammals would occur. The acoustic criteria for underwater detonations are comprehensively explained in our proposed and final rulemakings for the U.S. Navy's Cherry Point Range Operations (74 FR 11057; 74 FR 28370). We summarize them here:

Criteria and thresholds for estimating the exposures from a single explosive activity on marine mammals were established for the Seawolf Submarine Shock Test Final Environmental Impact Statement (FEIS) (''Seawolf'') and subsequently used in the USS Winston S. Churchill (DDG 81) Ship Shock FEIS (''Churchill'') (DoN, 1998 and 2001). We adopted these criteria and thresholds in final rule on the unintentional taking of marine animals occurring incidental to the shock testing which involved large explosives (65 FR 77546; December 12, 2000). Because no large explosives (greater than 1000 lbs NEW) would be used at Cherry Point during the specified activities, a revised acoustic criterion for small underwater explosions (i.e., 23 pounds per square inch [psi] instead of previous acoustic criteria of 12 psi for peak pressure over all exposures) has been established to predict onset of TTS.

I.1. Thresholds and Criteria for Injurious Physiological Impacts

I.1.a. Single Explosion

For injury, NMFS uses dual criteria, eardrum rupture (i.e. tympanic-membrane injury) and onset of slight lung injury, to indicate the onset of injury. The threshold for tympanic-membrane (TM) rupture corresponds to a 50 percent rate of rupture (i.e., 50 percent of animals exposed to the level are expected to suffer TM rupture). This value is stated in terms of an Energy Flux Density Level (EL) value of 1.17 inch pounds per square inch (in-lb/in2), approximately 205 dB re 1 microPa^2-sec.

The threshold for onset of slight lung injury is calculated for a small animal (a dolphin calf weighing 26.9 lbs), and is given in terms of the ''Goertner modified positive impulse,'' indexed to 13 psi-msec (DoN, 2001). This threshold is conservative since the positive impulse needed to cause injury is proportional to animal mass, and therefore, larger animals require a higher impulse to cause the onset of injury. This analysis assumed the marine species populations were 100 percent small animals. The criterion with the largest potential impact range (most conservative), either TM rupture (energy threshold) or onset of slight lung injury (peak pressure), will be used in the analysis to determine Level A exposures for single explosive events.

For mortality and serious injury, we use the criterion corresponding to the onset of extensive lung injury. This is conservative in that it corresponds to a 1 percent chance of mortal injury, and yet any animal experiencing onset severe lung injury is counted as a lethal exposure. For small animals, the threshold is given in terms of the Goertner modified positive impulse, indexed to 30.5 psi-msec. Since the Goertner approach depends on propagation, source/animal depths, and animal mass in a complex way, the actual impulse value corresponding to the 30.5 psi-msec index is a complicated calculation. To be conservative, the analysis used the mass of a calf dolphin (at 26.9 lbs) for 100 percent of the populations.

I.1.b. Multiple Explosions

For multiple explosions, the Churchill approach had to be extended to cover multiple sound events at the same training site. For multiple exposures, accumulated energy over the entire training time is the natural extension for energy thresholds since energy accumulates with each subsequent shot (detonation); this is consistent with the

treatment of multiple arrivals in Churchill. For positive impulse, it is consistent with the Churchill final rule to use the maximum value over all impulses received.

I.2. Thresholds and Criteria for Non-Injurious Physiological Effects

To determine the onset of TTS (non-injurious harassment)—a slight, recoverable loss of hearing sensitivity, there are dual criteria: an energy threshold and a peak pressure threshold. The criterion with the largest potential impact range (most conservative), either the energy or peak pressure threshold, will be used in the analysis to determine Level B TTS exposures. We refer the reader to the following sections for descriptions of the thresholds for each criterion.

I.2.a. Single Explosion—TTS-Energy Threshold

The TTS energy threshold for explosives is derived from the Space and Naval Warfare Systems Center (SSC) pure-tone tests for TTS (Schlundt *et al.,* 2000; Finneran and Schlundt, 2004). The pure-tone threshold (192 dB as the lowest value) is modified for explosives by (a) interpreting it as an energy metric, (b) reducing it by 10 dB to account for the time constant of the mammal ear, and (c) measuring the energy in 1/3-octave bands, the natural filter band of the ear. The resulting threshold is 182 dB re 1 microPa^2-sec in any 1/3-octave band.

I.2.b. Single Explosion—TTS-Peak Pressure Threshold

The second threshold applies to all species and is stated in terms of peak pressure at 23 psi (about 225 dB re 1 μPa). This criterion was adopted for Precision Strike Weapons (PSW) Testing and Training by Eglin Air Force Base in the Gulf of Mexico (NMFS, 2005). It is important to note that for small shots near the surface (such as in this analysis), the 23-psi peak pressure threshold generally will produce longer impact ranges than the 182-dB energy metric. Furthermore, it is not unusual for the TTS impact range for the 23-psi pressure metric to actually exceed the without-TTS (behavioral change without onset of TTS) impact range for the 177-dB energy metric.

I.3. Thresholds and Criteria for Behavioral Effects

I.3.a. Single Explosion

For a single explosion, to be consistent with Churchill, TTS is the criterion for Level B harassment. In other words, because behavioral disturbance for a single explosion is likely to be limited to a short-lived startle reaction, use of the TTS criterion is considered sufficient protection and therefore behavioral effects (Level B behavioral harassment without onset of TTS) are not expected for single explosions.

I.3.b. Multiple Explosions—Without TTS

For multiple explosions, the Churchill approach had to be extended to cover multiple sound events at the same training site. For multiple exposures, accumulated energy over the entire uninterrupted firing time is the natural extension for energy thresholds since energy accumulates with each subsequent shot (detonation); this is consistent with the treatment of multiple arrivals in Churchill. Because multiple explosions could occur within a discrete time period, a new acoustic criterion-behavioral disturbance without TTS is used to account for behavioral effects significant enough to be judged as harassment, but occurring at lower noise levels than those that may cause TTS.

The threshold is based on test results published in Schlundt *et al.* (2000), with derivation following the approach of the Churchill FEIS for the energy-based TTS threshold. The original Schlundt *et al.* (2000) data and the report of Finneran and Schlundt (2004) are the basis for thresholds for behavioral disturbance without TTS. During this study, instances of altered behavior sometimes began at lower exposures than those causing TTS; however, there were many instances when subjects exhibited no altered behavior at levels above the onset-TTS levels. Regardless of reactions at higher or lower levels, all instances of altered behavior were included in the statistical summary. The behavioral disturbance without TTS threshold for tones is derived from the SSC tests, and is found to be 5 dB below the threshold for TTS, or 177 dB re 1 microPa^2-sec maximum energy flux density level in any ⅓-octave band at frequencies above 100 Hz for cetaceans.

II. Summary of Thresholds and Criteria for Impulsive Sounds

The effects, criteria, and thresholds used in the assessment for impulsive sounds are summarized in Table 8. The criteria for behavioral effects without physiological effects used in this analysis are based on use of multiple explosives from live, explosive firing at BT–9 only; no live firing occurs at BT–11.

TABLE 8—EFFECTS, CRITERIA, AND THRESHOLDS FOR IMPULSIVE SOUNDS

Effect	Criteria	Metric	Threshold	Effect
Mortality	Onset of Extensive Lung Injury.	Goertner modified positive impulse	indexed to 30.5 psi-msec (assumes 100 percent small animal at 26.9 lbs).	Mortality.
Injurious Physiological	50 percent Tympanic Membrane Rupture.	Energy flux density	1.17 in-lb/in^2 (about 205 dB re 1 microPa^2-sec).	Level A.
Injurious Physiological	Onset Slight Lung Injury	Goertner modified positive impulse	indexed to 13 psi-msec (assumes 100 percent small animal at 26.9 lbs).	Level A.
Non-injurious Physiological.	TTS	Greatest energy flux density level in any 1/3-octave band (> 100 Hz for toothed whales and > 10 Hz for baleen whales)—for total energy over all exposures.	182 dB re 1 microPa^2-sec.	Level B.
Non-injurious Physiological.	TTS	Peak pressure over all exposures	23 psi	Level B.
Non-injurious Behavioral	Multiple Explosions Without TTS.	Greatest energy flux density level in any 1/3-octave (> 100 Hz for toothed whales and > 10 Hz for baleen whales)—for total energy over all exposures (multiple explosions only).	177 dB re 1 microPa^2-sec.	Level B.

Take from Explosives

The Marine Corps conservatively modeled that all explosives would detonate at a 1.2 m (3.9 ft) water depth despite the training goal of hitting the target, resulting in an above water or on land explosion. For sources that are detonated at shallow depths, it is frequently the case that the explosion may breech the surface with some of the acoustic energy escaping the water column. The source levels presented in the table above have not been adjusted for possible venting nor does the subsequent analysis take this into account. Properties of explosive sources used at BT–9, including NEW, peak one-third-octave (OTO) source level, the approximate frequency at which the peak occurs, and rounds per burst are described in Table 9. Refer to Table 10 for distances to our harassment threshold levels from these sources.

TABLE 9—SOURCE WEIGHTS AND PEAK SOURCE LEVELS

Source type	New	Peak OTO SL	Frequency of Peak OTO SL	Rounds per burst
2.75-inch Rocket	4.8 lbs	223.9 dB re: 1μPa	~ 1500 Hertz (Hz)	1
5-inch Rocket	15.0 lbs	228.9 dB re: 1μPa	~ 1000 Hz	1
30 mm	0.1019 lbs	212.1 dB re: 1μPa	~ 2500 Hz	30
40 mm	0.1199 lbs	227.8 dB re: 1μPa	~ 1100 Hz	5
G911 Grenade	0.5	213.9 dB re: 1 μPa	~ 2500 Hz	1

TABLE 10—DISTANCES TO OUR HARASSMENT THRESHOLDS FROM EXPLOSIVE ORDNANCES

	Behavioral disturbance (177 dB energy)	TTS (23 psi)	Level A (13 psi-msec)	Mortality (31 psi-ms)
2.75-inch Rocket HE	N/A	172 m (564 ft)	47 m (154 ft)	27 m (89 ft)
5'' Rocket HE	N/A	255 m (837 ft)	61 m (200 ft)	39 m (128 ft)
30mm HE	209 m (686 ft)	N/A	10 m (33 ft)	5 m (16 ft)
40mm HE	144 m (472 ft)	N/A	10 m (33 ft)	5 m (16 ft)
G911 Grenade	N/A	83 m (272 ft)	21 m (33 ft)	10 m (33 ft)

To calculate take, the distances to which animals may be harassed were considered along with dolphin density. The density estimate from Read *et al.* (2003) was used to calculate take from munitions firing. As described in the *Description of Marine Mammals in the Area of the Specified Activity* section, this density, 0.183/km^2, was derived from boat based surveys in 2000 which covered all inland North Carolina waters. Note that estimated density of dolphins at BT–9 and BT–11, specifically, were calculated to be 0.11 dolphins/km^2, and 1.23 dolphins/km^2 respectively (Maher 2003), based on boat surveys conducted from July 2002 through June 2003 (excluding April, May, Sept. and Jan.). However, the USMC chose to estimate take of dolphins based on the higher density reported from the summer 2000 surveys (0.183/km^2). Additionally, take calculations for munition firing are based on 100 percent water detonation, although the goal of training is to hit the targets, and no pre-exercise monitoring or mitigation. Therefore, take estimates can be considered conservative.

Based on dolphin density and amount of munitions expended, there is very low potential for Level A harassment, serious injury, and mortality and monitoring and mitigation measures are anticipated to further negate this potential. Accordingly, we are not proposing to issue these levels of take. As portrayed in Table 9, the largest harassment zone (Level B) is within 209 m of a detonation in water; however, the Marine Corps has implemented a 1,000 m ''foul'' zone for BT–9 and anywhere within Raritan Bay for BT–11. In total, from firing of explosive ordnances, the USMC is requesting, and NMFS is proposing to issue, the incidental take of 25 bottlenose dolphins from Level B harassment (Table 11).

TABLE 11—NUMBER OF DOLPHINS POTENTIALLY TAKEN FROM EXPOSURE TO EXPLOSIVES BASED ON THRESHOLD CRITERIA

Ordnance type	Level B—behavioral (177dB re 1microPa^2-s)	Level B—TTS (23 psi)	Level A—Injurious (205 dB re 1microPa^2-s or 13 psi)	Mortality (30.5 psi)
2.75″ Rocket HE	N/A	4.97	0.17	0.06
5″ Rocket HE	N/A	3.39	0.09	0.03
30mm HE	2.55	N/A	0.05	0.00
40mm HE	12.60	N/A	0.16	0.01
G911 Grenade	N/A	0.87	0.03	0.01
Total	15.15	9.23	0.5	0.11

Take from Direct Hit

The potential risk of a direct hit to an animal in the target area is estimated to be so low it is discountable. A Range Air Installation Compatible Use Zone (RAICUZ) study generated the surface area or footprints of weapon impact areas associated with air-to-ground ordnance delivery (USMC 2001). Statistically, a weapon safety footprint describes the area needed to contain 99.99 percent of initial and ricochet impacts at the 95-percent confidence interval for each type of aircraft and ordnance utilized on the BTs. At both BT–9 and BT–11 the probability of deployed ordnance landing in the impact footprint is essentially 1.0, since the footprints were designed to contain 99.99 percent of impacts, including ricochets. However, only 36 percent of the weapon footprint for BT–11 is over water in Rattan Bay, so the likelihood of a weapon striking an animal at the BT in Rattan Bay is 64 percent less. Water depths in Rattan Bay range from 3 m (10 ft) in the deepest part of the bay to 0.5 m (1.6 m) close to shore, so that nearly the entire habitat in Rattan Bay is suitable for marine mammal use (or 36 percent of the weapon footprint).

The estimated potential risk of a direct hit to an animal in the target area is extremely low. The probability of hitting a bottlenose dolphin at the BTs can be derived as follows: Probability = dolphin's dorsal surface area * density of dolphins. The estimated dorsal surface area of a bottlenose dolphin is 1.425 m^2 (or the average length of 2.85 m times the average body width of 0.5 m). Thus, using Read *et al.* (2003)'s density estimate of 0.183 dolphins/km^2, without consideration of mitigation and monitoring implementation, the probability of a dolphin being hit in the waters of BT–9 is 2.61×10^{-7} and of BT–11 is 9.4×10^{-8}. Using the proposed levels of ordnance expenditures at each in-water BT (Tables 4 and 5) and taking into account that only 36 percent of the ordnance deployed at BT–11 is over water, as described in the application, the estimated potential number of ordnance strikes on a marine mammal per year is 0.263 at BT–9 and 0.034 at BT–11. It would take approximately three years of ordnance deployment at the BTs before it would be likely or probable that one bottlenose dolphin would be struck by deployed inert ordnance. Again, these estimates are without consideration to proposed monitoring and mitigation measures.

Take from Vessel and Aircraft Presence

Vessel movement is associated with surface-to-surface exercises, as described in the *Specified Activities* section above, which primarily occurs within BT–11. The USMC is not requesting takes specific to the act of maneuvering small boats within the BTs; however, NMFS has analyzed the potential for take from this activity.

The potential impacts from exposure to vessels are described in the *Vessel and Aircraft Presence* section above. Interactions with vessels are not a new experience for bottlenose dolphins in Pamlico Sound. Pamlico Sound is heavily used by recreational, commercial (fishing, daily ferry service, tugs, etc.), and military (including the Navy, Air Force, and Coast Guard) vessels year-round. The NMFS' Southeast Regional Office has developed marine mammal viewing guidelines to educate the public on how to responsibly view marine mammals in the wild and avoid causing a take (*http://www.nmfs.noaa.gov/pr/education/southeast*). The guidelines recommend that vessels should remain a minimum of 50 yards from a dolphin, operate vessels in a predictable manner, avoid excessive speed or sudden changes in speed or direction in the vicinity of animals, and not to pursue, chase, or separate a group of animals. The Marine Corps would abide by these guidelines to the fullest extent practicable. The Marine Corps would not engage in high speed exercises should a marine mammal be detected within the immediate area of the BTs prior to training commencement and would never closely approach, chase, or pursue dolphins. Detection of marine mammals would be facilitated by personnel monitoring on the vessels and those marking success rate of target hits and monitoring of remote camera on the BTs (see Proposed Monitoring and Reporting section).

Based on the description of the action, the other activities regularly occurring in the area, the species that may be exposed to the activity and their observed behaviors in the presence of vessel traffic, and the implementation of measures to avoid vessel strikes, we determined that it is unlikely that the operation of vessels during surface-to-surface maneuvers will result in the take of any marine mammals, in the form of either behavioral harassment, injury, serious injury, or mortality.

Aircraft would move swiftly through the area and would typically fly approximately 914 m from the water's surface before dropping unguided munitions and above 4,572 m for precision-guided munitions bombing. While the aircraft may approach as low as 152 m (500 ft) to drop a bomb this is not the norm and would never be done around marine mammals. Regional whale watching guidelines advise aircraft to maintain a minimum altitude of 300 m (1,000 ft) above all marine mammals, including small odontocetes, and to not circle or hover over the animals to avoid harassment. Our approach regulations limit aircraft from flying below 300 m (1,000 ft) over a humpback whale (*Megaptera novaeangliae*) in Hawaii, a known calving ground, and limit aircraft from flying over North Atlantic right whales closer than 460 m (1509 ft). Given that Marine Corps aircraft would not fly below 300 m on the approach, would not engage in hovering or circling the animals, and would not drop to the minimal altitude of 152 m if a marine mammal is in the area, we believe it unlikely that the operation of aircraft, as described above, will result in take of bottlenose dolphins in Pamlico Sound in any manner.

Negligible Impact Analysis and Preliminary Determination

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

The NDAA's definition of harassment as it applies to a military readiness activity is: (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

We propose to authorize take by Level B harassment for the proposed training operations. Acoustic stimuli generated during training operations may have the potential to result in the behavioral disturbance of some marine mammals. There is no evidence that planned activities could result in injury, serious injury, or mortality within the specified geographic area for the requested authorization. The required mitigation and monitoring measures would

minimize any potential risk for serious injury or mortality.

Pursuant to our regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that we must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. We have defined ''negligible impact'' in 50 CFR 216.103 as: ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number and manner of takes, alone, is not enough information on which to base a negligible impact determination. We must also consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), or any of the other variables mentioned in the first paragraph (if known), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The Marine Corps has been conducting gunnery and bombing training exercises at BT–9 and BT–11 for several years and, to date, no dolphin injury, serious injury, or mortality has been attributed these military training exercises. The Marine Corps has a history of notifying the NMFS stranding network when any injured or stranded animal comes ashore or is spotted by personnel on the water. Therefore, stranded animals have been examined by stranding responders, further confirming that it is unlikely training contributes to marine mammal injuries or deaths. Due to the implementation of the aforementioned proposed mitigation measures, no take by Level A harassment or serious injury or mortality is anticipated nor would any be authorized in the IHA. We are proposing; however, to authorize 25 Level B harassment takes associated with training exercises.

The Marine Corps has proposed a 1000 yard (914 m) safety zone around BT–9 despite the fact that the distance to NMFS explosive Level B harassment threshold is 228 yards (209 m). They also would consider an area fouled if any dolphins are spotted within Raritan Bay (where BT–11 is located). The Level B harassment takes allowed for in the IHA would be of very low intensity and would likely result in dolphins being temporarily behaviorally affected by bombing or gunnery exercises. In addition, takes may be attributed to animals not using the area when exercises are occurring; however, this is difficult to calculate. Instead, we look if the specified activities occur during and within habitat important to vital life functions to better inform its negligible impact determination.

Read *et al.* (2003) concluded that dolphins rarely occur in open waters in the middle of North Carolina sounds and large estuaries, but instead are concentrated in shallow water habitats along shorelines. However, no specific areas have been identified as vital reproduction or foraging habitat. Scientific boat based surveys conducted throughout Pamlico Sound conclude that dolphins use the areas around the BTs more frequently than other portions of Pamlico Sound (Maher, 2003) despite the Marine Corps actively training in a manner identical to the specified activities described here for years.

As described in the *Affected Species* section of this notice, bottlenose dolphin stock segregation is complex with stocks overlapping throughout the coastal and estuarine waters of North Carolina. It is not possible for the Marine Corps to determine to which stock any individual dolphin taken during training activities belong as this can only be accomplished through genetic testing. However, it is likely that many of the dolphins encountered would belong to the NNCE or SNCE stock. These stocks have a population estimate of 1,387 and 2,454, respectively. We are proposing to authorize 25 takes of bottlenose dolphins in total; therefore, this number represents 1.8 and 1.0 percent, respectively, of those populations. This species is not listed as threatened or endangered under the ESA

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we preliminarily find that the specified USMC AS Cherry Point BT–9 and BT–11 training activities will result in the incidental take of marine mammals, by Level B harassment only, and that the total taking from will have a negligible impact on the affected species or stocks.

Subsistence Harvest of Marine Mammals

Marine mammals are not taken for subsistence uses within Pamlico Sound; therefore, issuance of an IHA to the USMC for MCAS Cherry Point training exercises would not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence use.

Endangered Species Act (ESA)

No ESA-listed marine mammals are known to occur within the action area. Therefore, there is no requirement for NMFS to consult under Section 7 of the ESA on the issuance of an Authorization under section 101(a)(5)(D) of the MMPA. However, ESA-listed sea turtles may be present within the action area.

On September 27, 2002, NMFS issued a Biological Opinion (BiOp) on *Ongoing Ordnance Delivery at Bombing Target 9 (BT–9) and Bombing Target 11 (BT–11) at Marine Corps Air Station, Cherry Point, North Carolina.* The BiOp, which is still in effect, concluded that that the USMC's proposed action will not result in adverse impacts to any ESA-listed marine mammals and is not likely to jeopardize the continued existence of the endangered green turtle (*Chelonia mydas*), leatherback turtle (*Dermochelys coriacea*), Kemp's ridley turtle (*Lepidochelys kempii*), or threatened loggerhead turtle (*Caretta caretta*). The proposed IHA will not result in effects beyond those considered in the 2002 BiOp and NMFS does not anticipate the need for further Section 7 consultation for the Authorization or the underlying activities proposed by the Marines. No critical habitat has been designated for these species in the action area; therefore, none will be affected.

National Environmental Policy Act (NEPA)

On February 11, 2009, the Marine Corps issued a Finding of No Significant Impact for its Environmental Assessment (EA) on MCAS Cherry Point Range Operations. Based on the analysis of the EA, the Marine Corps determined that the proposed action will not have a significant impact on the human environment. We adopted the Marine Corps' EA and signed a Finding of No Significant Impact on August 31, 2010. We have again reviewed the proposed application and preliminarily determined that there are no substantial changes to the proposed action or new environmental impacts or concerns. Therefore, we have determined that a new or supplemental EA or Environmental Impact Statement is likely unnecessary. Before making a

final determination in this regard, we will review public comments and information submitted by the public and others in response to this notice. The EA referenced above is available for review at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Dated: March 26, 2013.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–07305 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Privacy Act of 1974; System of Records

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of amendment of Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the United States Patent and Trademark Office (USPTO) is amending the system of records currently listed under ''COMMERCE/PAT–TM–7 Patent Application Files.'' This action is being taken to update the Privacy Act notice. We invite the public to comment on the amendments noted in this publication.

DATES: Written comments must be received no later than April 29, 2013. The amendments will become effective as proposed on April 29, 2013, unless the USPTO receives comments that would result in a contrary determination.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: Raul.Tamayo@uspto.gov.* Include ''Privacy Act PAT–TM–7 comment'' in the subject line of the message.
- *Fax:* (571) 273–7728, marked to the attention of Raul Tamayo.
- *Mail:* Raul Tamayo, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

All comments received will be available for public inspection at the Federal rulemaking portal located at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Raul Tamayo, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, (571) 272–7728.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (USPTO) is giving notice of an amendment to a system of records that is subject to the Privacy Act of 1974. This system of records maintains information on patent applicants and their authorized representatives. The Privacy Act notice is being updated with the current address and departmental information for the system location and system manager. The routine uses of records maintained in the system have been updated to include use in law enforcement, audits and oversight activities, and distribution to contractors, all uses commonly published in other agency system of records notices. The descriptions of storage, retrievability, and safeguards have been revised to reflect current database practices. The rule references for the notification procedure, contesting record procedures, and exemptions have been updated to correspond to the current statutes and rules for those items as related to the USPTO.

The amended Privacy Act system of records notice, ''COMMERCE/PAT–TM–7 Patent Application Files,'' is published in its entirety below.

COMMERCE/PAT–TM–7

SYSTEM NAME:

Patent Application Files. (Note: This notice is broken down, where indicated, into three subsystems relating to the status of the files: a. Pending; b. Abandoned; and c. Patented.)

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

a. United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314; b. Franconia Warehouse—Files Repository, 6808 Loisdale Road, Springfield, VA 22150; and United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314; c. Franconia Warehouse—Files Repository, 6808 Loisdale Road, Springfield, VA 22150; and United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for patent, including inventors, legal representatives for deceased or incapacitated inventors, and other persons authorized by law to make applications for patent.

CATEGORIES OF RECORDS IN THE SYSTEM:

Oath or declaration of applicant including name, citizenship, residence, post office address and other information pertaining to the applicant's activities in connection with the invention for which a patent is sought. Statements containing various kinds of information with respect to inventors who are deceased or incapacitated, or who are unavailable or unwilling to make application for patent.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

35 U.S.C. 1, 6, and 115; 5 U.S.C. 301.

PURPOSE(S):

To carry out the duties of the USPTO to grant and issue patents, including the collection of the inventor's oath or declaration under 35 U.S.C. 115.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) a. Information concerning these records is provided outside the Office only upon authorization of the applicant or owner of the application or when necessary to carry out the provisions of any act of Congress or in such special circumstances as may be determined by the Commissioner, e.g. files referred for secrecy order determination under 35 U.S.C. 181. b. Same as a., except where application is referred to in a U.S. Patent, in which case the record is open to public inspection. c. Records are open to public inspection.

(2) Routine uses will include disclosure for law enforcement purposes to the appropriate agency or other authority, whether federal, state, local, foreign, international or tribal, charged with the responsibility of enforcing, investigating, or prosecuting a violation of any law, rule, regulation, or order in any case in which there is an indication of a violation or potential violation of law (civil, criminal, or regulatory in nature).

(3) Routine uses will include disclosure to an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

(4) Routine uses will include disclosure to contractors and their agents, grantees, experts, consultants, and others performing or working on a

contract, service, grant, cooperative agreement, or other work assignment for the United States Patent and Trademark Office, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to the United States Patent and Trademark Office employees.

(5) Routine uses for all three subsystems will also include the Prefatory Statement of General Routine Uses Nos. 1–5 and 8–13, as found at 46 FR 63501–63502 (December 31, 1981).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, microfilm, and electronic storage media.

RETRIEVABILITY:

Subsystems a. and b. filed by serial number, cross-indexed to name of applicant; or stored in searchable database and retrievable by application number. Subsystem c. filed by patent number, cross-indexed to name of applicant; or stored in searchable database and retrievable by patent number.

SAFEGUARDS:

Buildings employ security guards. Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Where information is retrievable by computer, it is stored in databases protected by passwords.

RETENTION AND DISPOSAL:

Records retention and disposal is in accordance with the series records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

a. Commissioner for Patents, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314; b. Director, Office of Administrative Services, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314; c. Director, Office of Administrative Services, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314.

NOTIFICATION PROCEDURE:

Information about the records contained in this system may be obtained by sending a request in writing, signed, to the system manager at the address above or to the address provided in 37 CFR 102 subpart B for making inquiries about records covered by the Privacy Act. Requesters should provide their name, address, and record sought (including Serial Number or Patent Number, if known) in accordance with the procedures for making inquiries appearing in 37 CFR 102 subpart B.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The general provisions for access, contesting contents, and appealing initial determinations by the individual concerned appear in 37 CFR 102 subpart B. Requests from individuals should be addressed as stated in the notification section above.

RECORD SOURCE CATEGORIES:

The inventors or other persons who submit applications for patent and the patent attorneys or agents authorized by such inventor or other persons to represent them.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), Patent Applications, to the extent that they are subject to a secrecy order pursuant to 35 U.S.C. 181 or are otherwise subject to security classification pursuant to E.O. 12065 or the Atomic Energy Act of 1954 are exempted from the notification, access and content requirements of the agency procedures (under 5 U.S.C. 552((c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f)). This exemption is made to prevent disclosure of information which might be detrimental to national security and in accordance with agency rules, which appear in 37 CFR 102 subpart B.

Dated: March 26, 2013.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2013–07341 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Privacy Act of 1974; System of Records

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of amendment of Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the United States Patent and Trademark Office (USPTO) is amending the system of records currently listed under ''COMMERCE/PAT–TM–9 Patent Assignment Records.'' This action is being taken to update the Privacy Act notice. We invite the public to comment on the amendments noted in this publication.

DATES: Written comments must be received no later than April 29, 2013. The amendments will become effective as proposed on April 29, 2013, unless the USPTO receives comments that would result in a contrary determination.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: Lee.Thompson@uspto.gov.* Include ''Privacy Act PAT–TM–9 comment'' in the subject line of the message.
- *Fax*: (571) 273–0140, marked to the attention of Lee Thompson.
- *Mail:* Lee Thompson, Assignment Recordation Branch, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

All comments received will be available for public inspection at the Federal rulemaking portal located at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lee Thompson, Assignment Recordation Branch, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, (571) 272–3350.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (USPTO) is giving notice of an amendment to a system of records that is subject to the Privacy Act of 1974. This system of records maintains information related to recordation of assignments of property rights for patent applications and patents, including the documents submitted to the USPTO for such recordation. The Privacy Act notice is being updated with the current address information for the system location and system manager. The description of the routine uses of records maintained in the system has been updated to include use in law enforcement, audits and oversight activities, and distribution to contractors, all uses commonly published in other agency system of records notices. The rule references for

the notification procedure, contesting record procedures, and exemptions have been updated to correspond to the current statutes and rules for those items as related to the USPTO.

The amended Privacy Act system of records notice, ''COMMERCE/PAT–TM–9 Patent Assignment Records,'' is published in its entirety below.

COMMERCE/PAT–TM–9

SYSTEM NAME:

Patent Assignment Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Assignment Recordation Branch, Public Records Division, Public Information Services Group, United States Patent and Trademark Office, 2800 South Randolph Street, Arlington, VA 22206.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have given or received property rights under an application for patent or a patent by means of a written instrument recorded in the USPTO; intellectual property owners (deceased or incapacitated) and their legal representatives.

CATEGORIES OF RECORDS IN THE SYSTEM:

Assignments, grants, mortgages, liens, encumbrances, licenses, and other instruments affecting title, letters testamentary, other court certificates and orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

35 U.S.C. 1, 6, and 261; E.O. 9424.

PURPOSE(S):

To maintain records related to assignments of property rights for patent applications and patents, including the documents submitted to the USPTO for recordation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records open to the public are searched by users for the purpose of determining ownership for other property rights with respect to patents and trademarks. On the separate Government Register, records categorized as ''Public'' are available for public inspection; those records categorized as ''Departmental'' are used by duly authorized employees of Government agencies; and those records designated as ''Secret''' are disclosed only to persons having written authority from the head of the agency submitting the record. Assignment records relating to pending patent applications are maintained in confidence in accordance with 5 U.S.C. 122.

In addition to the routine uses in the Prefatory Statement of General Routine Uses, Nos. 1–5 and 8–13, as found at 46 FR 63501–63502 (December 31, 1981):

(1) Routine uses will include disclosure for law enforcement purposes to the appropriate agency or other authority, whether federal, state, local, foreign, international or tribal, charged with the responsibility of enforcing, investigating, or prosecuting a violation of any law, rule, regulation, or order in any case in which there is an indication of a violation or potential violation of law (civil, criminal, or regulatory in nature).

(2) Routine uses will include disclosure to an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

(3) Routine uses will include disclosure to contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other work assignment for the USPTO, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to the USPTO employees.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and electronic storage media.

RETRIEVABILITY:

By inventor's name, application serial number, assignee's name, assignor's name, and patent number.

SAFEGUARDS:

Building employs security guards. Records subject to confidentiality requirements are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained. Records in the Secret Portion of the Government Register are, additionally, stored in a locked vault. Where information is retrievable by computer, all safeguards appropriate to secure the system (hardware and software) are utilized.

RETENTION AND DISPOSAL:

Records retention and disposal is in accordance with the series records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Records Officer, Assignment Recordation Branch, United States Patent and Trademark Office, 2800 South Randolph Street, Arlington, VA 22206.

NOTIFICATION PROCEDURE:

Information about the records contained in this system may be obtained by sending a request in writing, signed, to the system manager at the address above or to the address provided in 37 CFR 102 subpart B for making inquiries about records covered by the Privacy Act. Requesters should provide their name, address, and record sought (including assignees' or assignors' name(s) and application serial number, if known) in accordance with the procedures for making inquiries appearing in 37 CFR 102 subpart B.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The general provisions for access, contesting contents, and appealing initial determinations by the individual concerned appear in 37 CFR 102 subpart B. Requests from individuals should be addressed as stated in the notification section above.

RECORD SOURCE CATEGORIES:

Persons who have submitted written instruments to the USPTO for recording.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), assignment records which are designated ''Secret'' and maintained in the Government Register pursuant to E.O. 9424 are exempted from the notification, access, and contest requirements of the agency procedures (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f)). This exemption is made to prevent disclosure of information which might be detrimental to national security and in accordance with agency rules which appear in 37 CFR 102 subpart B.

Dated: March 26, 2013.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2013–07378 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Privacy Act of 1974; System of Records

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of amendment of Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the United States Patent and Trademark Office (USPTO) is amending the system of records currently listed under ''COMMERCE/PAT–TM–8 Patent Application Secrecy Order Files.'' This action is being taken to update the Privacy Act notice. We invite the public to comment on the amendments noted in this publication.

DATES: Written comments must be received no later than April 29, 2013. The amendments will become effective as proposed on April 29, 2013, unless the USPTO receives comments that would result in a contrary determination.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: Raul.Tamayo@uspto.gov.* Include ''Privacy Act PAT–TM–8 comment'' in the subject line of the message.
- *Fax:* (571) 273–7728, marked to the attention of Raul Tamayo.
- *Mail:* Raul Tamayo, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

All comments received will be available for public inspection at the Federal rulemaking portal located at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Raul Tamayo, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, (571) 272–7728.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (USPTO) is giving notice of an amendment to a system of records that is subject to the Privacy Act of 1974. This system of records maintains information on patent applicants and their authorized representatives for applications that may fall under the secrecy provisions of 35 U.S.C. 181 through 183. The Privacy Act notice is being updated with the current address and departmental information for the system location and system manager. The routine uses of records maintained in the system have been updated to include use in law enforcement, audits and oversight activities, and distribution to contractors, all uses commonly published in other agency system of records notices. The rule references for the notification procedure, contesting record procedures, and exemptions have been updated to correspond to the current statutes and rules for those items as related to the USPTO.

The amended Privacy Act system of records notice, ''COMMERCE/PAT–TM–8 Patent Application Secrecy Order Files,'' is published in its entirety below.

COMMERCE/PAT–TM–8

SYSTEM NAME:

Patent Application Secrecy Order Files.

SECURITY CLASSIFICATION:

Classified and Unclassified.

SYSTEM LOCATION:

Patent Examining Operation, Technology Center 3600, United States Patent and Trademark Office, 501 Dulany Street, Alexandria, VA 22314.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants including inventors, legal representatives for deceased or incapacitated inventors, and other persons authorized by law to make applications for patent.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identification of patent application and applicant including application serial number, filing date, title of invention, applicant's or inventor's address and addresses of applicant's duly appointed representatives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

35 U.S.C. 1, 6, and 181 through 183.

PURPOSE(S):

To carry out the duties of the USPTO under 35 U.S.C. 181 through 183 regarding the disclosure or publication of applications or patents that may be detrimental to national security.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

(1) Referral to authorized Government agencies under 35 U.S.C. 181 for determination of the requirement for a secrecy order, and notification of the applicant or his duly appointed representative of such secrecy order.

(2) Routine uses will include disclosure for law enforcement purposes to the appropriate agency or other authority, whether federal, state, local, foreign, international or tribal, charged with the responsibility of enforcing, investigating, or prosecuting a violation of any law, rule, regulation, or order in any case in which there is an indication of a violation or potential violation of law (civil, criminal, or regulatory in nature).

(3) Routine uses will include disclosure to an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

(4) Routine uses will include disclosure to contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other work assignment for the United States Patent and Trademark Office, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to the United States Patent and Trademark Office employees.

(5) Routine uses will also include the Prefatory Statement of General Routine Uses Nos. 1–5 and 8–10, and 13, as found at 46 FR 63501–63502 (December 31, 1981).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed by application serial number, cross-indexed to name of applicant.

SAFEGUARDS:

Buildings employ security guards. Records are stored in a locked vault and maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Records retention and disposal is in accordance with the series records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Patent Examining Technology Center 3600, United States Patent and Trademark Office, 501 Dulany Street, Alexandria, VA 22314.

NOTIFICATION PROCEDURE:

Information about the records contained in this system may be obtained by sending a request in writing, signed, to the system manager at the address above or to the address provided in 37 CFR part 102 subpart B for making inquiries about records covered by the Privacy Act. Requesters should provide their name, address, and record sought (including social security or Patent Number, if known) in accordance with the procedures for making inquiries appearing in 37 CFR part 102 subpart B.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The general provisions for access, contesting contents, and appealing initial determinations by the individual concerned appear in 37 CFR part 102 subpart B. Requests from individuals should be addressed as stated in the notification section above.

RECORD SOURCE CATEGORIES:

Subject applicants or their representatives and authorized representatives of the Department of Energy, the Secretary of Defense, and the Chief Officer of any other department or agency of the Government designated by the President as a defense agency of the United States.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), these records, since they relate to determinations pertinent to secrecy orders pursuant to 35 U.S.C. 181 or to security classification pursuant to E.O. 12065 or the Atomic Energy Act of 1954 are exempted from the notification, access, and contest requirements of the agency procedures (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f)). This exemption is made to prevent disclosure of information which might be detrimental to national security and in accordance with agency rules, which appear in 37 CFR part 102 subpart B.

Dated: March 26, 2013.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2013–07377 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Privacy Act of 1974; System of Records

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of amendment of Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the United States Patent and Trademark Office (USPTO) is amending the system of records currently listed under ''COMMERCE/PAT–TM–6 Parties Involved in Patent Interference Proceedings.'' This action is being taken to update the Privacy Act notice. We invite the public to comment on the amendments noted in this publication.

DATES: Written comments must be received no later than April 29, 2013. The amendments will become effective as proposed on April 29, 2013, unless the USPTO receives comments that would result in a contrary determination.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: Kurt.Brown@uspto.gov.* Include ''Privacy Act PAT–TM–6 comment'' in the subject line of the message.
- *Fax:* (571) 273–0053, marked to the attention of Kurt Brown.
- *Mail:* Kurt Brown, Patent Trial and Appeal Board, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

All comments received will be available for public inspection at the Federal rulemaking portal located at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kurt Brown, Patent Trial and Appeal Board, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, (571) 272–5356.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (USPTO) is giving notice of an amendment to a system of records that is subject to the Privacy Act of 1974. This system of records maintains information on patent applicants and patentees who become involved in a conflict involving the question of priority of invention. The Privacy Act notice is being updated with the current information for the system location and system manager. The description of the routine uses of records maintained in the system has been revised to clarify which records may be open to public inspection and to include use in law enforcement, audits and oversight activities, and distribution to contractors, all uses commonly published in other agency system of records notices. The storage and safeguard information has been updated to include electronic records. The description of retrievability has been revised to clarify that records may be indexed by the names of applicants or patentees, but not witnesses. The rule references for the notification procedure, contesting record procedures, and exemptions have been updated to correspond to the current statutes and rules for those items as related to the USPTO.

The amended Privacy Act system of records notice, ''COMMERCE/PAT–TM–6 Parties Involved in Patent Interference Proceedings,'' is published in its entirety below.

COMMERCE/PAT–TM–6

SYSTEM NAME:

Parties Involved in Patent Interference Proceedings.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Patent Trial and Appeal Board, United States Patent and Trademark Office, Madison East, 600 Dulany Street, Alexandria, Virginia 22314.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for patent and patentees who become involved in a conflict involving the question of priority of invention.

CATEGORIES OF RECORDS IN THE SYSTEM:

All records relating to the declaration, conduct, and termination of interference proceedings, including, but not limited to: Preliminary statements, motions, testimony, and settlement agreements. The data contained in the records may include information relating to an applicant's, a patentee's or a witness's name, age, citizenship, residence, educational and work background, physical and mental health, activities relating to conception and reduction to practice of the contested subject matter, and other matters which may arise during the conduct of the interference proceeding or in connection with any agreements made by the parties relative to the interference proceeding.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

35 U.S.C. 1, 6, 23, 24, and 135.

PURPOSE(S):

To carry out the duties of the USPTO under 35 U.S.C. 6 and 135, in particular, to review adverse decisions of patent examiners regarding patent applications; to determine the priority and patentability of inventions in interference proceedings; and to conduct Inter Partes Reviews, Post Grant Reviews, and Proceedings under the Transitional Program from Covered Business Methods Patents, and Derivation Proceedings. Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records relating to interferences which do not involve an unpublished application are open to public inspection. Records relating to interferences which do involve an unpublished application (37 CFR 41.6) are open to public inspection after the interference has terminated, if any application or patent in the interference is or becomes published. Otherwise, information concerning these records is provided outside the Office only upon authorization of the applicants or owners of the applications or patents involved, or when necessary to carry out the provisions of any act of Congress or in such special circumstances as may be determined by the Director. Copies of settlement agreements filed under 35 U.S.C. 135(c) are kept separate from other interference records if the party filing them so requests, and are made available, as provided in the statute, only to Government agencies on written request or to any person on a showing of good cause.

In addition to the routine uses in the Prefatory Statement of General Routine Uses, as found at 46 FR 63501–63502 (December 31, 1981), routine uses of these records will also include:

(1) Disclosure for law enforcement purposes to the appropriate agency or other authority, whether federal, state, local, foreign, international or tribal, charged with the responsibility of enforcing, investigating, or prosecuting a violation of any law, rule, regulation, or order in any case in which there is an indication of a violation or potential violation of law (civil, criminal, or regulatory in nature).

(2) Disclosure to an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

(3) Disclosure to contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other work assignment for the USPTO, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to the USPTO employees.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders or in electronic form. Electronic records held in confidence are in a password-controlled system.

RETRIEVABILITY:

Filed by Interference Number, cross-indexed to the names of the parties. The records may be indexed by applicant or patentee name, but not by witness name.

SAFEGUARDS:

Records of settlement agreements held in confidence are located in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. Electronic files are stored in secured premises with access limited to those whose official duties require access. The electronic files are password-protected and can only be accessed by authorized personnel.

RETENTION AND DISPOSAL:

Records retention and disposal is in accordance with the series records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Administrative Patent Judge, Patent Trial and Appeal Board, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

NOTIFICATION PROCEDURE:

Information about the records contained in this system may be obtained by sending a request in writing, signed, to the system manager at the address above or to the address provided in 37 CFR part 102 subpart B for making inquiries about records covered by the Privacy Act. Requesters should provide their name, address, and record sought (including Interference Number, if known) in accordance with the procedures for making inquiries appearing in 37 CFR part 102 subpart B.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The general provisions for access, contesting contents, and appealing initial determinations by the individual concerned appear in 37 CFR part 102 subpart B. Requests from individuals should be addressed as stated in the notification section above.

RECORD SOURCE CATEGORIES:

Applicants for patent and patentees, the patent attorneys or agents authorized by such persons to represent them, those authorized by the applicant to furnish information, and witnesses and other parties involved in the taking of testimony.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), Patent Interference Proceedings records which relate to applications subject to a secrecy order pursuant to 35 U.S.C. 181 or are otherwise subject to security classification pursuant to E.O. 12065 or the Atomic Energy Act of 1954, are exempted from the notification, access, and contest requirements of the agency procedures (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f)). This exemption is made to prevent disclosure of information which might be detrimental to national security and in accordance to agency rules, which appear in 37 CFR part 102 subpart B.

Dated: March 26, 2013.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2013–07340 Filed 3–28–13; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to the Procurement List.

SUMMARY: The Committee is proposing to add a service to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: 4/29/2013.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202.

For Further Information or to Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed action.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service is proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service

Service Type/Location: Section 508 Assurance Service, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, Washington, DC.

NPAs: National Industries for the Blind, Alexandria, VA (Prime Contractor); Columbia Lighthouse for the Blind, Washington, DC (Subcontractor).

Contracting Activity: Office of Federal Contract Compliance Programs, Washington, DC.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2013–07303 Filed 3–28–13; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 288. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 288 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

DATES: *Effective Date:* April 1, 2013.

FOR FURTHER INFORMATION CONTACT: Mrs. Sonia Malik, 571–372–1276.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 287. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows: The changes in Civilian Bulletin 288 are updated rates for Alaska.

Dated: March 25, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA						
[OTHER]						
01/01 - 12/31	110		118		228	1/1/2013
ADAK						
01/01 - 12/31	120		79		199	7/1/2003
ANCHORAGE [INCL NAV RES]						
05/16 - 09/30	213		119		332	1/1/2013
10/01 - 05/15	99		107		206	1/1/2013
BARROW						
05/15 - 09/14	177		94		271	4/1/2013
09/15 - 05/14	159		93		252	4/1/2013
BETHEL						
01/01 - 12/31	179		101		280	1/1/2013
BETTLES						
01/01 - 12/31	135		62		197	10/1/2004
CLEAR AB						
01/01 - 12/31	90		82		172	10/1/2006
COLDFOOT						
01/01 - 12/31	165		70		235	10/1/2006
COPPER CENTER						
05/15 - 09/15	149		85		234	1/1/2013
09/16 - 05/14	99		80		179	1/1/2013
CORDOVA						
01/01 - 12/31	95		117		212	1/1/2013
CRAIG						
04/01 - 09/30	129		77		206	1/1/2013
10/01 - 03/31	80		72		152	1/1/2013
DEADHORSE						
01/01 - 12/31	170		68		238	8/1/2012
DELTA JUNCTION						
01/01 - 12/31	129		54		183	1/1/2013

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
DENALI NATIONAL PARK						
05/01 - 09/30	159		95		254	1/1/2013
10/01 - 04/30	89		89		178	1/1/2013
DILLINGHAM						
05/15 - 10/15	185		111		296	1/1/2011
10/16 - 05/14	169		109		278	1/1/2011
DUTCH HARBOR-UNALASKA						
01/01 - 12/31	121		102		223	2/1/2012
EARECKSON AIR STATION						
01/01 - 12/31	90		77		167	6/1/2007
EIELSON AFB						
05/15 - 09/15	154		96		250	1/1/2013
09/16 - 05/14	75		88		163	1/1/2013
ELFIN COVE						
05/15 - 09/10	175		46		221	1/1/2013
09/11 - 05/14	150		44		194	1/1/2013
ELMENDORF AFB						
05/16 - 09/30	213		119		332	1/1/2013
10/01 - 05/15	99		107		206	1/1/2013
FAIRBANKS						
09/16 - 05/14	75		88		163	1/1/2013
05/15 - 09/15	154		96		250	1/1/2013
FOOTLOOSE						
01/01 - 12/31	175		18		193	10/1/2002
FT. GREELY						
01/01 - 12/31	129		54		183	1/1/2013
FT. RICHARDSON						
05/16 - 09/30	213		119		332	1/1/2013
10/01 - 05/15	99		107		206	1/1/2013
FT. WAINWRIGHT						
05/15 - 09/15	154		96		250	1/1/2013
09/16 - 05/14	75		88		163	1/1/2013
GAMBELL						
01/01 - 12/31	137		42		179	4/1/2013

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
GLENNALLEN						
05/15 - 09/15	149		85		234	1/1/2013
09/16 - 05/14	99		80		179	1/1/2013
HAINES						
01/01 - 12/31	107		101		208	1/1/2011
HEALY						
10/01 - 04/30	89		89		178	1/1/2013
05/01 - 09/30	159		95		254	1/1/2013
HOMER						
05/05 - 09/15	159		103		262	1/1/2013
09/16 - 05/04	89		98		187	1/1/2013
JUNEAU						
05/16 - 09/15	149		100		249	1/1/2013
09/16 - 05/15	135		99		234	1/1/2013
KAKTOVIK						
01/01 - 12/31	165		86		251	10/1/2002
KAVIK CAMP						
01/01 - 12/31	150		69		219	10/1/2002
KENAI-SOLDOTNA						
05/01 - 10/31	99		110		209	1/1/2013
11/01 - 04/30	79		108		187	1/1/2013
KENNICOTT						
01/01 - 12/31	275		109		384	1/1/2013
KETCHIKAN						
05/01 - 09/30	135		88		223	1/1/2013
10/01 - 04/30	99		85		184	1/1/2013
KING SALMON						
05/01 - 10/01	225		91		316	10/1/2002
10/02 - 04/30	125		81		206	10/1/2002
KLAWOCK						
04/01 - 09/30	129		77		206	1/1/2013
10/01 - 03/31	80		72		152	1/1/2013
KODIAK						
05/01 - 09/30	152		93		245	2/1/2012

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
10/01	- 04/30	100		88		188	2/1/2012
KOTZEBUE							
01/01	- 12/31	219		115		334	2/1/2012
KULIS AGS							
05/16	- 09/30	213		119		332	1/1/2013
10/01	- 05/15	99		107		206	1/1/2013
MCCARTHY							
01/01	- 12/31	275		109		384	1/1/2013
MCGRATH							
01/01	- 12/31	165		69		234	10/1/2006
MURPHY DOME							
05/15	- 09/15	154		96		250	1/1/2013
09/16	- 05/14	75		88		163	1/1/2013
NOME							
01/01	- 12/31	150		132		282	1/1/2013
NUIQSUT							
01/01	- 12/31	180		53		233	10/1/2002
PETERSBURG							
01/01	- 12/31	110		118		228	1/1/2013
POINT HOPE							
01/01	- 12/31	200		49		249	1/1/2011
POINT LAY							
01/01	- 12/31	225		51		276	8/1/2011
PORT ALEXANDER							
01/01	- 12/31	150		43		193	8/1/2010
PORT ALSWORTH							
01/01	- 12/31	135		88		223	10/1/2002
PRUDHOE BAY							
01/01	- 12/31	170		68		238	1/1/2011
SELDOVIA							
05/05	- 09/15	159		103		262	1/1/2013
09/16	- 05/04	89		98		187	1/1/2013
SEWARD							
10/16	- 04/30	84		85		169	1/1/2013

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
05/01 - 10/15	174		94		268	1/1/2013
SITKA-MT. EDGECUMBE						
10/01 - 04/30	169		113		282	1/1/2013
05/01 - 09/30	209		117		326	1/1/2013
SKAGWAY						
05/01 - 09/30	135		88		223	1/1/2013
10/01 - 04/30	99		85		184	1/1/2013
SLANA						
05/01 - 09/30	139		55		194	2/1/2005
10/01 - 04/30	99		55		154	2/1/2005
SPRUCE CAPE						
05/01 - 09/30	152		93		245	2/1/2012
10/01 - 04/30	100		88		188	2/1/2012
ST. GEORGE						
01/01 - 12/31	129		55		184	6/1/2004
TALKEETNA						
01/01 - 12/31	100		89		189	10/1/2002
TANANA						
01/01 - 12/31	150		132		282	1/1/2013
TOK						
10/01 - 05/14	85		84		169	1/1/2013
05/15 - 09/30	95		85		180	1/1/2013
UMIAT						
01/01 - 12/31	350		64		414	2/1/2012
VALDEZ						
05/16 - 09/14	219		121		340	1/1/2013
09/15 - 05/15	139		113		252	1/1/2013
WAINWRIGHT						
01/01 - 12/31	175		83		258	1/1/2011
WASILLA						
05/01 - 09/30	164		103		267	1/1/2013
10/01 - 04/30	96		96		192	1/1/2013
WRANGELL						
05/01 - 09/30	135		88		223	1/1/2013

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
10/01 - 04/30	99		85		184	1/1/2013
YAKUTAT						
01/01 - 12/31	105		94		199	1/1/2011
AMERICAN SAMOA						
AMERICAN SAMOA						
01/01 - 12/31	139		96		235	9/1/2012
GUAM						
GUAM (INCL ALL MIL INSTAL)						
01/01 - 12/31	159		96		255	7/1/2012
HAWAII						
[OTHER]						
07/01 - 08/21	114		118		232	5/1/2012
08/22 - 06/30	104		117		221	5/1/2012
CAMP H M SMITH						
01/01 - 12/31	177		126		303	5/1/2012
EASTPAC NAVAL COMP TELE AREA						
01/01 - 12/31	177		126		303	5/1/2012
FT. DERUSSEY						
01/01 - 12/31	177		126		303	5/1/2012
FT. SHAFTER						
01/01 - 12/31	177		126		303	5/1/2012
HICKAM AFB						
01/01 - 12/31	177		126		303	5/1/2012
HONOLULU						
01/01 - 12/31	177		126		303	5/1/2012
ISLE OF HAWAII: HILO						
07/01 - 08/21	114		118		232	5/1/2012
08/22 - 06/30	104		117		221	5/1/2012
ISLE OF HAWAII: OTHER						
01/01 - 12/31	180		129		309	5/1/2012
ISLE OF KAUAI						
01/01 - 12/31	243		131		374	5/1/2012
ISLE OF MAUI						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31	209		137		346	5/1/2012
ISLE OF OAHU						
01/01 - 12/31	177		126		303	5/1/2012
KEKAHA PACIFIC MISSILE RANGE FAC						
01/01 - 12/31	243		131		374	5/1/2012
KILAUEA MILITARY CAMP						
07/01 - 08/21	114		118		232	5/1/2012
08/22 - 06/30	104		117		221	5/1/2012
LANAI						
01/01 - 12/31	249		155		404	5/1/2012
LUALUALEI NAVAL MAGAZINE						
01/01 - 12/31	177		126		303	5/1/2012
MCB HAWAII						
01/01 - 12/31	177		126		303	5/1/2012
MOLOKAI						
01/01 - 12/31	131		89		220	5/1/2012
NAS BARBERS POINT						
01/01 - 12/31	177		126		303	5/1/2012
PEARL HARBOR						
01/01 - 12/31	177		126		303	5/1/2012
SCHOFIELD BARRACKS						
01/01 - 12/31	177		126		303	5/1/2012
WHEELER ARMY AIRFIELD						
01/01 - 12/31	177		126		303	5/1/2012
MIDWAY ISLANDS						
MIDWAY ISLANDS						
01/01 - 12/31	125		68		193	5/1/2012
NORTHERN MARIANA ISLANDS						
[OTHER]						
01/01 - 12/31	85		76		161	7/1/2012
ROTA						
01/01 - 12/31	130		106		236	7/1/2012
SAIPAN						

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31		140		87		227	7/1/2012
TINIAN							
01/01 - 12/31		85		76		161	7/1/2012
PUERTO RICO							
[OTHER]							
01/01 - 12/31		109		112		221	6/1/2012
AGUADILLA							
01/01 - 12/31		124		76		200	10/1/2012
BAYAMON							
01/01 - 12/31		195		128		323	9/1/2010
CAROLINA							
01/01 - 12/31		195		128		323	9/1/2010
CEIBA							
01/01 - 12/31		139		92		231	10/1/2012
CULEBRA							
01/01 - 12/31		150		98		248	3/1/2012
FAJARDO [INCL ROOSEVELT RDS NAVSTAT]							
01/01 - 12/31		139		92		231	10/1/2012
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]							
01/01 - 12/31		195		128		323	9/1/2010
HUMACAO							
01/01 - 12/31		139		92		231	10/1/2012
LUIS MUNOZ MARIN IAP AGS							
01/01 - 12/31		195		128		323	9/1/2010
LUQUILLO							
01/01 - 12/31		139		92		231	10/1/2012
MAYAGUEZ							
01/01 - 12/31		109		112		221	9/1/2010
PONCE							
01/01 - 12/31		149		89		238	9/1/2012
RIO GRANDE							
01/01 - 12/31		169		123		292	6/1/2012
SABANA SECA [INCL ALL MILITARY]							

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31	195		128		323	9/1/2010
SAN JUAN & NAV RES STA						
01/01 - 12/31	195		128		323	9/1/2010
VIEQUES						
01/01 - 12/31	175		95		270	3/1/2012
VIRGIN ISLANDS (U.S.)						
ST. CROIX						
04/15 - 12/14	135		92		227	5/1/2006
12/15 - 04/14	187		97		284	5/1/2006
ST. JOHN						
04/15 - 12/14	163		98		261	5/1/2006
12/15 - 04/14	220		104		324	5/1/2006
ST. THOMAS						
04/15 - 12/14	240		105		345	5/1/2006
12/15 - 04/14	299		111		410	5/1/2006
WAKE ISLAND						
WAKE ISLAND						
01/01 - 12/31	173		42		215	9/1/2012

[FR Doc. 2013–07310 Filed 3–28–13; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulation System

[Docket No. 2012–0044–0001]

Submission for OMB Review; Comment Request; Correction

ACTION: Notice; correction.

SUMMARY: This document corrects the preamble to a notice published in the **Federal Register** on March 12, 2013, 78 FR 15711, regarding the Submission for OMB Review; Comment Request for OMB Control Number 0704–0250. This correction revises numbers delineated concerning the public burden data.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, 571–372–6098, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

Correction

In the **Federal Register** of March 12, 2013, in FR Doc. 2013–5613, at 78 FR 15711, in the second column, correct the *Number of Respondents* and to *Responses per Respondent* to read:

Number of Respondents: 20,865.

Responses per Respondent: 7.29.

Kortnee Stewart,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2013–07453 Filed 3–28–13; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14482–000]

ECOsponsible, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On January 18, 2013, ECOsponsible, Inc filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Little River Hydro Project (Little River Project or project) to be located on the Little River, near the Town of Clifton, in St. Lawrence County, New York. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An existing earth dam with a height of 44 feet and a length of 1,420 feet; (2) an existing reservoir with a drainage area of 37 square miles, a surface area of 215 acres, a normal storage capacity of 1,660 acre-feet, and a total storage capacity of 2,389 acre-feet; (3) an existing 48-inch-diameter outlet conduit; (4) a new horizontal axis ''S'' type propeller turbine with a rated capacity of 1,000 kilowatts; (5) a new 1,900-foot-long transmission line from the powerhouse to an existing 15-kilovolt grid connection point located adjacent to state Highway #3; (6) a new 9-foot by 9-foot metering substation; and (7) appurtenant facilities. The estimated annual generation of the Little River Project would be 7,446 megawatt-hours.

Applicant Contact: Mr. Dennis Ryan, Executive Director, ECOsponsible, Inc., 120 Mitchell Road Ste 100, Ease Aurora, New York 14052; phone: (716) 655–3524.

FERC Contact: Woohee Choi; phone: (202) 502–6336.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14482) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 22, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–07300 Filed 3–28–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Attendance at PJM Interconnection, L.L.C. Meetings

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission and Commission staff may attend upcoming PJM Interconnection, L.L.C. (PJM) Members Committee and Markets and Reliability Committee meetings, as well as other PJM committee, subcommittee or task force meetings.[1] The Commission and Commission staff may attend the following meetings:

PJM Members Committee

- March 28, 2013 (Wilmington, DE)
- April 25, 2013 (Wilmington, DE)
- May 16, 2013 (White Sulphur Springs, West VA)

Date To Be Determined

- June 27, 2013 (Wilmington, DE)
- August 1, 2013 (Wilmington, DE)
- September 26, 2013 (Wilmington, DE)
- October 24, 2013 (Wilmington, DE)
- December 5, 2013 (Wilmington, DE)

PJM Markets and Reliability Committee

- March 28, 2013 (Wilmington, DE)
- April 25, 2013 (Wilmington, DE)
- May 30, 2013 (Wilmington, DE)
- June 27, 2013 (Wilmington, DE)
- August 1, 2013 (Wilmington, DE)
- August 29, 2013 (Wilmington, DE)
- September 26, 2013 (Wilmington, DE)
- October 24, 2013 (Wilmington, DE)
- December 5, 2013 (Wilmington, DE)

PJM Market Implementation Committee

- April 10, 2013 (Norristown, PA)
- May 8, 2013 (Norristown, PA)
- June 5, 2013 (Norristown, PA)
- July 10, 2013 (Norristown, PA)
- August 7, 2013 (Norristown, PA)
- September 11, 2013 (Norristown, PA)
- October 9, 2013 (Norristown, PA)
- November 6, 2013 (Norristown, PA)
- December 11, 2013 (Norristown, PA)

The discussions at each of the meetings described above may address matters at issue in pending proceedings before the Commission, including the following currently pending proceedings:

Docket No. EL05–121, *PJM Interconnection, L.L.C.*

Docket No. EL08–14, *Black Oak Energy LLC, et al.,* v. *FERC*

Docket No. EL10–52, *Central Transmission, L.L.C.* v. *PJM Interconnection, L.L.C.*

Docket No. ER09–1148, *PPL Electric Utilities Corporation*

Docket No. ER09–1256, *Potomac-Appalachian Transmission Highline, L.L.C.*

Docket Nos. ER09–1589 and EL10–6, *FirstEnergy Service Company*

Docket Nos. ER10–253 and EL10–14, *Primary Power, L.L.C.*

Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc*

Docket Nos. ER11–2183 and EL11–32, *American Electric Power Service Corporation*

Docket Nos. ER11–2814 and ER11–2815, *PJM Interconnection, L.L.C. and American Transmission Systems, Inc.*

Docket No. ER11–4106, *PJM Interconnection, L.L.C.*

Docket No. ER11–4628, *PJM Interconnection, L.L.C.*

Docket No. EL12–8, *DC Energy, L.L.C. and DC Energy Mid-Atlantic, L.L.C.* vs. *PJM Interconnection, L.L.C.*

Docket No. EL12–54, *Viridity Energy, Inc.* v. *PJM Interconnection, L.L.C.*

Docket No. EL12–69, *Primary Power LLC* v. *PJM Interconnection, L.L.C.*

Docket No. AD12–1 and ER11–4081, *Midwest Independent Transmission* System Operator, Inc.

Docket No. AD12–16, *Capacity Deliverability Across the Midwest Independent* Transmission System Operator, Inc./PJM Interconnection, L.L.C. Seam

Docket No. EL13–10, *North American Natural Resources, Inc.* v. *PJM Interconnection,* L.L.C. et. al.

Docket No. ER12–91, *PJM Interconnection, L.L.C.*

Docket No. ER12–92, *PJM Interconnection, L.L.C., et al.*

Docket No. ER12–513, *PJM Interconnection, L.L.C.*

Docket No. ER12–1173, *PJM Interconnection, L.L.C., et al.*

Docket No. ER12–1178, *PJM Interconnection, L.L.C.*

Docket No. ER12–1204, *PJM Interconnection, L.L.C.*

Docket No. ER12–1761, *PJM Interconnection, L.L.C.*

Docket No. ER12–2274, *Public Service Electric and Gas Company*

Docket No. ER12–2391, *PJM Interconnection, L.L.C.*

Docket No. ER12–2399, *PJM Interconnection, L.L.C.*

Docket No. ER12–2708, *PJM Interconnection, L.L.C.*

Docket No. EL13–47, *FirstEnergy Solutions Corporation* v. *PJM Interconnection, L.L.C. et al.*

Docket No. ER13–90, *Public Service Electric and Gas Company and PJM* Interconnection, L.L.C.

Docket No. ER13–195, *Indicated PJM Transmission Owners*

Docket No. ER13–198, *PJM Interconnection, L.L.C.*

Docket No. ER13–232, *American Electric Power Service Corporation*

[1] For example, PJM subcommittees and task forces of the standing committees (Operating, Planning and Market Implementation) and senior standing committees (Members and Markets and Reliability) meet on a variety of different topics; they convene and dissolve on an as-needed basis. Therefore, the Commission and Commission staff may monitor the various meetings posted on the PJM Web site.

Docket No. ER13–233, *American Electric Power Service Corporation*

Docket No. ER13–234, *American Electric Power Service Corporation*

Docket No. ER13–235, *American Electric Power Service Corporation*

Docket No. ER13–236, *American Electric Power Service Corporation*

Docket No. ER13–237, *American Electric Power Service Corporation*

Docket No. ER13–238, *American Electric Power Service Corporation*

Docket No. ER13–239, *American Electric Power Service Corporation*

Docket No. ER13–240, *American Electric Power Service Corporation*

Docket No. ER13–347, *PJM Interconnection, L.L.C.*

Docket No. ER13–397, *PJM Interconnection, L.L.C.*

Docket No. ER13–486, *PJM Interconnection, L.L.C.*

Docket No. ER13–535, *PJM Interconnection, L.L.C.*

Docket No. ER13–539. *PJM Interconnection, L.L.C., et al.*

Docket No. ER13–694, *PJM Interconnection, L.L.C.*

Docket No. ER13–703, *PJM Interconnection, L.L.C.*

Docket No. ER13–793, *Eastern Kentucky Power Cooperative*

Docket No. ER13–887, *PJM Interconnection, L.L.C.*

Docket No. ER13–1018, *Brandon Shores LLC and C.P. Crane LLC*

Docket No. ER13–1023, *PJM Interconnection, L.L.C.*

Docket No. ER13–1025, *Calpine Energy Services LP*

Docket No. ER13–1033, *Linden VFT, LLC and PJM Interconnection, L.L.C.*

Docket No. ER13–1044, *PJM Interconnection, L.L.C.*

Docket No. ER13–1051, *Linden VFT, LLC.*

Docket No. ER13–1052, *PJM Interconnection, L.L.C. and the Midwest Independent Transmission System Operator, Inc.*

For additional meeting information, see: *http://www.pjm.com/committees-and-groups.aspx* and *http://www.pjm.com/Calendar.aspx.*

The meetings are open to stakeholders. For more information, contact Valerie Martin, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6139 or *Valerie.Martin@ferc.gov.*

Dated: March 22, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–07301 Filed 3–28–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ –OAR–2005–0161; FRL 9529–8]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Renewable Fuels Standard Program (RFS2—Supplemental) (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Renewable Fuels Standard Program (RFS2—Supplemental)'' (EPA ICR No. 2380.02, OMB Control No. 2060–0637) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through March 31, 2013. Public comments were previously requested via the **Federal Register** (77 FR 69620) on November 20, 2012 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before April 29, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2005–0161, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Geanetta Heard, Fuels Compliance Center, 6406J Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–343–9017 fax number: 202–343–2800; email address: *heard.geanetta@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: EPA will continue to collect annual reports, initial registrations and updates by way of the Agency's CDX and petitions for renewable fuels pathways from the regulated renewable fuels industry. The recordkeeping and reporting of this regulation will allow EPA to monitor compliance with the RFS program. We inform respondents that they may assert claims of business confidentiality (CBI) for information they submit in accordance with 40 CFR Part 2.

Forms: All of the forms associated with this ICR may be found in the associated docket (Docket ID EPA–HQ –OAR–2005–0161).

Respondents/affected entities: Producers of Renewable Fuels, Importers, Obligated Parties, Parties who own renewable identification numbers (RINs), including foreign RIN owners

Respondent's obligation to respond: Mandatory under the Clean Air Act, Sections 114 and 208, 42 U.S.C. 7414 and 7542.

Estimated number of respondents: 1192.

Frequency of response: Annually.

Total estimated burden: 15,707 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $ 3,039,221 (per year) in labor costs. There are no capital or O&M costs.

Changes in the Estimates: There is a sharp decrease of 43,026 hours in the total estimated respondent burden compared to the ICR currently approved by OMB. This decrease was caused by members in the obligated parties once registered not being required to re-register their companies in this renewal. New registrations are required if a company aquires another or when a new company enters into a party. The requirements of the current members in the party classes are to submit updates and corrections to their current registration when needed in CDX. The

RFS industry will submitt petitions for renewable fuel pathways to seek approval. The number in the respondent universe will decreased in all categories for the parties thus lessoning the reporting burden for its members.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–07386 Filed 3–28–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9008–4]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/*.

Weekly Receipt of Environmental Impact Statements

Filed 03/18/2013 Through 03/22/2013 Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html*

EIS No. 20130072, Final EIS, FHWA, AR, River Valley Intermodal Facilities, *Review Period Ends:* 05/13/2013, *Contact:* Randal Looney 501–324–6430.

EIS No. 20130073, Draft Supplement, NRC, WY Ross In-Situ Leach Recovery (ISR) Project, Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities, *Comment Period Ends:* 05/13/2013, *Contact:* Johari Moore 301–415–7694.

EIS No. 20130074, Draft Supplement, FHWA, USACE, WV, King Coal Highway Delbarton to Belo Project and Buffalo Mountain Surface Mine Clean Water Act Section 404 Permit Application, *Comment Period Ends:* 05/22/2013, *Contact:* Jason Workman (FHWA) 304–347–5928, Mark Taylor (USACE) 304–399–5610, Ben Hark (WVDOT) 304–558–2885.

The U.S. Department of Transportation's Federal Highway Administration and the U.S. Department of the Army's Corps of Engineers and the West Virginia Department of Transportation's Division of Highways are Joint-Lead Agencies for this project.

EIS No. 20130075, Draft Supplement, NMFS, AK, Effects of Oil and Gas Activities in the Arctic Ocean, *Comment Period Ends:* 05/28/2013, *Contact:* Candace Nachman 301–427–8401.

EIS No. 20130076, Draft EIS, USFS, AZ, Four-Forest Restoration Initiative Coconino and Kaibab National Forests, *Comment Period Ends:* 05/29/2013, *Contact:* Henry Provencio (928) 226–4684.

EIS No. 20130077, Draft EIS, NPS, TX, Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument Draft General Management Plan, *Comment Period Ends:* 05/28/2013, *Contact:* Erin Flanagan 303–969–2327.

EIS No. 20130078, Final EIS, USFS, MT, Jack Rabbit to Big Sky Meadow Village 161 kV Transmission Line Upgrade, *Review Period Ends:* 04/29/2013, *Contact:* Amy Waring 406–255–1451.

EIS No. 20130079, Draft EIS, BLM, MT, Billings and Pompeys Pillar National Monument Resource Management Plan, *Comment Period Ends:* 06/27/2013, *Contact:* Carolyn Sherve-Bybee 406–896–5234.

Dated: March 26, 2013.

Aimee S. Hessert,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2013–07373 Filed 3–28–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

Safe Drinking Water Act Sole Source Aquifer Program; Designation of Bainbridge Island, Washington as a Sole Source Aquifer

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final determination.

SUMMARY: Notice is hereby given that pursuant to Section 1424(e) of the Safe Drinking Water Act, the Administrator of the U.S. Environmental Protection Agency (EPA) has determined that the Bainbridge Island Aquifer System located in Kitsap County, Washington is the sole or principle source of drinking water for the citizens of Bainbridge Island and that this aquifer system, if contaminated would create a significant hazard to public health. As a result of this action, all Federal financially assisted projects constructed on Bainbridge Island will be subject to EPA review to ensure that these projects are designed and constructed so they do not create a significant hazard to public health.

DATES: This determination shall be effective on March 29, 2013.

ADDRESSES: All documents relating to this determination are available for inspection by the public during normal business hours at the U.S. EPA Library, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101 between the hours of 9:00 a.m.–12:00 p.m. and 1:00–4:00 p.m. and at the Bainbridge Island library at 1270 Madison Avenue North, Bainbridge Island.

FOR FURTHER INFORMATION CONTACT: Susan Eastman, EPA Region 10, Drinking Water Unit, by mail at the Seattle address given above, by telephone at (206) 553–6249, or by email at *Eastman.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300h3(e), Public Law 93–523 of December 16, 1974) states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, could create a significant hazard to public health, he shall publish a notice of the determination in the **Federal Register**. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On August 5, 2009, EPA received a petition from two citizens of Bainbridge Island requesting designation of the Bainbridge Island Aquifer System as a Sole Source Aquifer (SSA). On April 20, 2012, EPA published a notice in the *Bainbridge Islander* newspaper and mailed fact sheets to island residents which served to announce the public comment period. The public was permitted to submit comments and information on the petition from April 20 through June 4, 2012. Public comments received by EPA were generally in support of the designation.

II. Basis for Determination

EPA defines a sole or principle source aquifer as an aquifer or aquifer system which supplies at least 50 percent of the drinking water consumed in the area overlying the aquifer, and for which

there is no alternative source or combination of alternative drinking water sources which could physically, legally and economically supply those dependent upon the aquifer (U.S. EPA, 1987, Sole Source Aquifer Designation Decision Process, Petition Review Guidance).

Among the factors considered by the Regional Administrator in connection with the designation of an area under Section 1424(e) are: (1) Whether the Bainbridge Island Aquifer System is the area's sole or principal source of drinking water and (2) whether contamination of the aquifer system would create a significant hazard to public health. On the basis of technical information available to the EPA, the Regional Administrator has made the following findings in favor of designating the Bainbridge Island Aquifer System a SSA:

1. The Bainbridge Island Aquifer System currently serves more than 23,000 residents of Bainbridge Island. One hundred percent of the current population obtains their drinking water from the petitioned aquifer system either from individual wells or from one of the more than 150 water systems on the island.

2. There is no existing alternative drinking water source or combination of sources which supply drinking water to the designated area, nor is there any available cost effective future source capable of supplying the drinking water demands for the population served by the aquifer service area. No potential surface water bodies exist to provide a source of drinking water, piping water from the Kitsap Peninsula across Agate Pass Bridge to Bainbridge Island is cost-prohibitive and installation of a desalination plant is too costly.

3. Since groundwater contamination can be difficult or sometimes impossible to reverse and since the Bainbridge community relies on the Bainbridge Aquifer System for drinking water purposes, contamination of the aquifer system would pose a significant public health hazard.

The legal and technical basis for the proposal was outlined in an EPA publication titled: ''Support Document for Sole Source Aquifer Designation of the Bainbridge Island Aquifer System''.

III. Description of the Bainbridge Island Aquifer System

The petitioned area includes all of Bainbridge Island. The island is a mix of developed land and forests. Six principal aquifers make up the Bainbridge Island Aquifer System. On island precipitation recharges the aquifers and is the only source of recharge for lakes, ponds, and streams. The island has a total of 53 miles of seawater shoreline and the aquifer area is bounded on all sides by Puget Sound. Interior plateaus reach maximum elevations of 300 to 400 feet above mean sea level. The island can be divided into 12 drainage basins. Large volumes of unconsolidated glacial and interglacial materials from at least six advances and retreats of Pleistocene continental glaciers over the last 300,000 years has shaped the present-day landscape and underlying hydrostratigraphy of the island and are host to the aquifers on Bainbridge Island. The aquifer system is vulnerable to contamination from potential seawater intrusion, accidental spills, petroleum projects, small hazardous waste generators, household hazardous waste disposal, leachate from the closed island landfill, leachate from the Wyckoff Superfund site in Eagle Harbor, failing septic systems, fertilizers, pesticides and herbicides and improperly abandoned wells. Bainbridge Island's hydrogeologic characteristics are similar to the following Puget Sound islands whose aquifers have already been designated as SSA's by EPA: Camano, Whidbey, Marrowstone, Guemes and Vashon-Maury. Please see the Support Document for a more detailed hydrogeologic description.

IV. Information Utilized in Determination

The information utilized in this determination include the petition; U.S. Geological Survey, 2011, Conceptual Model and Numerical Simulation of the Groundwater-Flow system of Bainbridge Island, Washington, Scientific Investigations Report 2011–5021, 96 pages; Washington Department of Ecology, 2011a, Confirmed and Suspected Contaminated Sites List, Bainbridge Island City Strawberry Plant Site, August 16; EPA guidance documents and the City of Bainbridge Water Resource Study (2000). For a complete list of references used by the petitioner see the Support Document.

V. Project Review

Publication of this determination requires that EPA review proposed projects with Federal financial assistance in order to ensure that such projects do not have the potential to contaminate the Bainbridge Island SSA so as to create a significant hazard to public health. Proposed projects that are funded entirely by state, local, or private concerns are not subject to SSA review by EPA. EPA does not review all possible Federal financially-assisted projects but tries to focus on those projects which pose the greatest risk to public health. Memorandums of Understanding between EPA and various Federal funding agencies help identify, coordinate and evaluate projects.

VI. Summary

Today's action affects the Bainbridge Island Aquifer System located on Bainbridge Island, Kitsap County, Washington. Projects with federal financial assistance proposed within the Bainbridge Island Aquifer System will be reviewed to ensure that their activities will not endanger public health through contamination of the aquifer. A public notice regarding the SSA designation request was published in the *Bainbridge Islander* newspaper on April 20, 2012. Seven comments were received all in general support of the designation of the Bainbridge Island Aquifer System.

Authority: Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300h3(e), Pub. L. 93–523 of December 16, 1974

Dated: March 21, 2013.

Rick Albright,

Acting Regional Administrator.

[FR Doc. 2013–07409 Filed 3–28–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2013–N–04]

Notice of Annual Adjustment of the Cap on Average Total Assets That Defines Community Financial Institutions

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) has adjusted the cap on average total assets that defines a ''Community Financial Institution'' based on the annual percentage increase in the Consumer Price Index for all urban consumers (CPI–U) as published by the Department of Labor (DOL). These changes took effect on January 1, 2013.

FOR FURTHER INFORMATION CONTACT: Patricia L. Sweeney, Division of Federal Home Loan Bank Regulation, (202) 649–3311, *Pat.Sweeney@fhfa.gov*, or Eric M. Raudenbush, Assistant General Counsel, (202) 649–6421, *Eric.Raudenbush@fhfa.gov*, (not toll-free numbers), Federal Housing Finance Agency, Constitution Center, 400 Seventh Street, SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The Federal Home Loan Bank Act (Bank Act) confers upon insured depository institutions that meet the statutory definition of a ''Community Financial Institution'' (CFI) certain advantages over non-CFI insured depository institutions in qualifying for Federal Home Loan Bank (Bank) membership, and in the purposes for which they may receive long-term advances and the collateral they may pledge to secure advances.[1] Section 2(10)(A) of the Bank Act and § 1263.1 of FHFA's regulations define a CFI as any Bank member the deposits of which are insured by the Federal Deposit Insurance Corporation and that has average total assets below a statutory cap.[2] The Bank Act was amended in 2008 to set the statutory cap at $1 billion and to require the Director of FHFA to adjust the cap annually to reflect the percentage increase in the CPI–U, as published by the DOL, for the prior year.[3] For 2012, FHFA set the CFI asset cap at $1,076,000,000, which reflected a 3.4 percent increase over 2011, based upon the increase in the CPI–U between 2010 and 2011. *See* 77 FR 14366 (Mar. 9, 2012).

II. The CFI Asset Cap For 2013

As of January 1, 2013, FHFA has increased the CFI asset cap from $1,076,000,000 to $1,095,000,000, which reflects a 1.8 percent increase in the unadjusted CPI–U from November 2011 to November 2012. The new amount was obtained by rounding to the nearest million, as has been the practice for all prior adjustments. Consistent with the practice of other Federal agencies, FHFA bases the annual adjustment to the CFI asset cap on the percentage increase in the CPI–U from November of the year prior to the preceding calendar year to November of the preceding calendar year, because the November figures represent the most recent available data as of January 1st of the current calendar year.

In calculating the CFI asset cap, FHFA uses CPI–U data that have not been seasonally adjusted (*i.e.*, the data have not been adjusted to remove the estimated effect of price changes that normally occur at the same time and in about the same magnitude every year). The DOL encourages use of unadjusted CPI–U data in applying ''escalation'' provisions such as that governing the CFI asset cap, because the factors that are used to seasonally adjust the data are amended annually, and seasonally adjusted data that are published earlier are subject to revision for up to five years following their original release. Unadjusted data are not routinely subject to revision, and previously published unadjusted data are only corrected when significant calculation errors are discovered.

Dated: March 21, 2013.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2013–07335 Filed 3–28–13; 8:45 am]

BILLING CODE 8070–01–P

[1] *See* 12 U.S.C. 1424(a), 1430(a).

[2] *See* 12 U.S.C. 1422(10)(A); 12 CFR 1263.1.

[3] *See* 12 U.S.C. 1422(10); 12 CFR 1263.1 (defining the term *CFI asset cap*).

FEDERAL HOUSING FINANCE AGENCY

[No. 2013–N–05]

Lender Placed Insurance, Terms and Conditions

AGENCY: Federal Housing Finance Agency.

ACTION: Notice; input accepted.

This Notice sets forth an approach to address certain practices relating to lender placed insurance that the Federal Housing Finance Agency (FHFA) considers contrary to prudent business practice, to appropriate administration of Fannie Mae and Freddie Mac (the Enterprises) guaranteed loans, and which expose the Enterprises to potential losses as well as litigation and reputation risks. While FHFA plans a broader review of issues relating to the market for lender placed insurance, that includes receiving input from government and private sector parties, the practices that are addressed here are considered sufficiently distinct as to merit early action by the Agency acting as Conservator for the Enterprises.

Background

The FHFA oversees the operations of Fannie Mae and Freddie Mac. The Enterprises are in conservatorships, and, as Conservator, FHFA has statutory obligations in its conduct of the conservatorships, including preserving and conserving assets.[1] The Enterprises have diverse relationships with seller-servicers, ranging from loan originations to the administration of properties in default. These relationships are governed by their seller-servicer guides and, in certain cases, by individual contracts. Part of the administration by servicers of the interests of the Enterprises relate to the maintenance of properties.

Lender placed (or forced place) insurance involves the imposition of property and casualty insurance on a property that does not have the coverage required by their mortgage instruments. This commonly occurs due to lapse of voluntary insurance coverage for non-payment of premium. The absence of coverage triggers notifications to borrowers advising them of the need to provide proof of adequate coverage and warning that, in the absence of this proof, insurance will be forced placed, possibly at higher rates and with diminished coverage.

Protection of property values is important to homeowners, communities, and to the Enterprises. At the same time, provision of such insurance products at an appropriate cost is of concern as well. Reportedly, premiums for lender placed insurance are generally double those for voluntary insurance and, in certain instances, significantly higher. FHFA recognizes that some greater risks are involved with lender placed insurance and that lender placed insurance carriers do not have the opportunity to underwrite the properties they insure, however, the multiples involved may not reflect claims experience and other measures. Loss ratios for lender placed insurance are significantly below those for voluntary hazard insurance and some states already have required or have considered rate reductions of 30 percent or more.

The Enterprises, operating in conservatorship and supported by taxpayers, may be affected by such costs where a servicer pays the higher premiums and is unable to recoup the cost from the homeowner or at a foreclosure sale, and the expense is passed along to the Enterprise for reimbursement.

In the wake of the financial crisis, demands for lender placed insurance have risen and, as a result, so have Enterprise expenses related to such coverage. Concerns about lender placed insurance costs, compensation, and practices have been raised by the National Association of Insurance Commissioners, state regulators, the Consumer Financial Protection Bureau, state attorneys general, and consumer organizations. Generally, the focus has centered on excessive rates and costs passed onto borrowers, as well as commissions and other compensation paid to servicers by carriers.

In order to keep lender placed insurance costs to the Enterprises as low as possible, practices that provide

[1] The duties and authorities of the Conservator are set forth primarily at 12 U.S.C. 4617.

incentives for or do not deter higher costs should be avoided.

Approach to Certain Lender Placed Insurance Practices

For mortgages that the Enterprises purchase or guarantee, FHFA anticipates that the Enterprises will put in place restriction on lender placed insurance practices enumerated below. Before any such restrictions take effect, FHFA seeks input from the public and interested parties for 60 days from the publication of this Notice. After considering input received, FHFA will determine what elements of the restrictions may or may not be maintained, amended or revised in its direction to the Enterprises. Four months subsequent to the receipt of such input, and in consultation with the Conservator, Fannie Mae and Freddie Mac will provide aligned guidance to sellers and servicers, including implementation schedules related to these particular lender placed insurance practices.[2]

The specific practices related to lender placed insurance that FHFA has determined pose risks to the Enterprises or run contrary to the duties of the Conservator and for which actions are specified are practices where there are concerns regarding conflicts between parties to the insurance agreement, including:

1. *Certain Sales Commissions.* The Enterprises shall prohibit sellers and servicers from receiving, directly or indirectly, remuneration associated with placing coverage with or maintaining placement with particular insurance providers.

2. *Certain Reinsurance Activities.* The Enterprises shall prohibit sellers and servicers from receiving, directly or indirectly, remuneration associated with an insurance provider ceding premiums to a reinsurer that is owned by, affiliated with or controlled by the sellers or servicer.

Input

FHFA invites input from any person with views on the planned practice limitations set forth above. FHFA also invites input on enhancing the transparency and consumer and investor protections related to lender placed insurance as well as regarding other practices that may operate to the detriment of the Enterprises operating in conservatorships. Further, FHFA is interested in whether there is data or information that would run contrary to the intended results sought by FHFA. Finally, FHFA is interested in the amount of time and difficulties associated with altering contracts between contractors and Enterprise servicers as would result from the planned approach.

FHFA will accept public input through its Office of Housing and Regulatory Policy (OHRP), no later than May 28, 2013, as the agency moves forward with its deliberations on appropriate action. Communications may be addressed to Federal Housing Finance Agency, OHRP, Constitution Center, 400 Seventh Street SW., Ninth Floor, Washington, DC 20024, or emailed to *LPIinput@fhfa.gov*. Communications to FHFA may be made public and posted without change on the FHFA Web site at *http://www.fhfa.gov*, and would include any personal information provided, such as name, address (mailing and email), and telephone numbers.

Dated: March 25, 2013.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2013–07338 Filed 3–28–13; 8:45 am]

BILLING CODE 8070–01–P

[2] Actions by the Enterprises only affect loans that they purchase or guarantee; their seller-servicer guides have no effect on practices of insurers except for dealings with the Enterprises.

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer, Cynthia Ayouch, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer, Shagufta Ahmed, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority to revise the following report:

Report title: Capital Assessments and Stress Testing information collection.

Agency form number: FR Y–14A/Q/M.

OMB Control number: 7100–0341.

Effective Dates: March 31, 2013 and June 30, 2013.

Frequency: Annually, semi-annual, quarterly, and monthly.

Reporters: Large banking organizations that meet an annual threshold of $50 billion or more in total consolidated assets (large Bank Holding Companies or large BHCs), as defined by the Capital Plan rule (12 CFR 225.8).[1]

Estimated annual reporting hours: FR Y–14A: Summary, 50,160 hours; Macro scenario, 1,860 hours; Counterparty credit risk (CCR), 2,292 hours; Basel III/Dodd-Frank, 600 hours; and Regulatory capital, 600 hours. FR Y–14 Q: Securities risk, 1,200 hours; Retail risk, 1,920 hours; Pre-provision net revenue (PPNR), 75,000 hours; Wholesale corporate loans, 6,720 hours; Wholesale commercial real estate (CRE) loans, 6,480 hours; Trading risk, 41,280 hours; Basel III/Dodd-Frank, 2,400 hours; Regulatory capital, 4,800 hours; and Operational risk, 3,360 hours; and Mortgage Servicing Rights (MSR) Valuation, 864 hours; Supplemental, 960 hours; and Retail Fair Value Option/Held for Sale (Retail FVO/HFS), 1,216 hours. FR Y–14M: Retail 1st lien mortgage, 153,000 hours; Retail home equity, 146,880 hours; and Retail credit card, 91,800 hours. FR Y–14 Implementation and On-Going Automation: Start-up for new respondents, 79,200 hours; and On-going revisions for existing respondents, 9,120 hours.

Estimated average hours per response: FR Y–14A: Summary, 836 hours; Macro scenario, 31 hours; CCR, 382 hours; Basel III/Dodd-Frank, 20 hours; and

[1] The Capital Plan rule applies to every top-tier large BHC. This asset threshold is consistent with the threshold established by section 165 of the Dodd-Frank Act relating to enhanced supervision and prudential standards for certain BHCs.

Regulatory capital, 20 hours. FR Y–14Q: Securities risk, 10 hours; Retail risk, 16 hours; PPNR, 625 hours; Wholesale corporate loans, 60 hours; Wholesale CRE loans, 60 hours; Trading risk, 1,720 hours; Basel III/Dodd-Frank, 20 hours; Regulatory capital, 40 hours; Operational risk, 28 hours, MSR Valuation, 24 hours; Supplemental, 8 hours; and Retail FVO/HFS, 16 hours. FR Y–14M: Retail 1st lien mortgage, 510 hours; Retail home equity, 510 hours; and Retail credit card, 510 hours. FR Y–14 Implementation and On-Going Automation: Start-up for new respondents, 7,200 hours; and On-going revisions for existing respondents, 480 hours.

Number of respondents: 30.

General description of report: The FR Y–14 series of reports are authorized by section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), which requires the Federal Reserve to ensure that certain BHCs and nonbank financial companies supervised by the Federal Reserve are subject to enhanced risk-based and leverage standards in order to mitigate risks to the financial stability of the United States (12 U.S.C. 5365). Additionally, section 5 of the BHC Act authorizes the Board to issue regulations and conduct information collections with regard to the supervision of BHCs (12 U.S.C. 1844).

As these data are collected as part of the supervisory process, they are subject to confidential treatment under exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)). In addition, commercial and financial information contained in these information collections may be exempt from disclosure under FOIA exemption 4 U.S.C. 552(b)(4)). Such exemptions would be made on a case-by-case basis.

Abstract: The data collected through the FR Y–14A/Q/M schedules provide the Federal Reserve with the additional information and perspective needed to help ensure that large BHCs have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The annual Comprehensive Capital Analysis and Review (CCAR) exercise is also complemented by other Federal Reserve supervisory efforts aimed at enhancing the continued viability of large BHCs, including (1) continuous monitoring of BHCs' planning and management of liquidity and funding resources and (2) regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of these financial institutions. In order to fully evaluate the data submissions, the Federal Reserve may conduct follow up discussions with or request responses to follow up questions from respondents, as needed.

The annual FR Y–14A collects large BHCs' quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.[2] The quarterly FR Y–14Q collects granular data on BHCs' various asset classes and PPNR for the reporting period, which are used to support supervisory stress test models and for continuous monitoring efforts. The monthly FR Y–14M comprises three loan- and portfolio-level collections, and one detailed address matching collection to supplement two of the loan- and portfolio-level collections for first lien mortgages and home equity mortgages.

On October 12, 2012, the Federal Reserve published two final rules in the **Federal Register** (77 FR 62409) with stress testing requirements for certain bank holding companies, state member banks, and savings and loan holding companies. The final rules implement sections 165(i)(1) and (i)(2) of the Dodd-Frank Act. Section 165(i)(1) of the Dodd-Frank Act requires the Board to conduct an annual stress test of each covered company[3] to evaluate whether the covered company has sufficient capital, on a total consolidated basis, to absorb losses as a result of adverse economic conditions (supervisory stress tests). Section 165 (i)(2) requires the Board to issue regulations that require covered companies to conduct stress tests semi-annually and require financial companies with total consolidated assets of more than $10 billion that are not covered companies and for which the Federal Reserve is the primary federal financial regulatory agency to conduct stress tests on an annual basis (collectively, company-run stress tests).

Current actions: On December 20, 2012, the Federal Reserve published a notice in the **Federal Register** (77 FR 75434) requesting public comment for 60 days on the revision of the FR Y–14 information collection. The Federal Reserve proposed revisions to the monthly FR Y–14M schedules and modifications to the frequency for certain FR Y–14A and FR Y–14Q schedules, effective March 31, 2013, to help refine supervisory stress tests and better evaluate BHCs' stress tests results. Revisions to the FR Y–14M schedules included: (1) Adding data items to all three loan- and portfolio-level collections, and the address matching collection, (2) clarifying several data items currently collected, and (3) deleting data items that are no longer needed. The comment period expired on February 19, 2013. The Federal Reserve received eleven comment letters regarding the proposed changes: eight from BHCs, two from private companies, and one from a group of trade associations.[4] All substantive comments are summarized and addressed below.

Summary of Comments

Most of the comments received requested clarification of the instructions for the information to be reported, or were technical in nature. These comments will be addressed in the final FR Y–14 reporting instructions. The Federal Reserve also received three comments not directly related to the proposed revisions to the FR Y–14 information collection regarding suggestions to (1) improve the current Frequently Asked Questions process, (2) prioritize collected data items in order of importance to the Federal Reserve, and (3) provide feedback to the mid-cycle company run stress test in a timely manner. Federal Reserve plans to take these comments under consideration and address them at a later date, as appropriate. The following is a detailed discussion of aspects of the proposed FR Y–14 collection for which the Federal Reserve received one or more substantive comments and an evaluation of, and responses to the comments received.

A. General

In general, commenters expressed concerns about the overall expansion of the information collection, the ongoing frequency of modifications to the reporting forms, and the increased burden those modifications will cause to reporters. Specifically, several commenters noted that the proposal substantially increases the number of data items on the FR Y–14M schedules, leaving BHCs insufficient time to make

[2] BHCs that must re-submit their capital plan generally also must provide a revised FR Y–14A in connection with their resubmission.

[3] See 12 U.S.C. 5365(a). A ''covered company'' includes any bank holding company with total consolidated assets of $50 billion or more and each nonbank financial company that the Council has designated for supervision by the Board.

[4] Three trade associations submitted a joint comment letter.

appropriate changes to their models, modify reporting systems, and integrate these systems with their internal controls structure. These commenters also requested delayed implementation of the revisions and guidance for BHCs and recommended developing a ''best efforts standard'' for missing or incomplete data.

The Federal Reserve weighed the potential increase in respondent burden against the need to collect additional information to enhance the Federal Reserve's ability to conduct effective supervisory stress testing, and made certain modifications to the proposal in response to the comments received. Specifically, the Federal Reserve will eliminate 12 proposed and 2 existing data items from the FR Y–14M schedules and delay the effective date until June 30, 2013 for most of the data items being added to the FR Y–14M schedules (except for the 8 proposed Basel II items on the FR Y–14M first-lien and home equity schedules).[5] Additional details on the items being eliminated are provided below. Furthermore, the Federal Reserve agrees that changes to the reporting forms should be less frequent and substantive to allow for the development of mature systems and processes and is working towards minimizing changes to the FR Y–14 reporting forms going forward.

Regarding the comment that a ''best efforts standard'' be applied, one commenter requested that such a standard be applied to data items that must be obtained from third parties. Other commenters noted particular data items that are difficult to obtain because of their historical nature or because they are part of portfolios that have been acquired. Firms are expected to comply with all regulatory reporting requirements and firms that have completed a merger or acquisition have requested and been granted extensions to allow additional time to reach full compliance. However, the Federal Reserve understands the difficulty in obtaining certain data items, particularly those obtained from third parties, and will investigate providing additional instructions regarding a ''best efforts standard.''

Regarding the reporting forms, one commenter suggested modifying the FR Y–14 reporting forms to clearly distinguish between the reporting of retail loans secured by 1–4 family residential properties from commercial loans secured by similar collateral. The Federal Reserve recognizes this distinction in loan classification but needs additional time to understand the extent of this issue and will make this distinction in a future proposal, if appropriate. Additionally, one commenter suggested that the formulas in the FR Y–14A Summary Schedule be modified to allow a firm to make one submission for both the supervisory baseline scenario and the BHC baseline scenario if a firm uses the supervisory baseline scenario as the BHC baseline scenario. The Federal Reserve understands the potential reduction in burden of allowing one submission, but believes additional investigation into the effect this change may have on the next annual Comprehensive Capital Analysis and Review and Dodd-Frank Act (DFA) stress test is warranted, and will consider issuing further guidance to address this comment.

Several commenters requested that the Federal Reserve attempt to minimize duplicative reporting requirements among the Federal Reserve's reporting forms and between the Federal Reserve's and other agencies' reporting forms. One commenter expressed concern over similar elements between the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128), FR Y–14A, and FR Y–14Q and suggested the reporting forms be changed to eliminate duplication. While the Federal Reserve recognizes that the aforementioned reporting forms contain similar elements, their differing frequencies, data items, and levels of granularity prevent consolidation of similar elements on any one reporting form. Another commenter suggested that better alignment should be achieved between the FR Y–14 and similar reporting requirements of other banking agencies. The Federal Reserve coordinates closely with other federal banking agencies that collect similar information and is working to eliminate duplicative requirements; however, other agencies have independent authority to collect such information.

The timing of reporting form submissions to the Federal Reserve and communication issued by the Federal Reserve was noted as an issue by several commenters. It was suggested by one commenter that the reporting timeline for the FR Y–14M should match the reporting timeline for the FR Y–14Q/FR Y–9C. Another commenter suggested that the submission deadlines for both the FR Y–14Q and FR Y–14M should be five days after the deadline for the FR Y–9C to provide more time for reconciliation between reporting forms. The Federal Reserve notes that all filers to date have largely complied with the reporting submission deadlines, which have been in place since the creation of the aforementioned reporting forms. The Federal Reserve needs to retain the current submission deadlines in order to allow sufficient time to conduct supervisory responsibilities.

Numerous comments were received inquiring whether firms are required to submit historical data for new data items on the FR Y–14M schedules. The Federal Reserve generally notes that unless a reporting form specifically requests historical data, respondents are not required to provide the Federal Reserve with historical data for any new data items.

Several commenters raised concerns regarding the mid-cycle DFA company run stress tests. One commenter suggested reducing the burden on reporters for the mid-cycle DFA company run stress test by both limiting the requirements for supporting documentation (as stated in the instructions to the FR Y–14A) and creating an abbreviated version of the FR Y–14A Summary Schedule. While the Federal Reserve agrees that limiting the supporting documentation for the mid-cycle submission may effectively reduce burden, creating an abbreviated version of the FR Y–14A Summary Schedule may prevent the Federal Reserve from conducting a complete analysis consistent with the annual stress test.

B. FR Y–14M Credit Card Schedule

In the December 20th proposal, the Federal Reserve proposed adding 65 new data items to the FR Y–14M Credit Card schedule: 46 data items to the account level and 19 items to the portfolio level. Additionally, the Federal Reserve proposed to revise the reporting of 11 existing account level data items from optional to mandatory. After careful consideration of comments and reporting burden, the Federal Reserve will adopt a final schedule with 59 of the proposed new data items: 40 data items to the account level and 19 items to the portfolio level. The majority of comments received requested clarification of item definitions and will be addressed in the final instructions. Some comments, however, suggested significant modification to data items and are addressed below.

Several commenters noted a lack of clarity among the possible selections for Month-End and Cycle-End Account Status items, especially regarding charged-off accounts and accounts in

[5] There are four Basel II items being added to both the First Lien Closed-End 1–4 Family Residential Loan Schedule and the Domestic Home Equity Loan and Home Equity Line Schedule: Basel II—Probability of Default (PD), Basel II—Loss Given Default (LGD), Basel II—Expected Loss Given Default (ELGD), and Basel II—Exposure at Default (EAD).

collection stage. Specifically, commenters expressed confusion about which option should be applied to charged-off accounts and how the Federal Reserve defines an account being in the collections stage. The Federal Reserve will revise the proposed selection options to be more specific.

Several commenters requested additional guidance regarding generating the information requested in the revised Customer ID item and the proposed new Co-borrower ID, Corporate ID and Trade Key items, because they are to be populated ''using the algorithm provided by the Federal Reserve Board or its agent.'' After consideration of the new definitions, the Federal Reserve believes that such an algorithm is unnecessary and will revert to the existing definition of Customer ID and remove Co-Borrower ID and Trade Key from the final schedule. Questions related to generating the Corporate ID would be directed to the Federal Reserve's data aggregator.

Several commenters stated that they do not store census tract information in their internal data management systems. Therefore, the Federal Reserve will remove data items for Account Billing Address—Census Tract, Account Billing Address—Street Address, and Account Billing Address—City.

Several commenters suggested adding a third response of ''Other'' to the proposed data item Updated Income Source to account for sources that do not qualify as ''Household'' or ''Individual.'' The Federal Reserve will add a third response of ''Other.''

Several commenters requested clarification regarding what to report if one Annual Percentage Rate (APR) is to be reported but several APRs existed in the reporting period. The Federal Reserve will clarify the instructions to state that firms should report a weighted average of APRs throughout the reporting period.

C. FR Y–14M First Lien Closed-End 1–4 Family Residential Loan Schedule

In the December 20th proposal, the Federal Reserve proposed adding 40 new data items to the loan-level table of the First Lien schedule. Additionally, the Federal Reserve proposed removing three existing data items from the same table. After consideration of comments and reporting burden, the Federal Reserve will revise the final schedule adding 36 of the proposed new data items to the loan-level table and removing 2 existing data items. With respect to the final list of proposed items, the Federal Reserve did not receive substantive comments on most of the proposed items. Most of the comments received required only clarification to definitions, which will be provided in the final instructions.

The Federal Reserve proposed to eliminate the Home Affordable Refinance Flag item, because it had appeared, based on a preliminary analysis, that the information reflected in this data item could be derived from other data items. However, after further consideration and analysis, the Federal Reserve has determined that the information reflected in the Home Affordable Refinance Flag data item cannot be derived from other data items. In addition, several commenters suggested that the Federal Reserve work with other agencies to better align the FR Y–14M schedules with data collections by other agencies in order to reduce the burden on reporters. Retaining the Home Affordable Refinance Flag would facilitate greater consistency with other agencies' data collections and, accordingly, retaining this item may reduce the burden on FR Y–14M reporters. Therefore the Federal Reserve will retain the Home Affordable Refinance Flag data item in the final schedule.

One commenter suggested that the data item Product Type should include an option for 10 year fixed-rate loans. The Federal Reserve has observed many instances of 10 year fixed-rate loans and will add an option for such loans.

Similarly to the Credit Card schedule, several commenters requested additional guidance regarding the Customer ID and the Co-borrower ID items. After consideration of comments and additional burden to reporters of these proposed items, the Federal Reserve will remove the items Co-Borrower ID and Customer ID. In an effort to additionally minimize reporting burden, the proposed items Prepayment Penalty Waived This Month and Reason for Default will also be eliminated.

D. FR Y–14M Domestic Home Equity Loan and Home Equity Line Schedule

The Federal Reserve proposed adding 27 new data items to the Loan/Line Level Table and 1 new data item to the Portfolio Level Table. Additionally, the Federal Reserve proposed to delete 1 existing data item from the Loan/Line Level Table. After consideration of comments and reporting burden, the final schedule will add 25 and eliminate 1 of the proposed new data items and eliminate 1 existing data item from the Loan/Line Level Table. Most of the comments received required only clarification to definitions, which will be provided in the final instructions.

Similarly to the First Lien schedule, several commenters requested additional guidance regarding the Customer ID and the Co-borrower ID items. After consideration of comments and additional burden to reporters of these proposed items, the Federal Reserve will remove the items Co-Borrower ID and Customer ID. In an effort to additionally minimize reporting burden, the proposed items Escrow Amount at Origination and Remodified Flag will also be eliminated as well as the existing item Escrow Amount Current.

Board of Governors of the Federal Reserve System.

March 25, 2013.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2013–07272 Filed 3–28–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 15, 2013.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Olivia Britton Holding,* Raleigh, North Carolina; to retain voting shares of First Citizens BancShares, Inc., and thereby indirectly retain voting shares of First-Citizens Bank & Trust Company, both in Raleigh, North Carolina.

2. *Frank Brown Holding, Jr.,* Raleigh, North Carolina; to retain voting shares of First Citizens BancShares, Inc., and thereby indirectly retain voting shares of First-Citizens Bank & Trust Company, both in Raleigh, North Carolina.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Scotty D. Allen,* Stephenville, Texas; to acquire voting shares of F & M Bancshares, Inc., and thereby indirectly acquire voting shares of Farmers and Merchants Bank, both in De Leon, Texas.

Board of Governors of the Federal Reserve System, March 26, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–07333 Filed 3–28–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 15, 2013.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Larry Alton Jobe, Dallas, Texas; Leland A. Jobe, Dallas, Texas; Jennifer M. Jobe, Dallas, Texas; Lezlie MacElroy, Pilot Point, Texas; and Lorrie J. Fry, Austin, Texas,* collectively as a group acting in concert, to retain and acquire additional voting shares of IBT Bancorp, Inc., Irving, Texas, and thereby indirectly acquire, Independent Bank of Texas, Irving, Texas.

Board of Governors of the Federal Reserve System, March 25, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–07293 Filed 3–28–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). 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 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 25, 2013.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Princeton Capital, LLC,* West Trenton, New Jersey; to become a savings and loan holding company by acquiring up to 88 percent of the voting shares of Bank of Maumee, Maumee, Ohio.

Board of Governors of the Federal Reserve System, March 26, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–07334 Filed 3–28–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee on Procedures Review, Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned subcommittee:

Time and Date: 10:30 a.m.–5:00 p.m., April 25, 2013.

Place: Audio Conference Call via FTS Conferencing. The USA toll-free, dial-in number is 1–866–659–0537 and the pass code is 9933701.

Status: Open to the public, but without an oral public comment period. Written comment should be provided to the contact person below in advance of the meeting.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the compensation program. Key functions of the ABRWH include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the ABRWH to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2013.

Purpose: The ABRWH is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request

by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is a reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee on Procedures Review was established to aid the ABRWH in carrying out its duty to advise the Secretary, HHS, on dose reconstructions. The Subcommittee on Procedures Review is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Division of Compensation Analysis and Support (DCAS) and its dose reconstruction contractor.

Matters To Be Discussed: The agenda for the Subcommittee meeting includes discussion of the following ORAU and DCAS procedures: OTIB–0055 (''Conversion from NCRP Report 38 Neutron Quality Factors to ICRP Pub. 60''), Program Evaluation Report (PER)-0005 (''Misinterpreted Application of the External Dose Factor {Hanford}''), PER 014 (''Construction Trades Workers''), PER 017 (''Evaluation of Incomplete Internal Dose Records from Idaho, Argonne-East and Argonne-West National Laboratories''), PER 020 (''Blockson Technical Basis Document''), PER 029 (''Hanford TBD Revision''), PER 031 (''Y–12 TBD Revisions''), PER 037 (''Ames TBD Revision''), PER 038 (''Hooker Electrochemical TBD Revision''), ORAUT–PROC–0044 (''Special Exposure Cohort''); DCAS Report 0053 (''Stratified Co-Worker Sets''); and a continuation of the comment-resolution process for other dose reconstruction procedures under review by the Subcommittee.

The agenda is subject to change as priorities dictate.

In the event an individual wishes to provide comments, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below in advance of the meeting.

Contact Person for More Information: Theodore Katz, Designated Federal Official, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta Georgia 30333, Telephone (513) 533–6800, Toll Free 1 (800) CDC–INFO, email *dcas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–07367 Filed 3–28–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

Notice of Cancellation: This document corrects a notice that was published in the **Federal Register** on March 21, 2013 (78 FR 06434), announcing a teleconference that would include the initial review, discussion, and evaluation of applications received in response to ''Indoor Environment of Low-Income Renovated Multifamily Housing in the Western Region of the United States (U01), Funding Opportunity Announcement EH–13–001.'' This meeting is canceled.

Notice will be provided if the meeting is rescheduled in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463).

Contact Person for More Information: J. Felix Rogers, Ph.D., M.P.H., Scientific Review Officer, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE., Mailstop F63, Atlanta, Georgia 30341, Telephone: (770) 488–4334.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–07366 Filed 3–28–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1457–NC]

Medicare and Medicaid Programs; Announcement of Application From a Hospital Requesting Waiver for Organ Procurement Service Area

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: A hospital has requested a waiver of statutory requirements that would otherwise require the hospital to enter into an agreement with its designated Organ Procurement Organization (OPO). The request was made in accordance with section 1138(a)(2) of the Social Security Act (the Act). This notice requests comments from OPOs and the general public for our consideration in determining whether we should grant the requested waiver.

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on May 28, 2013.

ADDRESSES: In commenting, refer to file code CMS–1457–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1457–NC, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1457–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments to a regulations staff member ONLY to the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Patricia Taft, (410) 786–4561.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Organ Procurement Organizations (OPOs) are not-for-profit organizations that are responsible for the procurement, preservation, and transport of organs to transplant centers throughout the country. Qualified OPOs are designated by the Centers for Medicare & Medicaid Services (CMS) to recover or procure organs in CMS-defined exclusive geographic service areas, pursuant to section 371(b)(1) of the Public Health Service Act (42 U.S.C. 273(b)(1)) and our regulations at 42 CFR 486.306. Once an OPO has been designated for an area, hospitals in that area that participate in Medicare and Medicaid are required to work with that OPO in providing organs for transplant, pursuant to section 1138(a)(1)(C) of the Social Security Act (the Act) and our regulations at 42 CFR 482.45.

Section 1138(a)(1)(A)(iii) of the Act provides that a hospital must notify the designated OPO (for the service area in which it is located) of potential organ donors. Under section 1138(a)(1)(C) of the Act, every participating hospital must have an agreement only with its designated OPO to identify potential donors.

However, section 1138(a)(2)(A) of the Act provides that a hospital may obtain a waiver of the above requirements from the Secretary under certain specified conditions. A waiver allows the hospital to have an agreement with an OPO other than the one initially designated by CMS, if the hospital meets certain conditions specified in section 1138(a)(2)(A) of the Act. In addition, the Secretary may review additional criteria described in section 1138(a)(2)(B) of the Act to evaluate the hospital's request for a waiver.

Section 1138(a)(2)(A) of the Act states that in granting a waiver, the Secretary must determine that the waiver—(1) is expected to increase organ donations; and (2) will ensure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver. In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) Cost-effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO due to the changes made in definitions for metropolitan statistical areas; and (4) the length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application received from a hospital within 30 days of receiving the application, and to offer interested parties an opportunity to submit comments during the 60-day comment period beginning on the publication date in the **Federal Register**.

The criteria that the Secretary uses to evaluate the waiver in these cases are the same as those described above under sections 1138(a)(2)(A) and (B) of the Act and have been incorporated into the regulations at § 486.308(e) and (f).

II. Waiver Request Procedures

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) detailing the waiver process and discussing the information hospitals must provide in requesting a waiver. We indicated that upon receipt of a waiver request, we would publish a **Federal Register** notice to solicit public comments, as required by section 1138(a)(2)(D) of the Act.

According to these requirements, we will review the comments received. During the review process, we may consult on an as-needed basis with the Health Resources and Services Administration's Division of Transplantation, the United Network for Organ Sharing, and our regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We will then make a final determination on the waiver request and notify the hospital and the designated and requested OPOs.

III. Hospital Waiver Request

As permitted by 42 CFR 486.308(e), the following hospital has requested a waiver to enter into an agreement with a designated OPO other than the OPO designated for the service area in which the hospital is located:

Southern Ocean Medical Center in Manahawkin, New Jersey, is requesting a waiver to work with: New Jersey Sharing Network, 691 Central Avenue, New Providence, NJ 07974.

The Hospital's Designated OPO is: Gift of Life Donor Program, 401 N 3rd Street, Philadelphia, PA 19123.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C.35).

V. Response to Comments

We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble,

and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance, and Program No. 93.778, Medical Assistance Program)

Dated: March 25, 2013

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2013–07343 Filed 3–28–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369; (Formerly Docket No. 2007D–0168)]

Draft Guidance for Industry on Bioequivalence Recommendations for Metronidazole Vaginal Gel; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Bioequivalence Recommendations for Metronidazole Vaginal Gel.'' The guidance provides specific recommendations on the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs) for metronidazole vaginal gel.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by May 28, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kris Andre, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9326.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311; FDA–2007–D–0433), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific bioequivalence (BE) recommendations available to the public on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.* As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific BE recommendations and provide a meaningful opportunity for the public to consider and comment on those recommendations. This notice announces the availability of draft BE recommendations for metronidazole vaginal gel.

New drug application 020208 for MetroGel-Vaginal (metronidazole) vaginal gel, 0.75%, was initially approved by FDA in August 1992. On October 31, 2006, FDA approved ANDA 077264 for a generic version of MetroGel-Vaginal 0.75% (metronidazole). FDA is now issuing a draft guidance for industry on BE recommendations for generic metronidazole vaginal gel (Draft Metronidazole Vaginal Gel BE Recommendations).

In March 2006, Foley & Lardner LLP (the petitioner) submitted a citizen petition requesting that FDA require that any ANDA referencing Metro-Gel Vaginal meet certain conditions, including conditions related to demonstrating BE (Docket No. FDA–2006–P–0080). FDA is reviewing the issues raised in the petition. FDA will consider any comments on the Draft Metronidazole Vaginal Gel BE Recommendations in responding to the citizen petition.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on the design of BE studies to support ANDAs for metronidazole vaginal gel. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov.* It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: March 25, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–07296 Filed 3–28–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

[Docket Number OIG–1302–N]

Special Fraud Alert: Physician-Owned Entities

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This Special Fraud Alert addresses physician-owned entities that derive revenue from selling, or arranging for the sale of, implantable medical devices ordered by their physician-owners for use in procedures the physician-owners perform on their own patients at hospitals or ambulatory surgical centers (ASCs).

DATES: These regulations are effective on March 29, 2013.

FOR FURTHER INFORMATION CONTACT: Patrice S. Drew, Department of Health and Human Services, Office of Inspector General, Congressional and Regulatory Affairs, at (202) 619–1368.

I. Introduction

This Special Fraud Alert addresses physician-owned entities that derive revenue from selling, or arranging for the sale of, implantable medical devices ordered by their physician-owners for use in procedures the physician-owners perform on their own patients at hospitals or ambulatory surgical centers (ASCs). These entities frequently are referred to as physician-owned distributorships, or ''PODs.'' [1] The Office of Inspector General (OIG) has issued a number of guidance documents on the general subject of physician investments in entities to which they refer, including the 1989 Special Fraud Alert on Joint Venture Arrangements [2] and various other publications. OIG also provided guidance specifically addressing physician investments in medical device manufacturers and distributors in an October 6, 2006 letter.[3] In that letter, we noted ''the strong potential for improper inducements between and among the physician investors, the entities, device vendors, and device purchasers'' and stated that such ventures ''should be closely scrutinized under the fraud and abuse laws.'' [4] This Special Fraud Alert focuses on the specific attributes and practices of PODs that we believe produce substantial fraud and abuse risk and pose dangers to patient safety.

II. The Anti-Kickback Statute

One purpose of the anti-kickback statute is to protect patients from inappropriate medical referrals or recommendations by health care professionals who may be unduly influenced by financial incentives. Section 1128B(b) of the Social Security Act (the Act) makes it a criminal offense to knowingly and willfully offer, pay, solicit, or receive any remuneration to induce, or in return for, referrals of items or services reimbursable by a Federal health care program. When remuneration is paid purposefully to induce or reward referrals of items or services payable by a Federal health care program, the anti-kickback statute is violated. By its terms, the statute ascribes criminal liability to parties on both sides of an impermissible ''kickback'' transaction. Violation of the statute constitutes a felony punishable by a maximum fine of $25,000, imprisonment up to 5 years, or both. Conviction will also lead to exclusion from Federal health care programs, including Medicare and Medicaid. OIG may also initiate administrative proceedings to exclude persons from the Federal health care programs or to impose civil money penalties for fraud, kickbacks, and other prohibited activities under sections 1128(b)(7) and 1128A(a)(7) of the Act.

III. Physician-Owned Distributorships

Longstanding OIG guidance makes clear that the opportunity for a referring physician to earn a profit, including through an investment in an entity for which he or she generates business, could constitute illegal remuneration under the anti-kickback statute. The anti-kickback statute is violated if even one purpose of the remuneration is to induce such referrals.

OIG has repeatedly expressed concerns about arrangements that exhibit questionable features with regard to the selection and retention of investors, the solicitation of capital contributions, and the distribution of profits. Such questionable features may include, but are not limited to: (1) Selecting investors because they are in a position to generate substantial business for the entity, (2) requiring investors who cease practicing in the service area to divest their ownership interests, and (3) distributing extraordinary returns on investment compared to the level of risk involved.

PODs that exhibit any of these or other questionable features potentially raise four major concerns typically associated with kickbacks—corruption of medical judgment, overutilization, increased costs to the Federal health care programs and beneficiaries, and unfair competition. This is because the financial incentives PODs offer to their physician-owners may induce the physicians both to perform more procedures (or more extensive procedures) than are medically necessary and to use the devices the PODs sell in lieu of other, potentially more clinically appropriate, devices. We are particularly concerned about the presence of such financial incentives in the implantable medical device context because such devices typically are ''physician preference items,'' meaning that both the choice of brand and the type of device may be made or strongly influenced by the physician, rather than being controlled by the hospital or ASC where the procedure is performed.

We do not believe that disclosure to a patient of the physician's financial interest in a POD is sufficient to address these concerns. As we noted in the preamble to the final regulation for the safe harbor relating to ASCs:

> * * * disclosure in and of itself does not provide sufficient assurance against fraud and abuse * * * [because] disclosure of financial interest is often part of a testimonial, i.e., a reason why the patient should patronize that facility. Thus, often patients are not put on guard against the potential conflict of interest, i.e., the possible effect of financial considerations on the physician's medical judgment.

See 64 FR 63,518, 63,536 (Nov. 19, 1999). Although these statements were made with respect to ASCs, the same principles apply in the POD context.

OIG recognizes that the lawfulness of any particular POD under the anti-kickback statute depends on the intent of the parties. Such intent may be evidenced by a POD's characteristics, including the details of its legal structure; its operational safeguards; and the actual conduct of its investors, management entities, suppliers, and customers during the implementation phase and ongoing operations. Nonetheless, we believe that PODs are inherently suspect under the anti-kickback statute. We are particularly concerned when PODs, or their physician-owners, exhibit any of the following suspect characteristics:

- The size of the investment offered to each physician varies with the expected or actual volume or value of devices used by the physician.
- Distributions are not made in proportion to ownership interest, or physician-owners pay different prices for their ownership interests, because of the expected or actual volume or value of devices used by the physicians.
- Physician-owners condition their referrals to hospitals or ASCs on their purchase of the POD's devices through coercion or promises, for example, by stating or implying they will perform surgeries or refer patients elsewhere if a hospital or an ASC does not purchase devices from the POD, by promising or implying they will move surgeries to the hospital or ASC if it purchases devices from the POD, or by requiring a hospital or an ASC to enter into an exclusive purchase arrangement with the POD.

[1] The physician-owned entities addressed in this Special Fraud Alert are sometimes referred to as ''physician-owned companies'' or by other terminology. For purposes of this Special Fraud Alert, a ''POD'' is any physician-owned entity that derives revenue from selling, or arranging for the sale of, implantable medical devices and includes physician-owned entities that purport to design or manufacture, typically under contractual arrangements, their own medical devices or instrumentation. Although this Special Fraud Alert focuses on PODs that derive revenue from selling, or arranging for the sale of, implantable medical devices, the same principles would apply when evaluating arrangements involving other types of physician-owned entities.

[2] Special Fraud Alert: Joint Venture Arrangements (August 1989), *reprinted at* 59 FR 65,372, 65,374 (Dec. 19, 1994).

[3] Letter from Vicki Robinson, Chief, Industry Guidance Branch, Department of Health and Human Services, OIG, Response to Request for Guidance Regarding Certain Physician Investments in the Medical Device Industries (Oct. 6, 2006).

[4] *Id.*

• Physician-owners are required, pressured, or actively encouraged to refer, recommend, or arrange for the purchase of the devices sold by the POD or, conversely, are threatened with, or experience, negative repercussions (e.g., decreased distributions, required divestiture) for failing to use the POD's devices for their patients.

• The POD retains the right to repurchase a physician-owner's interest for the physician's failure or inability (through relocation, retirement, or otherwise) to refer, recommend, or arrange for the purchase of the POD's devices.

• The POD is a shell entity that does not conduct appropriate product evaluations, maintain or manage sufficient inventory in its own facility, or employ or otherwise contract with personnel necessary for operations.

• The POD does not maintain continuous oversight of all distribution functions.

• When a hospital or an ASC requires physicians to disclose conflicts of interest, the POD's physician-owners either fail to inform the hospital or ASC of, or actively conceal through misrepresentations, their ownership interest in the POD.

These criteria are not intended to serve as a blueprint for how to structure a lawful POD, as an arrangement may not exhibit any of the above suspect characteristics and yet still be found to be unlawful. Other characteristics not listed above may increase the risk of fraud and abuse associated with a particular POD or provide evidence of unlawful intent. For example, a POD that exclusively serves its physician-owners' patient base poses a higher risk of fraud and abuse than a POD that sells to hospitals and ASCs on the basis of referrals from nonowner physicians.

The anti-kickback statute is not a prohibition on the generation of profits; however, PODs that generate disproportionately high rates of return for physician-owners may trigger heightened scrutiny. Because the investment risk associated with PODs is often minimal, a high rate of return increases both the likelihood that one purpose of the arrangement is to enable the physician-owners to profit from their ability to dictate the implantable devices to be purchased for their patients and the potential that the physician-owner's medical judgment will be distorted by financial incentives. Our concerns are magnified in cases when the physician-owners: (1) are few in number, such that the volume or value of a particular physician-owner's recommendations or referrals closely correlates to that physician-owner's return on investment, or (2) alter their medical practice after or shortly before investing in the POD (for example, by performing more surgeries, or more extensive surgeries, or by switching to using their PODs' devices on an exclusive, or nearly exclusive basis).

We are aware that some PODs purport to design or manufacture their own devices. OIG does not wish to discourage innovation; however, claims—particularly unsubstantiated claims—by physician-owners regarding the superiority of devices designed or manufactured by their PODs do not disprove unlawful intent. The risk of fraud and abuse is particularly high in circumstances when such physicians-owners are the sole (or nearly the sole) users of the devices sold or manufactured by their PODs.

Finally, because the anti-kickback statute ascribes criminal liability to parties on both sides of an impermissible ''kickback'' transaction, hospitals and ASCs that enter into arrangements with PODs also may be at risk under the statute. In evaluating these arrangements, OIG will consider whether one purpose underlying a hospital's or an ASC's decision to purchase devices from a POD is to maintain or secure referrals from the POD's physician-owners.

IV. Conclusion

OIG is concerned about the proliferation of PODs. This Special Fraud Alert reiterates our longstanding position that the opportunity for a referring physician to earn a profit, including through an investment in an entity for which he or she generates business, could constitute illegal remuneration under the anti-kickback statute. OIG views PODs as inherently suspect under the anti-kickback statute. Should a POD, or an actual or potential physician-owner, continue to have questions about the structure of a particular POD arrangement, the OIG Advisory Opinion process remains available. Information about the process may be found at: *http://oig.hhs.gov/faqs/advisory-opinions-faq.asp.*

To report suspected fraud involving physician-owned entities, contact the OIG Hotline at *http://oig.hhs.gov/fraud/report-fraud/index.asp* or by phone at 1–800–447–8477 (1–800–HHS–TIPS).

Dated: March 26, 2013.

Daniel R. Levinson,

Inspector General.

[FR Doc. 2013–07394 Filed 3–28–13; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-day Comment Request: Quantification of Behavioral and Physiological Effects of Drugs Using a Mobile Scalable Device

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute on Drug Abuse (NIDA), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and For Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact NIDA Program Official: Dr. Steve Gust, National Institute on Drug Abuse, 6001 Executive Blvd., Bethesda, MD 20892, or call non-toll-free number (301) 443–6480 or Email your request, including your address to: *sgust@nida.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Proposed Collection: Quantification of Behavioral and Physiological Effects of Drugs Using a Mobile Scalable Device, 0925-New, National Institute on Drug Abuse (NIDA), National Institutes of Health (NIH).

Need and Use of Information Collection: This study will examine the

effectiveness of a mobile scalable device to detect the impairing effects of different drugs. The primary purpose of the data collected is to determine eligibility in a driving simulation study and to verify the effectiveness of the experimental manipulations. The findings will provide valuable information concerning the utility and effectiveness of mobile, smartphone/tablet-based neurocognitive assessment that can provide a multifactorial evaluation of cognitive functioning associated with impaired driving.

OMB approval is requested for 18 months. There are no costs to respondents other than their time. The total annualized burden hours are 58.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Per annual hour burden
Phone Screening	Adults	100	1	10/60	17
Driving Survey	Adults	72	1	15/60	18
Realism Survey	Adults	72	1	3/60	4
Sleep and Intake Questionnaire	Adults	72	2	3/60	7
Stanford Sleepiness Scale	Adults	72	6	1/60	7
Wellness Survey	Adults	72	2	2/60	5

Dated: March 25, 2013.

Glenda J. Conroy,

Executive Officer (OM Director), NIDA, NIH.

[FR Doc. 2013–07349 Filed 3–28–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Rheumatology, Dermatology and Osteoclast Biology.

Date: April 30, 2013.

Time: 1:00 p.m. to 3:00 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: Aruna K Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 25, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–07288 Filed 3–28–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Rheumatology, Dermatology and Osteoclast Biology.

Date: April 30, 2013.

Time: 1:00 p.m. to 3:00 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: Aruna K Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 25, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–07307 Filed 3–28–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: AIDS and AIDS Related Research.

Date: April 9, 2013.

Time: 10:30 a.m. to 12:00 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: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Neurotoxicity.

Date: April 11, 2013.

Time: 2:00 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: Richard D Crosland, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7850, Bethesda, MD 20892, 301–435–1220 *rc218u@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Program Project: Structural Basis for Gap Junction Function.

Date: April 15–16, 2013.

Time: 8:00 a.m. to 11:55 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Peter B Guthrie, Ph.D., Scientific Review Officer, Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 25, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–07289 Filed 3–28–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDDK.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Diabetes and Digestive and Kidney Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDDK.

Date: May 1–2, 2013.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health Building 5, Room 127, 5 Memorial Drive, Bethesda, MD 20892.

Contact Person: Michael W. Krause, Ph.D., Scientific Director, National Institute of Diabetes and Digestive, and Kidney Diseases, National Institute of Health, Building 5, Room B104, Bethesda, MD 20892–1818, (301) 402–4633, *mwkrause@helix.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 25, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–07292 Filed 3–28–13; 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 Tumor Immunology.

Date: June 26–27, 2013.

Time: 6:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Express, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Robert Bird, Ph.D., Chief Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8113, Bethesda, MD 20892–8328, 301–496–7978, *birdr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 25, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–07290 Filed 3–28–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Rheumatology, Dermatology and Osteoclast Biology.

Date: April 30, 2013.

Time: 1:00 p.m. to 3:00 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: Aruna K Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 25, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–07308 Filed 3–28–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel ''NIAID Peer Review Meeting''.

Date: April 22–24, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Maja Maric, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, Room 3266, Bethesda, MD 20892–7616, 301–451–2634, *maja.maric@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 25, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–07291 Filed 3–28–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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.

Proposed Project: SAMHSA Application for Peer Grant Reviewers (OMB No. 0930–0255)—Extension

Section 501(h) of the Public Health Service (PHS) Act (42 U.S.C. 290aa) directs the Administrator of the Substance Abuse and Mental Health Services Administration (SAMHSA) to establish such peer review groups as are needed to carry out the requirements of Title V of the PHS Act. SAMHSA administers a large discretionary grants program under authorization of Title V, and, for many years, SAMHSA has funded grants to provide prevention and treatment services related to substance abuse and mental health.

In support of its grant peer review efforts, SAMHSA desires to continue to expand the number and types of reviewers it uses on these grant review committees. To accomplish that end, SAMHSA has determined that it is important to proactively seek the inclusion of new and qualified representatives on its peer review groups. Accordingly SAMHSA has developed an application form for use by individuals who wish to apply to serve as peer reviewers.

The application form has been developed to capture the essential information about the individual applicants. Although consideration was given to requesting a resume from interested individuals, it is essential to have specific information from all applicants about their qualifications. The most consistent method to accomplish this is through completion of a standard form by all interested persons which captures information about knowledge, education, and experience in a consistent manner from all interested applicants. SAMHSA will use the information provided on the applications to identify appropriate peer grant reviewers. Depending on their experience and qualifications, applicants may be invited to serve as either grant reviewers or review group chairpersons.

The following table shows the annual response burden estimate.

Number of respondents	Responses/ respondent	Burden/ responses (hours)	Total burden hours
500	1	1.5	750

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, One Choke Cherry Road, Rockville, MD 20857 *or* email her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received by May 28, 2013.

Summer King,

Statistician.

[FR Doc. 2013–07302 Filed 3–28–13; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

United States Coast Guard

[Docket No. USCG–2013–0194]

Navigation Safety Advisory Council; Meeting

AGENCY: United States Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee meeting: correction.

SUMMARY: The Navigation Safety Advisory Council (NAVSAC) will meet April 10–11, 2013, in Arlington, Virginia to discuss matters relating to maritime collisions, rammings, groundings; Inland and International Rules of the Road; navigation regulations and equipment; routing measures; marine information; diving safety; and aids to navigation systems. This notice corrects the previous notice to add an explanation for why 15-days advance notice was not given.

DATES: NAVSAC will meet Wednesday, April 10, 2013, from 8 a.m. to 5 p.m., and Thursday, April 11, 2013, from 8 a.m. to 5 p.m. Please note that the meeting may close early if the committee has completed its business. Pre-registration and written comments are due April 1, 2013.

ADDRESSES: The meeting will be held at the Navy League Building, Coast Guard Recruiting Command, 5th floor conference room, 2300 Wilson Boulevard, Suite 500, Arlington, Virginia 20598. All visitors to the Navy League Building must pre-register to be admitted to the building. You may pre-register by contacting Mr. Burt Lahn listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions about this meeting, please contact Mr. Mike Sollosi, the NAVSAC Alternate Designated Federal Officer (ADFO), by telephone at 202–372–1545 or via email at *mike.m.sollosi@uscg.mil;* or Mr. Burt Lahn, NAVSAC meeting coordinator, at telephone 202–372–1526 or email *burt.a.lahn@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Coast Guard's March 27, 2013 notice of the April 10–11 2013, NAVSAC meeting inadvertently failed to contain an explanation for its publication less than 15 calendar days prior to the meeting, as required by General Services Administration rules 41 CFR–102–3.150(b). The reason the notice was published only 14 calendar days prior to the meeting was an administrative delay. The Coast Guard regrets the delay in publication but notes that the notice was publicly available on the **Federal Register** Web site 16 calendar days prior to the meeting. Additionally, all known interested parties were made aware of the meeting with sufficient time for planning purposes.

It is critical that this meeting be held on the announced meeting date because delays in Council discussions could have significant ramifications for ongoing Coast Guard studies and evaluations on the agenda for the upcoming meeting. Maintaining the current meeting schedule allows the Coast Guard to continue deliberations and forward progress regarding multiple risk assessments for U.S. ports and waterways.

If you have been adversely affected by the delay in publishing the notice, contact Mr. Mike Sollosi or Mr. Burt Lahn (see **FOR FURTHER INFORMATION CONTACT**) and the Coast Guard will make every effort to accommodate you.

Dated: March 25, 2013.

Kathryn Sinniger,

Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.

[FR Doc. 2013–07286 Filed 3–28–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2012–0797]

National Maritime Security Advisory Committee; Meeting

AGENCY: United States Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee meeting; correction.

SUMMARY: The Coast Guard published a notice of meeting for the National Maritime Security Advisory Committee (NMSAC) in the **Federal Register** on March 18, 2013. Based on budgetary constraints, NMSAC will no longer meet as previously reported. NMSAC will now meet on April 2, 2013 via web and teleconference to discuss various issues relating to national maritime security. This meeting will be open to the public.

DATES: The Committee will meet on Tuesday, April 2, 2013 from 10:00 a.m. to 1:00 p.m. This meeting may close early if all business is finished. All written material and requests to make oral presentations should reach the Coast Guard on or before March 29, 2012.

ADDRESSES: This meeting will be broadcasted via a web enabled interactive online format and teleconference line.

To participate via teleconference, dial 866–810–4853, the pass code to join is 9760138#. Additionally, if you would like to participate in this meeting via the online web format, please log onto *https://connect.hsin.gov/r11254182* and follow the online instructions to register for this meeting.

For information on facilities or services for individuals with disabilities or to request special assistance, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Committee as listed in the ''Agenda'' section below. You may submit written comments no later than March 29, 2013. Identify your comments by docket number [USCG–2012–0797] using one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. We encourage use of electronic submissions because security screening may delay delivery of mail.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Same as mail address above, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and docket number [USCG–2012–0797]. All submissions received will be posted without alteration at *www.regulations.gov*, including any personal information provided. You may review a Privacy Act

notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Docket: Any background information or presentations available prior to the meeting will be published in the docket. For access to the docket to read background documents or submissions received by NMSAC, go to *http://www.regulations.gov,insert* ''USCG–2012–0797'' in the ''Search'' box, and then click ''Search.''

Public oral comment period will be held during the meetings on April 2, 2013, from 12:30 p.m. to 1:00 p.m. Speakers are requested to limit their comments to 5 minutes. Please note that the public comment period will end following the last call for comments. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Owens, ADFO of NMSAC, 2100 2nd Street SW., Stop 7581, Washington, DC 20593–7581; telephone 202–372–1108 or email *ryan.f.owens@uscg.mil.* If you have any questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). NMSAC operates under the authority of 46 U.S.C. 70112. NMSAC provides advice, consults with, and makes recommendations to the Secretary of Homeland Security, via the Commandant of the Coast Guard, on matters relating to national maritime security.

Agenda of Meeting

The agenda for the Committee meeting is as follows:

(1) Cyber Security Executive Order. On February 12, 2013, President Barack Obama signed an Executive Order to strengthen the cybersecurity of critical infrastructure by increasing information sharing and by jointly developing and implementing a framework of cybersecurity practices with our industry partners. NMSAC will be engaged to discuss and hear public comment on the Executive Order and begin initial work in developing a framework for the maritime community.

(2) Presidential Policy Directive-21. On February 12, 2013, the White House Office of the Press Secretary published a Presidential Policy Directive (PPD) on critical infrastructure security and resilience. PPD–21 updates the national approach from Homeland Security Presidential Directive-7 (issued in 2003) to adjust to the new risk environment, understand key lessons learned, and drive toward enhanced capabilities. NMSAC will be engaged to discuss and hear public comment on PPD–21 and its impacts on the maritime community.

(3) National Suspicious Activity Reporting Initiative (NSI). NMSAC will receive a brief, hear public comments and provide recommendations, on the NSI program.

(4) Radiation Portal Monitoring. NMSAC will continue its discussion of the Radiation Portal Monitoring Program.

(5) Transportation Worker Identification Credential (TWIC) Notice of Proposed Rule Making (NPRM). NMSAC will have a discussion on the recent TWIC NPRM.

(6) Public Comment Period.

Dated: March 25, 2013.

Kathryn Sinniger,

Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.

[FR Doc. 2013–07285 Filed 3–28–13; 8:45 am]

BILLING CODE 9110–04–P

[1] The Executive Order (not numbered) is available for viewing online at the White House's Web site: *http://www.whitehouse.gov/the-press-office/2013/02/12/executive-order-improving-critical-infrastructure-cybersecurity.*

[2] Presidential Policy Directive-21 is available for viewing online at the White House's Web site: *http://www.whitehouse.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil.*

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5702–N–01]

The Performance Review Board

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Notice of Appointments.

SUMMARY: The Department of Housing and Urban Development announces the appointments of, Maurice A. Jones, Karen Newton Cole, Michael A. Anderson, Jemine A. Bryon, Clifford D. Taffet, Mary K. Kinney, Bryan Greene, Kevin M. Simpson, Lori A. Michalski, Donald J. LaVoy, Patricia Hoban-Moore, Kevin R. Cooke, Jean Lin Pao, and Susan J. Shuback as members of the Departmental Performance Review Board. The address is: Department of Housing and Urban Development, Washington, DC 20410–0050.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Juliette Middleton, Director, Office of Executive Resources, Department of Housing and Urban Development, Washington, DC 20410. Telephone (202) 402–3058. (This is not a toll-free number)

Dated: March 22, 2013.

Maurice A. Jones,

Deputy Secretary.

[FR Doc. 2013–07265 Filed 3–28–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5681–N–13]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the

property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Mr. Robert Moore, Air Force Real Property Agency, 2261 Hughes Avenue, Suite 156, Lackland AFB, TX 78236–9852, (210)–395–9512; *Army:* Ms. Veronica Rines, Office of the Assistant Chief of Staff for Installation Management, Department of Army, Room 5A128, 600 Army Pentagon, Washington, DC 20310, (571)–256–8145; *Energy:* Mr. Mark C. Price, Department of Energy, Office of Engineering & Construction Management, OECM MA–50, 4B122, 1000 Independence Avenue SW., Washington, DC 20585, (202)–586–5422; (These are not toll-free numbers).

Dated: March 21, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM

FEDERAL REGISTER REPORT FOR 03/29/2013

Suitable/Available Properties

Building

Alaska

12 Buildings
Eielson AFB
Eielson AK 99702
Landholding Agency: Air Force
Property Number: 18201240003
Status: Unutilized
Directions: 1120, 1121, 1161, 1190, 1300, 4305, 6131, 6398, 1302, 1191, 5281, 3108
Comments: off-site removal only; sf varies; secured area; contact AF for info. on a specific property & accessibility/removal requirements

9 Buildings
JBER–E
Anchorage AK 99506
Landholding Agency: Air Force
Property Number: 18201240030
Status: Unutilized
Directions: 5374, 59122, 59348, 76520, 16519, 16521, 9570, 7179, 8197
Comments: off-site removal only; sf. varies; moderate conditions; restricted area; contact AF for more info. on a specific property & accessibility/removal requirements

4 Buildings
JBER
JBER AK 99506
Landholding Agency: Air Force
Property Number: 18201310014
Status: Unutilized
Directions: 10449, 27369, 33855, 35750
Comments: off-site removal only; sf. varies; moderate conditions; restricted area; contact AF for more info. on a specific property & accessibility/removal reqs.

Building 6260
Arctic Warrior Dr.
JBER AK 99506
Landholding Agency: Air Force
Property Number: 18201310015
Status: Unutilized
Comments: off-site removal only; 75,720 sf.; Admin./Storage; moderate conditions; restricted area; contact AF for info. on accessibility/removal reqs.

3 Buildings
Gibson Ave.
JBER AK 99506
Landholding Agency: Air Force
Property Number: 18201310016
Status: Unutilized
Directions: 6252, 6257, 7263
Comments: off-site removal only; sf. varies; storage; moderate conditions; restricted area; contact AF for more info. on a specific property & accessibility/removal reqs.

2 Buildings
Industrial Ave.
Eielson AFB AK 99702
Landholding Agency: Air Force
Property Number: 18201310030
Status: Unutilized
Directions: 6213, 6214
Comments: off-site removal only; sf. varies; major repairs needed; contact AF for more info. on a specific property & accessibility/removal reqs.

8 Buildings
Wainwright Short Range Radar Site
Wainwright AK 99782
Landholding Agency: Air Force
Property Number: 18201310036
Status: Unutilized
Directions: 1, 2, 3, 12, 13, 100, 101, 105
Comments: sf. varies; very poor conditions; remote area; contact AF for info. on a specific property listed above

California

Building 1028
19338 North St.
Beale CA 95903
Landholding Agency: Air Force
Property Number: 18201240009
Status: Unutilized
Comments: 178 sf.; storage; poor conditions; asbestos & lead; restricted area; contact AF for info. on accessibility requirements

Building 2153
6900 Warren Shingle
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18201240010
Status: Unutilized
Comments: 4,000 sf.; storage; very poor conditions; asbestos & lead possible; restricted area; contact AF for info. on accessibility requirements

Former Mather AFB
Former Mather AFB
Rancho Cordova CA 95655
Landholding Agency: Air Force
Property Number: 18201310064
Status: Excess
Directions: includes five bldgs. and land; bldgs. #: 1703, 1705, 1706, 1707, 1708
Comments: previously reported in 1992; total sf.: 191,446; sits on 15 acres; used for: residential; good condition

7 Buildings

Lawrence Berkeley Lab
Berkeley CA 94720
Landholding Agency: Energy
Property Number: 41201310002
Status: Excess
Directions: 4, 7, 7–C, 14, 16, 16–A, 5
Comments: sf. varies; office; deteriorated; contamination; remediation needed; restricted area; contact Energy for info. on a specific property & accessibility

Colorado

Building 300
Buckley AFB
Aurora CO 80011
Landholding Agency: Air Force
Property Number: 18201230016
Status: Unutilized
Comments: off-site removal only; 1414 sf.; jet fuel labs; roof has collapse & needs to be replaced; restricted area; contact AF for details on accessibility/removal

Building 66072
Military Housing
Colorado Springs CO
Landholding Agency: Air Force
Property Number: 18201310028
Status: Unutilized
Comments: 5,017 sf.; vacant; roof repairs needed

Florida

Building 5002
6801 Hwy 98
Tyndall AFB FL 32403
Landholding Agency: Air Force
Property Number: 18201310010
Status: Unutilized
Comments: 151 sf.; water pump station; 6 mons. vacant; major repairs; restricted area; contact AF for info. on accessibility reqs.

Georgia

Building 1134
Veterans Pkwy
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21201310027
Status: Excess
Comments:
CORRECTION: published on 03/08/2013 incorrectly as 'land'; off-site removal only; 513sf. Admin. poor conditions; asbestos; w/in secured area; Gov't escort only to access/remove property

Idaho

38 Buildings
Aspen & LodgePole
Mountain Home ID 83648
Landholding Agency: Air Force
Property Number: 18201230034
Status: Underutilized
Directions: 5001–5013, 5015, 5019–5023, 5025, 5027, 5029, 5031–5033, 5035–5041, 5043, 5101, 5103, 5105, 5107, 5109
Comments: off-site removal only; sf. varies; military housing; minor repairs/ renovations needed; asbestos & lead present; restricted area; contact AF for info. on accessibility/removal reqs.

38 Buildings
LodgePole & Cottonwood
Mountain Home ID 83648
Landholding Agency: Air Force
Property Number: 18201230035
Status: Underutilized
Directions: 5110–5121, 5123, 5125, 5127–5132, 5134, 5137, 5139, 5141, 5144–5146, 5150, 5152–5161
Comments: off-site removal only; sf. varies; military housing; minor repairs/ renovations needed; asbestos & lead present; restricted area; contact AF for info. on accessibility/removal reqs.

37 Buildings
Cottonwood & Sage
Mountain Home ID 83648
Landholding Agency: Air Force
Property Number: 18201230036
Status: Underutilized
Directions: 5162–5164, 5166, 5168, 5170, 5201–5208, 5210, 5212, 5214–5219, 5221, 5223, 5225–5229, 5231, 5233, 5235–5240
Comments: off-site removal only; sf. varies; military housing; minor repairs/ renovations needed; asbestos & lead present; restricted area; contact AF for info. on accessibility/removal reqs.

38 Buildings
Sage, Beech, & Hickory
Mountain Home ID 83648
Landholding Agency: Air Force
Property Number: 18201230037
Status: Underutilized
Directions: 5241, 5243, 5245–5247, 5249, 5251, 5253–5255, 5257, 5259–5261, 5263, 5265, 5268, 5302–5303, 5305–5313, 5315, 5317, 5319–5323, 5323, 5327
Comments: off-site removal only; sf. varies; military housing; minor repairs/ renovations needed; asbestos & lead present; restricted area; contact AF for info. on accessibility/removal reqs.

38 Buildings
Hickory & Pinon
Mountain Home ID 83648
Landholding Agency: Air Force
Property Number: 18201230038
Status: Underutilized
Directions: 5329–5333, 5335, 5337, 5339, 5341–5349, 5351, 5353, 5355–5359, 5361, 5363–5367, 5370–5377
Comments: off-site removal only; sf. varies; military housing; minor repairs/ renovations needed; asbestos & lead present; restricted area; contact AF for info. on accessibility/removal reqs.

26 Buildings
Mountain Home AFB
Mountain Home ID 83648
Landholding Agency: Air Force
Property Number: 18201230041
Status: Underutilized
Directions: 45000, 45004, 45007, 45008, 45011, 45012, 45015, 45019, 45022, 45023, 45027, 45031, 45035, 45036, 45039, 45040, 45043, 45103, 45107, 45111, 45112, 45115, 45116, 45119, 45120, 45123
Comments: off-site removal only; 780 sf. for ea.parking; minor repairs/renovations needed; restricted area; contact AF for info. on accessibility/removals reqs.

74 Buildings
Mountain Home AFB
Mountain Home ID 83648
Landholding Agency: Air Force
Property Number: 18201230042
Status: Underutilized
Directions: 45127, 45130, 45131, 45134, 45135, 45139, 45143, 45146, 45147, 45152, 45156, 45159, 45160, 45163, 45164, 46168, 45172, 45203, 45204, 45207, 45208, 45212, 45216, 45217, 45220, 45221, 45225, 45228, 45229, 45233, 45237, 45238, 45241, 45242, 45245, 45249, 45253, 45254, 45257, 45261, 45264, 45265, 45268, 45272, 45272, 45305, 45308, 45309, 45312, 45313, 45317, 45321, 45322, 45325, 45329, 45332, 45333, 45337, 45341, 45344, 45345, 45348, 45349, 45353, 45357, 45358, 45361, 45365, 45366, 45367, 45372, 45373, 45376, 45377
Comments: off-site removal only; 780 sf. for ea. parking; minor repairs/renovations needed; restricted area; contact AF for info. on accessibility/removals reqs.

Illinois

Bldg. 500
Plum Hill MARS
Belleville IL 62221
Landholding Agency: Air Force
Property Number: 18201220035
Status: Unutilized
Comments: 3,519 sf.; communication facility; no utilities; possible ground contamination; need repairs and remediation

Massachusetts

3 Buildings
Hudson Rd.
Sudbury MA
Landholding Agency: Air Force
Property Number: 18201310026
Status: Excess
Directions: 01, 04, 05
Comments: sf. varies; lab; fair conditions; restricted area; contact AF for info. on accessibility reqs.

Michigan

3 Buildings
Selfridge ANGB
Selfridge MI 48045
Landholding Agency: Air Force
Property Number: 18201220020
Status: Unutilized
Directions: 326, 780, 710
Comments: off-site removal only; sf varies; office/school/barracks; fair conditions; need repairs

New Jersey

B–5249
South Scott Plaza
Ft. Dix NJ 08640
Landholding Agency: Air Force
Property Number: 18201230011
Status: Unutilized
Comments: off-site removal only; cooling tower; extensive deterioration; major repairs required; restricted area; contact AF for more details on accessibility/removal

Building 5971
West End Plaza
JBMDL NJ 08640
Landholding Agency: Air Force
Property Number: 18201310025
Status: Unutilized
Comments: off-site removal only; 1,842 sf.; storage; poor conditions; restricted area; contact AF for info. on accessibility reqs.

Oklahoma

Building 267
7576 Sentry Blvd.
Tinker AFB OK 73145
Landholding Agency: Air Force
Property Number: 18201310039

Status: Unutilized
Comments: off-site removal only; 6,892 sf.; vehicle parking shed; fair conditions; restricted area; contact AF for info. on accessibility/removal requirements

South Carolina

Building 1400
66/68 Von Steuben
Goose Creek SC 29445
Landholding Agency: Air Force
Property Number: 18201310006
Status: Underutilized
Comments: 3,426 sf.; storage; fair conditions

Land at Henley Park Area
JBC
N. Charleston SC 29404
Landholding Agency: Air Force
Property Number: 18201310008
Status: Underutilized
Comments: 57 acres; restricted military installation; contact AF on info. on accessibility reqs.

Texas

Building 57001
Concho
San Angelo TX 76904
Landholding Agency: Air Force
Property Number: 18201310057
Status: Excess
Comments: 1,072 sf.; shop; poor conditions; termite damage

Utah

Building 00030
Tooele Army Depot
Tooele UT 84074
Landholding Agency: Army
Property Number: 21201310067
Status: Underutilized
Comments: off-site removal only; playground; disassembly required; minor restoration needed; restricted area; contact Army for accessibility/removal reqs.

Virginia

Joint Base Langley Eustis
1134 Wilson Ave.
Newport News VA
Landholding Agency: Air Force
Property Number: 18201240006
Status: Unutilized
Comments: 887 sf.; storage; poor conditions; restricted area; vistor's pass required; contact AF for more info.

Joint Base Langley Eustis
3508 Mulberry Island Rd.
Newport News VA
Landholding Agency: Air Force
Property Number: 18201240007
Status: Unutilized
Comments: 4,026 sf.; storage; poor conditions; restricted area; vistor's pass required; contact AF for more info.

Suitable/Available Properties

Land

Florida

WBPA (9901/72441/99300)
9901 E. Pine Ave.
St. George Island FL 32328
Landholding Agency: Air Force
Property Number: 18201310041
Status: Excess
Comments: .34 acres; tower & fence needs to be removed; remote access; contact AF for more info.

Suitable/Unavailable Properties

Building

Oklahoma

24 Buildings
Tinker AFB
Tinker AFB OK 73145
Landholding Agency: Air Force
Property Number: 18201310040
Status: Excess
Directions: 9005, 217, 222, 234, 803, 902, 903, 904, 905, 990, 994, 1001, 1096, 1110, 2128, 3333, 3805, 4005, 4068, 7005, 7007, 7037, 7038, 7041
Comments: sf. varies; fair to moderate conditions; currently bldgs. are unavailable because they are being utilized by the AF

Unsuitable Properties

Building

Alabama

6 Buildings
Varies Locations
Maxwell AFB AL 36112
Landholding Agency: Air Force
Property Number: 18201230025
Status: Excess
Directions: 1417, 1418, 1419, 1422, 1468, 1470
Comments: located w/in restricted area; public access denied & no alternative method to gain access w/out compromising Nat'l security
Reasons: Secured Area

Bldg. 31
450 Cedar St.
Maxwell AFB AL 36112
Landholding Agency: Air Force
Property Number: 18201230026
Status: Unutilized
Comments: located w/in restricted area; public access denied & no alternative method to gain access w/out compromising Nat'l security
Reasons: Secured Area

Building 853
25 South LeMay
Maxwell AFB AL 36112
Landholding Agency: Air Force
Property Number: 18201240002
Status: Underutilized
Comments: located on active military installation; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

6 Buildings
Maxwell AFB
Maxwell AL
Landholding Agency: Air Force
Property Number: 18201240021
Status: Underutilized
Directions: 302, 307, 1411, 695, 699, 322
Comments: public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

2 Buildings
Maxwell AFB
Maxwell AFB AL 36112
Landholding Agency: Air Force
Property Number: 18201310034
Status: Underutilized
Directions: 1450, 1451
Comments: secured military installation; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

3 Buildings
Visiting Officer Qtrs.
Gunter Annex AL 36114
Landholding Agency: Air Force
Property Number: 18201310035
Status: Underutilized
Directions: 1014, 1015, 1016
Comments: secured military installation; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Building 926
210 Kirkpatrick Ave.
Maxwell AFB AL 36112
Landholding Agency: Air Force
Property Number: 18201310043
Status: Underutilized
Comments: secured military installation; public access denied & no alternative w/ out compromising nat'l security
Reasons: Secured Area

Alaska

3 Buildings
Eielson AFB
Eielson AK
Landholding Agency: Air Force
Property Number: 18201310017
Status: Unutilized
Directions: 6161, 6120, 6154
Comments: w/in secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

6 Buildings
Eielson AFB
Eielson AK 99702
Landholding Agency: Air Force
Property Number: 18201310019
Status: Unutilized
Directions: 2208, 3125, 6151, 6156, 6158, 6159
Comments: w/in secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

5 Buildings
Eareckson Air Station
Eareckson AS AK 99546
Landholding Agency: Air Force
Property Number: 18201310037
Status: Unutilized
Directions: 0719, 00400, 03055, 0071, 00702
Comments: restricted access; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Arizona

7 Buildings
Davis Monthan AFB
Tucson AZ 85707
Landholding Agency: Air Force
Property Number: 18201310042
Status: Underutilized
Directions: 145, 4101, 4857, 4858, 5122, 5313

Comments: military installation; public access denied & no alternative w/out compromising nat'l security
Reasons: Secured Area

CALIFORNIA

2 Buildings
401 & 405 14th St.
Edwards AFB CA 93524
Landholding Agency: Air Force
Property Number: 18201230002
Status: Unutilized
Directions: 7177, 7179
Comments: public access not allowed; no alternative method to allow public access w/out comprising nat'l security
Reasons: Secured Area

4259
741 Circle
Edwards AFB CA 93524
Landholding Agency: Air Force
Property Number: 18201230003
Status: Unutilized
Comments: public access not allowed; no alternative method to allow public access w/out comprising nat'l security
Reasons: Secured Area

3 Buildings
Edwards AFB
Edwards AFB CA 93524
Landholding Agency: Air Force
Property Number: 18201230032
Status: Unutilized
Directions: 1412, 4203, 7020
Comments: located w/in restricted area where public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

26 Buildings
Eureka Hill Rd.
Point Arena Air CA
Landholding Agency: Air Force
Property Number: 18201240011
Status: Underutilized
Directions: 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627
Comments: secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

21 Buildings
Eureka Hill Rd.
Point Arena Air CA
Landholding Agency: Air Force
Property Number: 18201240012
Status: Underutilized
Directions: 100, 102, 104, 105, 160, 201, 108, 202, 203, 206, 220, 221, 222, 225, 228, 217, 218, 408, 700, 300, 216
Comments: secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

ACFT DY RSCH
Edwards AFB
Edwards CA
Landholding Agency: Air Force
Property Number: 18201240016
Status: Unutilized
Comments: secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

ACFT RSCH ENG
Edwards AFB
Edwards CA
Landholding Agency: Air Force
Property Number: 18201240017
Status: Unutilized
Comments: secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Kennel Stray Animal
Edwards AFB
Edwards CA
Landholding Agency: Air Force
Property Number: 18201240018
Status: Excess
Comments: secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

10 Buildings
Fresno Yosemite Intern'l
Fresno CA 93727
Landholding Agency: Air Force
Property Number: 18201240036
Status: Excess
Directions: 2202, 2203, 2204, 2206, 2207, 2208, 2217, 2219, 2221, 2223
Comments: restricted area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

4 Buildings
Arnold/Grumman Ave.
Beale CA 95903
Landholding Agency: Air Force
Property Number: 18201310018
Status: Underutilized
Directions: 1057, 1058, 1226, 1152
Comments: w/in secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

4 Buildings
Edwards AFB
Edwards AFB CA 93523
Landholding Agency: Air Force
Property Number: 18201310053
Status: Underutilized
Directions: B1412, B1400, B4900, B8834
Comments: secured area; public access denied & no alternative w/out compromising nat'l security
Reasons: Secured Area

2 Buildings
MISC REC BLDG.
Edwards AFB CA 93523
Landholding Agency: Air Force
Property Number: 18201310054
Status: Unutilized
Directions: B5206, B16
Comments: secured area; public access denied & no alternative w/out compromising nat'l security
Reasons: Secured Area

Colorado

4 Buildings
Buckley AFB
Aurora CO 80011
Landholding Agency: Air Force
Property Number: 18201230017
Status: Underutilized
Directions: B1504, B1503, B1502, B1501
Comments: located w/in secured area where public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

San Latrine Shower
1093 Ferl Rd.
USAF Academy CO 80840
Landholding Agency: Air Force
Property Number: 18201230033
Status: Underutilized
Comments: located w/in secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

12 Buildings
Military Housing
USAF Academy CO
Landholding Agency: Air Force
Property Number: 18201310029
Status: Unutilized
Directions: 66073, 66080, 66100, 66074, 66081, 66101, 66070, 66071, 66082, 66102, 9328, 9329
Comments: w/in secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Delaware

2 Buildings
Dover AFB
Dover DE 19902
Landholding Agency: Air Force
Property Number: 18201230018
Status: Underutilized
Directions: 3499, 899
Comments: located w/in secured area where public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Building 2818
2600 Spruance Dr.
New Castle DE 19720
Landholding Agency: Air Force
Property Number: 18201310050
Status: Unutilized
Comments: secured area; public access denied & no alternative w/out compromising nat'l security
Reasons: Secured Area

Florida

Facilities 28407 & 28411
1656 Lighthouse Rd.
Cape Canaveral FL 32925
Landholding Agency: Air Force
Property Number: 18201220009
Status: Excess
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security.
Reasons: Secured Area

2 Buildings
Hurlburt Field
Hurlburt Field FL 32544
Landholding Agency: Air Force
Property Number: 18201220010
Status: Underutilized
Directions: 90318 and 90319
Comments: nat'l security concerns; public access denied & no alternative method to

gain access w/out comprising nat'l security.
Reasons: Secured Area

10 Buildings
Cape Canaveral
Cape Canaveral FL 32925
Landholding Agency: Air Force
Property Number: 18201220039
Status: Excess
Directions: 28411, 28415, 44500, 49928, 28401, 24445, 24404, 24403, 1715, 70540
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
Reasons: Secured Area

3 Buildings
MacDill AFB
MacDill FL 33621
Landholding Agency: Air Force
Property Number: 18201230009
Status: Unutilized
Directions: 1205, 1149, 1135
Comments: located w/in secured area where public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

10 Buildings
Samuel C. Phillips Pkwy
Cape Canaveral AFB FL 32925
Landholding Agency: Air Force
Property Number: 18201230014
Status: Excess
Directions: 84922, 84920, 67900,60535, 60534, 1361, 40906, 56623, 36004, 17705
Comments: located w/in secured area where public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Facility 49800
15030 Samuel C. Phillips Pkwy
Cape Canaveral FL 32925
Landholding Agency: Air Force
Property Number: 18201230019
Status: Excess
Comments: located w/in secured area where public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Bldg. 1132
Transmitter Rd.
MacDill AFB FL 33621
Landholding Agency: Air Force
Property Number: 18201230021
Status: Unutilized
Comments: located w/in secured area where public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Bldg. 297
8005 Hillsborough Loop Dr.
MacDill FL 33621
Landholding Agency: Air Force
Property Number: 18201230049
Status: Underutilized
Comments: located w/in secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

9 Buildings
MacDill AFB
MacDill FL 33621
Landholding Agency: Air Force
Property Number: 18201230050
Status: Unutilized
Directions: 23, 189, 821, 828, 829, 1075, 1083, 1084
Comments: located w/in restricted active military installation; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

8 Buildings
Eglin AFB
Eglin FL 32542
Landholding Agency: Air Force
Property Number: 18201230057
Status: Underutilized
Directions: 223, 255, 411, 584, 1278, 1284, 1289, 4023
Comments: located in restricted controlled gov't installation; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

2 Buildings
Eglin AFB
Eglin FL 32542
Landholding Agency: Air Force
Property Number: 18201230058
Status: Unutilized
Directions: 586, 9267
Comments: located un restricted controlled gov't installation; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

7 Buildings
Eglin AFB
Eglin FL 32542
Landholding Agency: Air Force
Property Number: 18201240015
Status: Underutilized
Directions: 249, 250, 251, 256, 408, 888, 955
Comments: restricted area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

4 Buildings
Fighter Wing, FL ANGB
Jacksonville FL 32218
Landholding Agency: Air Force
Property Number: 18201240028
Status: Underutilized
Directions: 1014, 1015, 1016, 1017
Comments: property located on a gated entry controlled military base; public access denied & no alternative to gain access w/out compromising nat'l security.
Reasons: Secured Area

Facility 3013
107 Ford St.
Eglin AFB FL 32542
Landholding Agency: Air Force
Property Number: 18201240034
Status: Underutilized
Comments: located in a secured area; on the Duke Field cantonment area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

3 Buildings
Tyndall AFB
Tyndall FL 32403
Landholding Agency: Air Force
Property Number: 18201310012
Status: Unutilized
Directions: B122, B123, 920
Comments: located w/in secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

21 Buildings
Cape Canaveral AFS
Cape Canaveral AFS FL 32925
Landholding Agency: Air Force
Property Number: 18201310032
Status: Unutilized
Directions: 1627, 2826, 2842, 4120, 5414, 7006, 7850, 8602, 15832, 28403, 28404, 28408, 28409, 28414, 28420, 28422, 28423, 28425, 28502, 28504, 36001
Comments: secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

5 Buildings
Kennedy Space Ctr. Communications
Kennedy Space Ctr. FL 32815
Landholding Agency: Air Force
Property Number: 18201310033
Status: Unutilized
Directions: 29115, 29120, 29139, 29142, 95401
Comments: secured area; public access denied & no alternative method without compromising nat'l security
Reasons: Secured Area

Building 91400
Traffic Check House
Hurlburt Field FL 32544
Landholding Agency: Air Force
Property Number: 18201310052
Status: Underutilized
Comments: secured area; public access denied & no alternative w/out compromising nat'l security
Reasons: Secured Area

12 Buildings
Florida Ave.
Tyndall AFB FL 32403
Landholding Agency: Air Force
Property Number: 18201310061
Status: Underutilized
Directions: 6030, 6022, 6021, 6020, 6016, 6014, 6025, 6023, 6028, 9706, 9704, 9719
Comments: secured area; public access denied & no alternative method w/out compromising nat'l security
Reasons: Secured Area

6027 CE Shop/DRMO
302 Florida Ave.
Tyndall AFB FL 32403
Landholding Agency: Air Force
Property Number: 18201310062
Status: Excess
Comments: secured area; public access denied & no alternative method w/out compromising nat'l security
Reasons: Secured Area

Georgia

7 Buildings
Glynco Air Nat'l Guard Station
Brunswick GA 31525
Landholding Agency: Air Force
Property Number: 18201310044
Status: Excess
Directions: 002, 008, 009, 839, 841, 890, 891

Comments: w/in secured location; public access denied & no alternative w/out compromising nat'l security
Reasons: Secured Area

Hawaii

Bldg. 3378
Joint Base Pearl Harbor
Hickman HI
Landholding Agency: Air Force
Property Number: 18201240027
Status: Unutilized
Comments: located on secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

7 Buildings
Wake Island
Wake Island HI 96898
Landholding Agency: Air Force
Property Number: 18201310038
Status: Unutilized
Directions: 01403, 01406, 01407, 01408, 01411, 01186
Comments: restricted area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

16 Buildings
Wake Island
Wake Island HI 96898
Landholding Agency: Air Force
Property Number: 18201310055
Status: Unutilized
Directions: 00404, 00443, 00445, 00950, 01172, 01174, 01186, 01187, 01202, 01204, 01211, 01212, 01216, 01306, 1808
Comments: secured area; public access denied & no alternative method w/out compromising nat'l security
Reasons: Secured Area

Idaho

Fac. 291
Bomber Rd.
MHAFB ID 83648
Landholding Agency: Air Force
Property Number: 18201240013
Status: Unutilized
Comments: secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Illinois

3 Buildings
Scott AFB
Scott AFB IL 62225
Landholding Agency: Air Force
Property Number: 18201220034
Status: Unutilized
Directions:
1984, 1985, 530
Comments: High security active duty installation; nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
Reasons: Secured Area

B1508
107 Bucher St.
Scott AFB IL 62225
Landholding Agency: Air Force
Property Number: 18201230023
Status: Excess
Comments: authorized access only; restricted area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Building 509
611 South Drive
Scott AFB IL 62225
Landholding Agency: Air Force
Property Number: 18201310009
Status: Unutilized
Comments: located w/in secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Indiana

Facilities 99 &1371
Stor Igloos
Terre Haute IN 47803
Landholding Agency: Air Force
Property Number: 18201220019
Status: Unutilized
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security.
Reasons: Secured Area

Kansas

7 Buildings
McConnell AFB
McConnell KS 67210
Landholding Agency: Air Force
Property Number: 18201220033
Status: Underutilized
Directions: 408, 415, 424, 425, 696, 750, 1120
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
Reasons: Secured Area

4 Buildings
McConnell AFB
McConnell KS 67210
Landholding Agency: Air Force
Property Number: 18201310005
Status: Underutilized
Directions: 685, 950, 1091, 1335
Comments: restricted military installation; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

4 Buildings
Kansas Air Nat'l Guard
McConnell AFB KS 67221
Landholding Agency: Air Force
Property Number: 18201310048
Status: Underutilized
Directions: 52, 1394, 6001, 6013
Comments: secured area; public access denied & no alterative w/out compromising nat'l security
Reasons: Secured Area

Facility 13
52010 Jayhawk Dr.
McConnell AFB KS 67221
Landholding Agency: Air Force
Property Number: 18201310049
Status: Unutilized
Comments: secured area; public access denied & no alternative w/out compromising nat'l security
Reasons: Secured Area

Louisiana

3 Buildings
Barksdale AFB
Barksdale AFB LA 71110
Landholding Agency: Air Force
Property Number: 18201220032
Status: Unutilized
Directions: 5724, 7318, 7136
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
Reasons: Secured Area

4 Buildings
Barksdale AFB
Barksdale LA 71110
Landholding Agency: Air Force
Property Number: 18201240004
Status: Unutilized
Directions: 4411,4414,4421,4868
Comments: w/in restricted area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

B–4401
743 Kenny Ave.
Barksdale LA 71110
Landholding Agency: Air Force
Property Number: 18201240005
Status: Excess
Comments: restricted area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Building 4161
460 Billy Mitchell Ave.
Barksdale LA 71110
Landholding Agency: Air Force
Property Number: 18201240014
Status: Underutilized
Comments: secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Bldg. 6115
300 Miller Ave.
Boosier LA 71112
Landholding Agency: Air Force
Property Number: 18201240033
Status: Unutilized
Comments: extremely high noise hazard area; located w/in military airfield clear zone
Reasons: Within airport runway clear zone

2 Buildings
300 Miller Ave.
Boosier City LA 71112
Landholding Agency: Air Force
Property Number: 18201240035
Status: Unutilized
Directions: 6117, 6119
Comments: located w/in 1,500 ft. of a Federal facility handling 34,000 gallons of flammable materials; located within aircraft accident potential zone 1 (most dangerous); military airfield clear zone
Reasons: Within airport runway clear zone Within 2000 ft. of flammable or explosive material

7 Buildings
Barksdale AFB
Barksdale LA
Landholding Agency: Air Force
Property Number: 18201310027
Status: Underutilized
Directions: 4235, 4427, 4431, 4432, 4433, 4434, 4868

Comments: w/in secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Maryland

2 Buildings
Martin State Airport
Baltimore MD 21220
Landholding Agency: Air Force
Property Number: 18201220022
Status: Excess
Directions: 1120 & 1121
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security.
Reasons: Secured Area

Massachusetts

137 Pump House
Reilly House
OTIS ANGB MA
Landholding Agency: Air Force
Property Number: 18201230048
Status: Excess
Comments: located w/in secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

3 Buildings
175 Falcon Dr.
Westfield MA 01085
Landholding Agency: Air Force
Property Number: 18201240026
Status: Excess
Directions: 16, 35, 28
Comments: located on secured area; public access denied & no alternative methods to gain access w/out compromising nat'l security
Reasons: Secured Area

Mississippi

4 Buildings
Kessler AFB
Kessler AFB MS 39534
Landholding Agency: Air Force
Property Number: 18201220037
Status: Underutilized
Directions: 4813, 4815, 4906, 4910
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
Reasons: Secured Area

Bldg. 21005
6225 M St.
Meridian MS 39307
Landholding Agency: Air Force
Property Number: 18201230046
Status: Unutilized
Comments: Access limited to military personnel only; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Building 630
713 Lockhart
Columbus MS 39710
Landholding Agency: Air Force
Property Number: 18201230060
Status: Underutilized
Comments: public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

2 Buildings
Security Police Operations
Meridian MS
Landholding Agency: Air Force
Property Number: 18201310046
Status: Excess
Directions: 501, 502
Comments: secured area; public access denied & no alternative w/out compromising nat'l security
Reasons: Secured Area

Missouri

5 Buildings
705 Memorial Dr.
Saint Joseph MO 64506
Landholding Agency: Air Force
Property Number: 18201310047
Status: Underutilized
Directions: 14, 15, 57, 59, 129
Comments: secured area; public access denied & no alternative w/out compromising nat'l security
Reasons: Secured Area

Montana

Building 30
120th Fighter Wing
Great Falls MT 59404
Landholding Agency: Air Force
Property Number: 18201310020
Status: Underutilized
Comments: w/in secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Nebraska

2 Buildings
Offutt AFB
Offutt NE 68113
Landholding Agency: Air Force
Property Number: 18201220026
Status: Excess
Directions: 443, 620
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
Reasons: Secured Area

New Hampshire

PEASE ANGB
302 Newmarket St.
Newington NH 03803
Landholding Agency: Air Force
Property Number: 18201230043
Status: Unutilized
Comments: public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Building 244
302 Newmarket St.
Newington NH 03803
Landholding Agency: Air Force
Property Number: 18201310023
Status: Excess
Comments: w/in secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

New Jersey

Building 2602
Joint Base McGuire-Dix Lakehurst
Trenton NJ 08641
Landholding Agency: Air Force
Property Number: 18201220044
Status: Unutilized
Comments: nat'l security concerns; approval for the public to gain access w/out comprising nat'l security is not feasible; will promote a breach of security
Reasons: Secured Area

3 Buildings
Joint Base McGuire Dix Lakehurst
Ft. Dix NJ 08640
Landholding Agency: Air Force
Property Number: 18201230008
Status: Unutilized
Directions: 9725, 9055, 9404
Comments: located w/in secured area where public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Facility 9418
Joint Base McGuire Dix Lakehurst
Ft. Dix NJ 08640
Landholding Agency: Air Force
Property Number: 18201230013
Status: Unutilized
Comments: located w/in secured area where public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

4 Buildings
Joint Base McGuire-Dix-Lakehurst
Ft. Dix NJ 08640
Landholding Agency: Air Force
Property Number: 18201230051
Status: Unutilized
Directions: 9723, 9728, 9411, 9403
Comments: located w/in secured area where public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Bldg. 9415
9410 Old Shore Rd.
Ft. Dix NJ 08640
Landholding Agency: Air Force
Property Number: 18201230053
Status: Unutilized
Comments: located w/in restricted area where public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Traffic Check House
3573 Lancaster Rd.
Trenton NJ 08641
Landholding Agency: Air Force
Property Number: 18201230054
Status: Unutilized
Comments: located w/in secured post; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

2 Buildings
JBMDL
Ft. Dix NJ 08640
Landholding Agency: Air Force
Property Number: 18201240019
Status: Unutilized
Directions: 8679, 2316
Comments: secured post; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

2 Buildings

JBMDL
JBMDL NJ 08641
Landholding Agency: Air Force
Property Number: 18201310024
Status: Unutilized
Directions: 3332, 3351
Comments: located w/in secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

New Mexico

3 Buildings
Kirtland AFB
Kirtland AFB NM 87117
Landholding Agency: Air Force
Property Number: 18201220011
Status: Underutilized
Directions: 253, 255, 638
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security.
Reasons: Secured Area

Bldg. 30116
5801 Manzano St SE
Kirtland AFB NM 87117
Landholding Agency: Air Force
Property Number: 18201220012
Status: Underutilized
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security.
Reasons: Secured Area

6 Buildings
Kirtland AFB
Kirtland AFB NM 87117
Landholding Agency: Air Force
Property Number: 18201220013
Status: Unutilized
Directions: 37514, 37511, 37509, 37503, 30144, 30108
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security.
Reasons: Secured Area

Bldgs. 573, 855, 859
Holloman AFB
Holloman AFB NM 88330
Landholding Agency: Air Force
Property Number: 18201220023
Status: Unutilized
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
Reasons: Secured Area

5 Buildings
Holloman AFB
Holloman AFB NM 88330
Landholding Agency: Air Force
Property Number: 18201220030
Status: Unutilized
Directions: 19, 838, 1197, 847, 1198
Comments: nat'l security concerns; public access denied due to anti-terrorism & no alternative method to gain access w/out comprising nat'l security
Reasons: Secured Area

Buildings 782, 793, 1102, 803
Holloman AFB
Holloman NM 88330
Landholding Agency: Air Force
Property Number: 18201240008
Status: Unutilized
Comments: Active military installation; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

5 Buildings
Cannon AFB
Cannon NM 88103
Landholding Agency: Air Force
Property Number: 18201240031
Status: Unutilized
Directions: 381, 799, 2112, 2332,258
Comments: [INSERT LANG.] located on AF controlled installation; restricted to authorized personnel only; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Ohio

Facility 20167
2310 Eighth St.
WPAFB OH 43433
Landholding Agency: Air Force
Property Number: 18201230031
Status: Unutilized
Comments: located w/in controlled fenced perimeter of military installation; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

10 Buildings
WPAFB
WPAFB OH 45433
Landholding Agency: Air Force
Property Number: 18201310013
Status: Unutilized
Directions: 10297, 20062, 20096, 20130, 30153, 30882, 30902, 31190, 30230, 31234
Comments: W/in secured installation; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Oklahoma

Facility 47
Altus AFB
AGGN OK 73523
Landholding Agency: Air Force
Property Number: 18201230030
Status: Excess
Comments: Public access denied due to anti-terrorism/force protection & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Facility 47
501 North First St.
Altus OK 73523
Landholding Agency: Air Force
Property Number: 18201240022
Status: Excess
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

4 Buildings
Altus AFB
Altus OK 73523
Landholding Agency: Air Force
Property Number: 18201240023
Status: Unutilized
Directions: 165, 65, 72, 48
Comments: Secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

2 Buildings
Altus AFB
Altus OK 73523
Landholding Agency: Air Force
Property Number: 18201310051
Status: Unutilized
Directions: 267, 335
Comments: Secured area; public access denied & no alternative w/out compromising nat'l security
Reasons: Secured Area

Oregon

Building 1004
6801 NE Cornfoot Rd.
Portland OR 97218
Landholding Agency: Air Force
Property Number: 18201240025
Status: Unutilized
Comments: Located on secured areea; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

3 Buildings
NE Cornfoot Rd.
Portland OR 97218
Landholding Agency: Air Force
Property Number: 18201310021
Status: Unutilized
Directions: 370, 188, 130
Comments: W/in secured area; public access denied & no alternative to gain access w/out compromising nat'l security
Reasons: Secured Area

3 Buildings
6801 NE Cornfoot Rd.
Portland OR 97218
Landholding Agency: Air Force
Property Number: 18201310045
Status: Unutilized
Directions: 494, 188, 370
Comments: Secured military installation; public access denied & no alternative method w/out compromising nat'l security
Reasons: Secured Area

South Carolina

11 Buildings
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18201220042
Status: Unutilized
Directions: 1851, 1850, 1852, 1856, 1858, B413, B420, B1713, B1049, B702, B1128
Comments: Facilities are located on a secured military installation; no public access & no alternative method to gain access w/out comprising nat'l security
Reasons: Secured Area

Bldg. 211
110 Graves Ave.
Joint Base Charleston SC 29404
Landholding Agency: Air Force
Property Number: 18201230055
Status: Unutilized
Comments: Located in restricted area; public access denied & no alternative method to gain access w/out compromising nat'l security

Reasons: Secured Area

Building 433
JBCWS
Goose Creek SC 29445
Landholding Agency: Air Force
Property Number: 18201310007
Status: Underutilized
Comments: Located w/in secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Tennessee

ACFT DY RSCH TEST
675 Second St.
Arnold AFB TN 37389
Landholding Agency: Air Force
Property Number: 18201230039
Status: Underutilized
Comments: Located in secured restricted area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

4 Buildings
2219 Sixth St.
Arnold AFB TN 37389
Landholding Agency: Air Force
Property Number: 18201230040
Status: Underutilized
Directions: 2220, 2221, 2222, 2223
Comments: Located in secured restricted area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Bldg. 708
Nashville IAP
Nashville TN 37217
Landholding Agency: Air Force
Property Number: 18201230059
Status: Underutilized
Comments: authorized military personnel only; restricted area; public access denied & no alternative method to gain access w/ out compromising nat'l security
Reasons: Secured Area

Building 712
240 Knapp Blvd.
Nashville TN 37217
Landholding Agency: Air Force
Property Number: 18201240024
Status: Excess
Comments: located on secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Building 750
South Fourth St.
Arnold AFB TN 37389
Landholding Agency: Air Force
Property Number: 18201240037
Status: Excess
Comments: located on secured area where public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

3 Buildings
Knapp Blvd.
Nashville TN
Landholding Agency: Air Force
Property Number: 18201310022
Status: Unutilized
Directions: 717, 730, 731
Comments: w/in secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Facilities 1470 & 1485
Arnold AFB
Arnold AFB TN 37389
Landholding Agency: Air Force
Property Number: 18201310063
Status: Excess
Comments: secured area; public access denied & no alternative method w/out compromising nat'l security
Reasons: Secured Area

Texas

11 Buildings
Ft. Sam Houston
San Antonio TX 78234
Landholding Agency: Air Force
Property Number: 18201220014
Status: Unutilized
Directions: 1149, 1151, 1152, 1153, 1154, 1158, 1159, 1160, 1161, 1162, 1163
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security.
Reasons: Secured Area

12 Buildings
Ft. Sam Houston
San Antonio TX 78234
Landholding Agency: Air Force
Property Number: 18201220015
Status: Unutilized
Directions: 2410, 2411, 2412, 2425, 2427, 2429, 2430, 2432, 3551, 3552, 3553, 3557
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security.
Reasons: Secured Area

Bldg. 435
Goodfellow AFB
Goodfellow AFB TX 76908
Landholding Agency: Air Force
Property Number: 18201220016
Status: Excess
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security.
Reasons: Secured Area

4 Buildings
Storage Munitions Cubicle
Lackland AFB TX
Landholding Agency: Air Force
Property Number: 18201220028
Status: Unutilized
Directions: 402, 403, 404, 585
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
Reasons: Secured Area

Bldg. 1092
Sheppard AFB
Sheppard AFB TX 76311
Landholding Agency: Air Force
Property Number: 18201220029
Status: Unutilized
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
Reasons: Secured Area

15 Buildings
Laughlin AFB
Del Rio TX 78843
Landholding Agency: Air Force
Property Number: 18201220040
Status: Unutilized
Directions: 47, 64, 113, 125, 136, 257, 284, 358, 360, 401, 510, 511, 2024, 8081, 9007
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
Reasons: Secured Area

6 Buildings
BE Stor Shed
Randolph AFB TX
Landholding Agency: Air Force
Property Number: 18201220043
Status: Underutilized
Directions: B1281, B1282, B1284, B1285, B1286, B1287
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
Reasons: Secured Area

5 Buildings
Goodfellow AFB
Goodfellow TX 76908
Landholding Agency: Air Force
Property Number: 18201230027
Status: Excess
Directions: 104, 508, 538, 707, 3070
Comments: anti-terrorism & force protection; located w/in restricted area where public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

B–6283
4810 Camp Bullis
Camp Bullis TX 78257
Landholding Agency: Air Force
Property Number: 18201230028
Status: Unutilized
Comments: located w/in secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

7 Buildings
4810 Camp Bullis
Camp Bullis TX 78257
Landholding Agency: Air Force
Property Number: 18201230029
Status: Unutilized
Directions: B5288, 5289, 5290, 5291, 5292, 5293, 5294
Comments: located w/in secured area where public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Building 330
291 Flight line
Goodfellow AFB TX 76908
Landholding Agency: Air Force
Property Number: 18201310056
Status: Excess
Comments: secured area; public access denied & no alternative method w/out compromising nat'l security
Reasons: Secured Area

Shop A/M Org. B00054
251 Fourth Ave.
Del Rio TX 78843

Landholding Agency: Air Force
Property Number: 18201310058
Status: Unutilized
Comments: located on military installation; public access denied & no alternative method w/out compromising nat'l security
Reasons: Secured Area

13 Buildings
Sheppard AFB
Sheppard AFB TX 76311
Landholding Agency: Air Force
Property Number: 18201310059
Status: Underutilized
Directions: 527, 528, 596, 690, 691, 692, 693, 776, 790, 791, 792, 793, 794
Comments: secured area; public access denied & no alternative method w/out compromising nat'l security
Reasons: Secured Area

Virginia

Bldg. 1994
Eagle Ave
Hampton VA 23665
Landholding Agency: Air Force
Property Number: 18201220024
Status: Underutilized
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
Reasons: Secured Area

9 Buildings
Langley AFB
Langley AFB VA 23665
Landholding Agency: Air Force
Property Number: 18201220027
Status: Underutilized
Directions: 1092, 1093, 1094, 1095, 1096, 1097, 1098, 750, 51
Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
Reasons: Secured Area

Washington

4 Buildings
South Taxiway Rd.
Fairchild AFB WA 99011
Landholding Agency: Air Force
Property Number: 18201230010
Status: Underutilized
Directions: 1024,1023,1026,1021
Comments: located w/in the boundary of an active AF installation where public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Hanger 1025
200 S. Taxiway I Rd.
Fairchild AFB WA 99011
Landholding Agency: Air Force
Property Number: 18201230024
Status: Underutilized
Comments: located w/in controlled active installation; public access denied & no alternative method w/out compromising nat'l security
Reasons: Secured Area

Wyoming

Bldg. 1200
1105 Wyoming Street
FE Warren AFB WY 82005
Landholding Agency: Air Force
Property Number: 18201230006
Status: Underutilized
Comments: located on restricted military installation; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Bldg. 945
7505 Booker Rd.
Cheyenne WY
Landholding Agency: Air Force
Property Number: 18201230062
Status: Unutilized
Comments: located in a secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

3 Buildings
FE Warren AF
Cheyenne WY 82005
Landholding Agency: Air Force
Property Number: 18201240020
Status: Unutilized
Directions: 1166, 2277, 835
Comments: restricted area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Florida

8 Buildings
null
Tyndall AFB FL 32403
Landholding Agency: Air Force
Property Number: 18201310011
Status: Underutilized
Directions: 205, 207, 214, 748, 1277, 1279, 1280, 1476
Comments: restricted military installation; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

[FR Doc. 2013–06971 Filed 3–28–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–FHC–2013–N047; FF07CAMM00.FX.FR133707PB000]

Letters of Authorization To Take Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Issuance.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972, as amended (MMPA), the U.S. Fish and Wildlife Service (Service, or we), has issued letters of authorization for the nonlethal take of polar bears and Pacific walrus incidental to oil and gas industry exploration, development, and production activities in the Beaufort Sea and the adjacent northern coast of Alaska and incidental to oil and gas industry exploration activities in the Chukchi Sea and the adjacent western coast of Alaska. These letters of authorization stipulate conditions and methods that minimize impacts to polar bears and Pacific walrus from these activities.

FOR FURTHER INFORMATION CONTACT: Craig Perham at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, MS 341, Anchorage, AK 99503; (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: On August 3, 2011, we published in the **Federal Register** a final rule (76 FR 47010) establishing regulations that allow us to authorize the nonlethal, incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska. The rule established subpart J in part 18 of title 50 of the Code of Federal Regulations (CFR) and is effective through August 3, 2016. The rule prescribed a process under which we issue Letters of Authorization (LOAs) to applicants conducting activities as described under the provisions of the regulations.

Each LOA stipulates conditions or methods that are specific to the activity and location. Holders of LOAs must use methods and conduct activities in a manner that minimizes to the greatest extent practicable adverse impacts on Pacific walrus and polar bears, their habitat, and on the availability of these marine mammals for subsistence purposes. Intentional take and lethal incidental take is prohibited.

In accordance with section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 et seq.) and our regulations at 50 CFR 18, subpart J, we issued LOAs to each of the following companies in the Beaufort Sea and adjacent northern coast of Alaska:

BEAUFORT SEA LETTERS OF AUTHORIZATION

Company	Activity	Project	Date issued
Alyeska Pipeline Service Company	Production	Trans-Alaska Pipeline Operation & Maintenance	November 15, 2011.
Alyeska Pipeline Service Company	Production	Trans-Alaska Pipeline Operation & Maintenance	December 11, 2012.

BEAUFORT SEA LETTERS OF AUTHORIZATION—Continued

Company	Activity	Project	Date issued
BP Exploration Alaska, Inc.	Exploration	Summer Seismic Survey	August 3, 2011.
BP Exploration Alaska, Inc.	Production	North Slope Production	August 3, 2011.
BP Exploration Alaska, Inc.	Development	Liberty Development Project	January 10, 2012.
BP Exploration Alaska, Inc.	Development	Red Dog #1 Plug and Abandonment Project	January 10, 2012.
BP Exploration Alaska, Inc.	Exploration	Simpson Lagoon Seismic Survey	July 16, 2012.
Brooks Range Petroleum Corporation.	Exploration	North Tarn/Mustang Exploration Program	November 20, 2011.
Brooks Range Petroleum Corporation.	Exploration	Tofcat Exploration Program	February 1, 2012.
Brooks Range Petroleum Corporation.	Exploration	Mustang Exploration Program	January 15, 2013.
CGGVeritas	Exploration	Tabasco 3D Seismic Survey	November 30, 2011.
CGGVeritas	Exploration	Great Bear 3D Seismic Survey	March 19, 2012.
CGGVeritas	Exploration	Great Bear Winter 3D Seismic Survey	February 1, 2013.
ConocoPhillips Alaska, Inc	Production	North Slope Production	August, 3, 2011.
ConocoPhillips Alaska, Inc	Exploration	Hydrate Production Test, Ignik Sikumi I, Prudhoe Bay Unit.	December 1, 2011.
ConocoPhillips Alaska, Inc	Development	Hemi Springs Plug and Abandonment Program	January 15, 2012.
ConocoPhillips Alaska, Inc	Development	North Staines River #1 Well Inspection	March 19, 2012.
ConocoPhillips Alaska, Inc	Development	Gravel Borehole Project	March 19, 2012.
ConocoPhillips Alaska, Inc.	Exploration	Winter Exploration Drilling Program	December 15, 2012.
Eni US Operating Co., Inc.	Development	Nikaitchuq Development Project	August 15, 2012.
ExxonMobil Production Company	Exploration	Prudhoe Bay Bathymetry & Noise Monitoring Survey	April 1, 2012.
ExxonMobil Production Company	Development	Point Thomson	February 1, 2012.
ExxonMobil Production Company	Development	Point Thomson	February 1, 2013.
Great Bear Petroleum, LLC	Exploration	Great Bear Exploration and Evaluation Program	January 19, 2012.
Ion Geophysical	Exploration	2D Seismic Survey	October 17, 2012.
North Slope Borough	Development	Gas Fields Well Drilling Program	May 1, 2012.
Olgoonik Fairweather, LLC	Exploration	Beaufort Sea Acoustic Monitoring Recorder Deployment and Retrieval Project.	July 15, 2012.
Olgoonik Fairweather, LLC	Exploration	Marine Fish Transboundary Cruise Environmental Studies Program.	September 19, 2012.
Pioneer Natural Resources Alaska, Inc..	Production	North Slope Production	August 3, 2011.
Pioneer Natural Resources Alaska, Inc..	Exploration	North Slope Exploration Program	October 17, 2011.
Pioneer Natural Resources Alaska, Inc..	Development	Nuna Development Program	April 20, 2012.
Repsol E&P USA, Inc.	Exploration	Colville River Delta Winter Drilling	December 7, 2011.
Repsol E&P USA, Inc.	Exploration	Colville River Delta Winter Drilling	February 7, 2013.
Savant Alaska, LLC	Development	Badami Unit Redevelopment Project	April 15, 2012.
Shell Offshore, Inc.	Exploration	Beaufort Sea Ice Observation and On-Ice Argos Data Buoy Deployment Program.	January 10, 2012.
Shell Offshore, Inc.	Exploration	Beaufort Sea Open Water Marine Survey Program and Onshore Environmental Baseline Study Activities.	June 4, 2012.
Shell Offshore, Inc.	Exploration	Camden Bay OCS Exploration Drilling	June 4, 2012.
Shell Offshore, Inc.	Exploration	Beaufort Sea Ice Observation and On-Ice Argos Data Buoy Deployment Program.	January 1, 2013.

On June 11, 2008, we published in the **Federal Register** a final rule (73 FR 33212) establishing regulations that allow us to authorize the nonlethal, incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry exploration activities in the Chukchi Sea and adjacent western coast of Alaska. The rule established subpart I of 50 CFR part 18 and is effective until June 11, 2013. The process under which we issue LOAs to applicants and the requirements that the holders of LOAs must follow is the same as described above for LOAs issued under 50 CFR 18, subpart J.

In accordance with section 101(a)(5)(A) of the MMPA and our regulations at 50 CFR 18, subpart I, we issued LOAs to the following companies in the Chukchi Sea:

CHUKCHI SEA LETTERS OF AUTHORIZATION

Company	Activity	Project	Date issued
Olgoonik Fairweather, LLC	Exploration	Chukchi Sea Baseline Environmental Studies Program.	July 15, 2012.
Shell Offshore, Inc.	Exploration	Chukchi Sea Ice Observation Flights Program	January 10, 2012.
Shell Offshore, Inc.	Exploration	Chukchi Sea Coastal Marine and Onshore Environmental Baseline Study.	June 4, 2012.
Shell Offshore, Inc.	Exploration	Chukchi Sea OCS Exploratory Drilling Program	June 4, 2012.

CHUKCHI SEA LETTERS OF AUTHORIZATION—Continued

Company	Activity	Project	Date issued
Shell Offshore, Inc.	Exploration	Chukchi Sea Ice Observation Flights Program	February 1, 2013.

Dated: March 12, 2013.

Geoffrey Haskett,

Regional Director, Alaska Region.

[FR Doc. 2013–07339 Filed 3–28–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO620000.L18200000.XH0000]

Call for Nominations for Advisory Committees

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to reopen the request for public nominations for certain Bureau of Land Management (BLM) Advisory Committees that have member terms expiring this year. These Advisory Committees provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their respective geographic areas. The Advisory Committees covered by this request for nominations are identified below. The BLM will accept public nominations for 30 days after the publication of this notice.

DATES: All nominations must be received no later than April 29, 2013.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for the address of respective BLM Offices accepting nominations.

FOR FURTHER INFORMATION CONTACT: Lauren Luckey, U.S. Department of the Interior, Bureau of Land Management, Correspondence, International, and Advisory Committee Office, 1849 C Street NW., MS–MIB 5070, Washington, DC 20240; 202–208–3806.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA (43 U.S.C. 1739) directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). As required by FACA, Resource Advisory Council (RAC) membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR subpart 1784 and include the following three membership categories:

Category One—Holders of Federal grazing permits and representatives of organizations associated with energy and mineral development, timber industry, transportation or rights-of-way, developed outdoor recreation, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations, archaeological and historic organizations, dispersed recreation activities, and wild horse and burro organizations; and

Category Three—Representatives of State, county, or local elected office, employees of a State agency responsible for management of natural resources, representatives of Indian tribes within or adjacent to the area for which the council is organized, representatives of academia who are employed in natural sciences, and the public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the State in which the RAC has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making. The Obama Administration prohibits individuals who are currently federally registered lobbyists from being appointed or re-appointed to FACA and non-FACA boards, committees, or councils.

This request for public nominations also applies to the Steens Mountain Advisory Council (SMAC) in Oregon established pursuant to Section 131 of the Steens Mountain Cooperative Management and Protection Act of 2000. The SMAC advises the Secretary of the Interior in managing the Steens Mountain Cooperative Management and Protection Area. Nominations are requested for the positions of Burns Paiute Tribe member and the State of Oregon liaison.

The following must accompany all nominations for the RACs and SMAC:

—Letters of reference from represented interests or organizations;
—A completed Resource Advisory Council application; and
—Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, BLM state offices will issue press releases providing additional information for submitting nominations, with specifics about the number and categories of member positions available for each RAC in the state and the Steens Mountain Advisory Council in Oregon. If you have already submitted your RAC nomination materials for 2013 you will not need to resubmit. Nominations for the following RACs should be sent to the appropriate BLM offices as noted below:

Alaska

Alaska RAC

Thom Jennings, Alaska State Office, BLM, 222 West 7th Avenue, #13, Anchorage, Alaska 99513, 970–271–3335.

California

Northwestern California RAC

Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130, 530–252–5332.

Central California RAC

David Christy, Mother Lode Field Office, BLM, 5152 Hillsdale Circle, El Dorado Hills, California 95762, 916–941–3146.

Idaho

Boise District RAC

Marsha Buchanan, Boise District Office, BLM, 3948 Development Avenue, Boise, Idaho 83705, 208–384–3393.

Coeur d'Alene District RAC

Suzanne Endsley, Coeur d'Alene District Office, BLM, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815, 208–769–5004.

Idaho Falls District RAC

Sarah Wheeler, Idaho Falls District Office, BLM, 1405 Hollipark Drive, Idaho Falls, Idaho 83401, 208–524–7550.

Montana and Dakotas

Central Montana RAC

Kaylene Patten, Lewistown Field Office, BLM, 920 Northeast Main Street, Lewistown, Montana 59457, 406–538–1957.

Dakotas RAC

Mark Jacobsen, Miles City Field Office, BLM, 111 Garryowen Road, Miles City, Montana 59301, 406–233–2800.

Eastern Montana RAC

Mark Jacobsen, Miles City Field Office, BLM, 111 Garryowen Road, Miles City, Montana 59301, 406–233–2800.

Western Montana RAC

David Abrams, Butte Field Office, BLM, 106 North Parkmont, Butte, Montana 59701, 406–533–7617.

Nevada

Mojave-Southern Great Basin RAC; Northeastern Great Basin RAC; Sierra Front-Northeastern Great Basin RAC

Christopher Rose, Nevada State Office, BLM, 1340 Financial Boulevard, Reno, Nevada 89502, 775–861–6480.

New Mexico

Albuquerque District RAC

Chip Kimball, Albuquerque District Office, BLM, 435 Montano NE., Albuquerque, New Mexico 87107, 505–761–8734.

Farmington District RAC

Bill Papich, Farmington District Office, BLM, 6251 College Boulevard, Farmington, New Mexico 87402, 505–564–7620

Oregon/Washington

Eastern Washington RAC

Robert St. Clair, Spokane District Office, BLM, 1103 N. Fancher Road Spokane Valley, Washington 99212, 509–536–1200

Southeast Oregon RAC; Steens Mountain Advisory Council

Tara Martinak, Burns District Office, BLM, 28910 Hwy 20, West Hines, Oregon 97738, 541–573–4519

Certification Statement: I hereby certify that the BLM Advisory Committees are necessary and in the public interest in connection with the Secretary's responsibilities to manage the lands, resources, and facilities administered by the BLM.

Neil Kornze,

Principal Deputy Director.

[FR Doc. 2013–07311 Filed 3–28–13; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT001900 L16100000.DP0000 LXSS00065E]

Notice of Availability of the Draft Billings and Pompeys Pillar National Monument Resource Management Plan and Environmental Impact Statement, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, the Bureau of Land Management (BLM) has prepared a combined Draft Resource Management Plan (RMP) and Draft Environmental Impact Statement (EIS) for Billings and Pompeys Pillar National Monument within the Billings Field Office of the BLM Montana/Dakotas State Office 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 RMP/EIS within 90 days following the date the Environmental Protection Agency publishes this notice of the draft RMP/EIS in the **Federal Register.**The BLM will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Billings and Pompeys Pillar National Monument draft RMP/EIS by any of the following methods:

- *Web site: http://www.blm.gov/mt/st/en/fo/billings_field_office/rmp.html*
- *Email: BLM_MT_Billings_Pompeys Pillar_RMP@blm.gov*
- *Fax:* 406–896–5281
- *Mail:* Bureau of Land Management, Billings Field Office, 5001 Southgate Drive, Billings, MT 59101

Copies of the Billings and Pompeys Pillar National Monument draft RMP/EIS are available in the Billings Field Office at the above address or may be viewed at: *http://www.blm.gov/mt/st/en/fo/billings_field_office/rmp.html.*

FOR FURTHER INFORMATION CONTACT: Carolyn Sherve-Bybee, RMP Team Lead, 406–896–5234 or Jim Sparks, Billings Field Manager, 406–896–5241; at the above mailing address or via email at: *BLM_MT_Billings_PompeysPillar_RMP @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 planning area is located in Big Horn, Carbon, Golden Valley, Musselshell, Stillwater, Sweet Grass, Wheatland, and Yellowstone Counties in Montana, and a portion of Big Horn County in Wyoming. This planning area encompasses approximately 434,154 acres of BLM-managed public lands. The RMP will fulfill the needs and obligations set forth by NEPA, FLPMA, and BLM management policies. The planning effort of the Billings and Pompeys Pillar National Monument RMP/EIS will revise the existing Billings RMP of 1984, as amended, and provide the Billings Field Office with an updated framework in which to administer BLM public lands. This draft RMP/EIS addresses new issues, changes in resource conditions, and changes in resource management practices since adoption of the Billings RMP in 1984 and was developed through a collaborative planning process. Formal public scoping began with the publication of the Notice of Intent in the **Federal Register** on May 15, 2008 (73 FR 28150), a legal document notifying the public and any affected agencies of the intent to revise the 1984 RMP and prepare an EIS, including draft planning criteria for review. The formal public scoping period ended on August 22, 2008; however, scoping comments were received through September 19, 2008.

Public scoping opportunities included seven open houses in communities within the planning area, a mailing of 1,200 scoping packages describing the area and process as well as soliciting written comments, a Web site, and outreach with various Federal and State government agencies. Outreach efforts were also made to tribes and consultation with the tribal governments is ongoing.

The information obtained from the scoping process was used to define the relevant issues that are addressed in a range of alternative management actions, the environmental impacts of which are analyzed in the draft EIS. Based on the scoping comments received and their subsequent analysis and evaluation, the following major planning issues were identified as being within the scope of the BLM Billings and Pompeys Pillar National Monument draft RMP/EIS.

Issue: Vegetation Communities—How can the public lands be managed to provide desired plant communities?

Issue: Wildlife and Fisheries Habitat and Invasive Species—How can public lands be managed to maintain or improve wildlife and fisheries habitats and control invasive species?

Issue: Special Status Species, including Threatened and Endangered Species—How can public lands be managed to conserve and recover threatened, endangered, proposed, and BLM-sensitive species, including Greater Sage-Grouse?

Issue: Commercial Activities—What public lands will be available for commercial activities and how will

those activities be managed while protecting the integrity of other resources?

Issue: Recreation Activities—How should recreation activities be managed to satisfy public demand while protecting natural and cultural resource values and provide for visitor safety?

Issue: Motorized and Non-Motorized Uses—How will conflicts between motorized and non-motorized uses be resolved and how will effects to resources from motorized uses be addressed?

Issue: Special Designations—What areas should be designated for special management (e.g., areas of critical environmental concern (ACEC), Wild and Scenic Rivers, etc.) and how should these areas be managed?

Issue: Social and Economic Conditions—How will local social and economic conditions be addressed?

Issue: Pompeys Pillar National Monument—How will the cultural and historic values at Pompeys Pillar National Monument be protected and how will recreation and visitor services at Pompeys Pillar National Monument be managed?

In addition to the no-action alternative, three action alternatives were developed to respond to these key issues:

- Alternative A: Continues existing management practices (no action alternative);
- Alternative B: Emphasizes conservation of natural and cultural resources while providing for compatible development and use;
- Alternative C: Emphasizes resource development and use while protecting natural and cultural resources; and
- Alternative D: Provides development opportunities while protecting sensitive resources (preferred alternative).

Special management areas in the area analyzed by the RMP/EIS include wild and scenic rivers, wilderness study areas, ACECs, research natural areas (RNAs), national historic trails, the Pryor Mountain Wild Horse Range, and Pompeys Pillar National Monument. The BLM Billings Field Office is concerned with applying the appropriate management of these areas to protect the values and resources for which they were designated. The BLM Billings Field Office considered carrying forward or removing current administrative designations (i.e., ACECs), depending on whether they still met the criteria for which they were originally designated. Additional areas were nominated for designation as ACECs and those that met relevance and importance criteria and required special management are proposed in the draft RMP/EIS.

In accordance with 43 CFR 1610.7–2(b) and BLM Manual 1613.32 regarding ACECs, this Notice of Availability announces a concurrent public comment period on proposed ACECs. Alternative B proposes to retain nine ACECs and designate three new ACECs and under this alternative the proposed management is the most restrictive. Alternative B would manage all ACECs as closed to all mineral activity including solid and fluid mineral leasing and would recommend withdrawal of all ACECs from locatable mineral entry. Alternative C proposes to retain nine ACECs and designate two new ACECs and the proposed management is less restrictive than Alternative B. All proposed management in the ACECs is subject to valid existing rights. The proposed ACECs and the most restrictive management (Alternative B) are:

- Pompeys Pillar National Monument and ACEC (432 acres), designated in the 1996 RMP amendment. Values of concern include historical, cultural, biological, geologic, outstanding viewsheds, and unique resources. Proposed use limitations(s): Right-of-way exclusion area (83 acres) and right-of-way avoidance area (349 acres); closed to all mineral leases; closed to geophysical exploration; closed to mineral material disposals and related exploration and development activities; withdrawal from locatable mineral entry all closures are subject to valid existing rights. This ACEC would also be closed to renewable energy development, closed to fuelwood cutting/wood product sales, closed to cremains scattering, and closed to land disposals.
- Bridger Fossil Area ACEC (577 acres), designated in the 1998 RMP amendment. Values of concern include paleontological values and Bridger Fossil Area National Natural Landmark. Proposed use limitation(s): Right-of-way exclusion area; travel is limited to designated roads and trails; closed to all mineral leases, closed to geophysical exploration; closed to mineral material disposals and related exploration and development activities; recommended for withdrawal from locatable mineral entry; closed to renewable energy development; closed to fuel wood cutting/wood product sales, closed to animal trapping/traplines; closed to recreational target shooting; closed to cremains scattering; closed to special recreation permits; and closed to other activities normally requiring a BLM permit.
- Castle Butte ACEC (184 acres), designated in the 1998 RMP amendment. Values of concern—unique cultural values. Proposed use limitation(s): Right-of-way exclusion area, no land disposals, travel limited to designated routes, closed to renewable energy development, closed to geophysical exploration, closed to use of explosives for geophysical exploration for oil and gas, closed to fuel wood cutting/wood product sales, closed to animal trapping/traplines, closed to recreational target shooting, closed to cremains scattering, closed to special recreation use permits, and closed to range improvements.
- East Pryor ACEC (8,301 acres), designated in the 1998 RMP amendment. Values of concern—wild horse and wildlife habitat, unique cultural/historical resources, special status plant species, and paleontological values including values for the Crooked Creek Natural Area and the Crooked Creek National Natural Landmark. Proposed use limitation(s): Right-of-way exclusion area (except valid existing rights), no land disposals, travel limited to designated routes, closed to oil and gas leasing and development, recommended for withdrawal from locatable mineral entry (subject to valid existing rights), closed to solid leasable minerals (subject to valid existing rights), mineral material sales not permitted, closed to renewable energy development, closed to geophysical exploration for oil and gas, use of explosives for geophysical exploration for oil and gas not allowed, fuel wood cutting/wood product sales, closed to livestock grazing within the Pryor Mountain Wild Horse Range boundary except livestock trailing allowed through Bad Pass only, animal trapping/traplines, closed to recreational target shooting, and cremains scattering not allowed.
- Four Dances Natural Area ACEC (784 acres), designated in the 2001 RMP amendment. Values of concern—significant cultural and scenic values, peregrine falcon nesting habitat, and managed for the natural hazards of the cliffs. Proposed use limitation(s): Right-of-way avoidance area; no land disposals; off-highway vehicle use (including bicycles) limited to administrative or authorized use only, no snowmobiles or off-road use, closed to oil and gas leasing, exploration, and development, closed and continued withdrawal from locatable mineral entry, closed and continued withdrawal from solid leasable mineral entry, mineral material sales not allowed, closed to renewable energy development, geophysical exploration for oil and gas not allowed, use of explosives for geophysical exploration

for oil and gas not allowed, fuel wood cutting/wood product sales not allowed, buffalo grazing not permitted, range improvements not allowed, animal trapping/traplines not allowed, no discharging of firearms, archery hunting may be allowed if deemed necessary by Montana Fish, Wildlife, and Parks (authorization from BLM required), cremains scattering not allowed, special recreation use permits not allowed, other activities normally requiring a BLM permit not allowed, day use area only, closed to horseback riding, closed to use of fireworks, closed to hang gliding, closed to paint ball activities, closed to exercising pets off leash, and special management/priority would be given to protecting falcon eyries by restricting human activity along the rims that might adversely affect the nesting birds.

• Grove Creek ACEC (8,251 acres), proposed ACEC/not designated in previous RMP or amendments. Values of concern—significant archaeological and traditional cultural values and special status plants. Proposed use limitations(s): Right-of-way exclusion area, no land disposals, travel limited to designated routes, closed to oil and gas leasing, exploration, and development, closed and recommended for withdrawal from locatable mineral entry, closed and recommended for withdrawal from solid leasable mineral entry, mineral materials sales not allowed, geophysical exploration for oil and gas not allowed, use of explosives for geophysical exploration for oil and gas not allowed, fuel wood cutting/wood product sales not allowed, range improvements not allowed, animal trapping/traplines not allowed, closed to recreational target shooting, cremains scattering not allowed, special recreation use permits not allowed, closed to renewable energy development, and other activities normally requiring a BLM permit not allowed.

• Meeteetse Spires ACEC (1,523 acres), designated in the 1998 RMP amendment. Values of concern—protect and enhance unique vegetation (rare plants) and conserve scenic values. Proposed use limitation(s): Right-of-way exclusion area, no land disposals, travel limited to designated routes, plant collecting allowed for scientific use or range/forestry studies only, no collection of special status species plants without a permit, fluid mineral leasing closed (956 acres), no surface occupancy for fluid mineral leasing (567 acres), recommended for withdrawal from locatable mineral entry (956 acres), mineral material sales not allowed, closed to renewable energy development, use of explosives for geophysical exploration for oil and gas not allowed, fuel wood cutting/wood product sales not allowed, closed to livestock grazing, range improvements not allowed, cremains scattering not allowed, special recreation permits not allowed, and other activities normally requiring a BLM permit not allowed.

• Petroglyph Canyon (240 acres), designated in the 1998 RMP amendment. Values of concern—unique cultural values. Proposed use limitation(s): Right-of-way exclusion area, no land disposals, travel limited to designated routes only, plant collecting not allowed, closed and continued withdrawal from locatable mineral entry, closed to solid leasable minerals, mineral materials sales/permits not allowed, closed to renewable energy, geophysical exploration for oil and gas not allowed, use of explosives for geophysical exploration for oil and gas not allowed, no heavy equipment/no retardant/no foam use for fire suppression, fuelwood cutting/wood product sales not allowed, no range improvements allowed, no animal trapping/traplines allowed, closed to recreational target shooting, no cremains scattering allowed, no special recreation permits allowed, and other activities normally requiring a BLM permit not allowed.

• Pryor Foothills RNA ACEC (958 acres), proposed ACEC/not designated in previous RMP or amendments. Values of concern—protect unique vegetation (a large concentration of BLM special status plant species and rare plant communities) and to protect significant historic and cultural values in the Gyp Springs area. Proposed use limitation(s): Right-of-way exclusion area, no land disposals, travel limited to designated routes, plant collecting not allowed, closed to fluid mineral leasing, closed and recommended for withdrawal from locatable mineral entry, closed to solid leasable mineral development, mineral materials sales not allowed, closed to renewable energy development, geophysical exploration not allowed, fuelwood cutting/wood product sales not allowed, no range improvements would be allowed that would result in a net increase of livestock use in this ACEC, closed to recreational target shooting, cremains scattering not permitted, special recreation permits not allowed, and other activities normally requiring a BLM permit not allowed.

• Stark Site ACEC (799 acres), designated in the 1998 RMP amendment. Values of concern—protect unique cultural values. Proposed use limitation(s): Right-of-way exclusion area, no land disposals, travel limited to designated routes, no surface occupancy for fluid mineral leasing, recommended for withdrawal from locatable mineral entry, mineral material sales not allowed, closed to renewable energy development, geophysical exploration for oil and gas not allowed, use of explosives for geophysical exploration for oil and gas not allowed, no heavy equipment/no retardant/no foam use during fire suppression, fuelwood cutting/wood product sales not allowed, range improvements not allowed, animal trapping/traplines not allowed, closed to recreational target shooting, cremains scattering not allowed, special recreation use permits not allowed, and other activities normally requiring a BLM permit not allowed.

• Weatherman Draw ACEC (4,986 acres), designated in the 1998 RMP amendment. Values of concern—protect unique cultural values. Proposed use limitation(s): Right-of-way exclusion area (subject to valid existing rights), no land disposals, travel limited to designated routes, plant collecting not allowed, closed to fluid mineral leasing, 600 acres closed and recommended for continued withdrawal from locatable mineral entry, 4,386 acres closed and recommended for withdrawal from locatable mineral entry, closed to solid leasable mineral entry, mineral material sales not allowed, closed to renewable energy development, geophysical exploration for oil and gas not allowed, fuelwood cutting/wood product sales not allowed, range improvements not allowed, animal trapping/traplines not allowed, closed to recreational target shooting, cremains scattering not allowed, special recreation use permits not allowed, and other activities normally requiring a BLM permit not allowed.

• Greater Sage-Grouse ACEC (154,140 acres), proposed ACEC/not designated in previous RMP or amendments. Values of concern—protect priority habitat for Greater Sage-Grouse. Proposed use limitation(s): Right-of-way exclusion area, no land disposals, closed to fluid mineral leasing, recommended for withdrawal from locatable mineral entry, mineral materials sales not allowed, closed to renewable energy development, geophysical exploration not allowed, special recreation permits allowed only if consistent with goals and objectives for habitat and/or species, prescribed fire not allowed, heavy equipment used for fire suppression not allowed within four miles of sage-grouse nesting habitat (leks), grazing allotments within or containing portions of the ACEC would be designated as management Category

I, and other permitted activities considered after site specific analysis that considered values for which the ACEC is designated.

Alternative A proposes to maintain the nine existing ACECs for a total of 37,896 acres. Under Alternative A, 1,675 acres are recommended withdrawn from mineral entry and 32,158 acres are not available for fluid mineral leasing. Alternative B proposes to retain nine ACECs and establish three additional ACECs for a total of 181,175 acres (management listed above). Alternative B would continue to withdraw 1,675 acres from locatable mineral entry, recommend withdrawals from locatable mineral entry for 178,749 acres, and make 179,244 acres unavailable for fluid mineral leasing. Alternative C proposes to retain nine ACECs and establish two additional ACECs for a total of 67,079 acres. Alternative C would continue to withdraw 1,675 acres from locatable mineral entry, recommend withdrawals from locatable mineral entry for 1,914 acres, and make 34,558 acres unavailable for fluid mineral leasing. Alternative D proposes to retain nine ACECs and establish two additional ACECs for a total of 38,786 acres. Alternative D would continue to withdraw 1,675 acres from locatable mineral entry, recommend withdrawals from locatable mineral entry for 20,827 acres, and make 18,716 acres unavailable for fluid mineral leasing.

The preferred alternative (Alternative D) proposes retaining ACEC designation for the following ACECs that are the same acreages as designated in the 1996, 1998, and 2001 RMP amendments: Pompeys Pillar National Monument and ACEC (432 acres), Bridger Fossil Area ACEC (577 acres), Castle Butte ACEC (184 acres), Four Dances Natural Area ACEC (784 acres), Petroglyph Canyon ACEC (240 acres), and Stark Site ACEC (799 acres). The following ACECs were designated in the 1998 RMP amendment, but ACEC boundaries expanded or changed in the preferred alternative:

- East Pryor ACEC (11,122 acres): This acreage is smaller than the 29,550 acres originally designated in 1998 RMP amendment, as the preferred alternative removes overlapping/conflicting management layers. The East Pryor ACEC is located in the same area as three wilderness study areas (WSAs) and the Pryor Mountain Wild Horse Range. In the preferred alternative, the boundaries of the ACEC were changed to exclude the WSAs, as WSAs have the most restrictive management, and the management of the WSAs would provide special management needed for the resource values of concern identified in the East Pryor ACEC. The 1998 boundary of the East Pryor ACEC included only a portion of the Demi-John Flat National Register District. The boundary has been expanded in the preferred alternative to include all of Demi-John Flat National Register District.
- Meeteetse Spires ACEC (956 acres plus 567 acres): The additional 576 acres were acquired from The Conservation Fund by the BLM in 2009 using money received from the Land and Water Conservation Fund. The private land was surrounded on three sides by the Meeteetse Spires ACEC and on one side by the U.S. Forest Service Custer National Forest (Line Creek Plateau RNA). The 567 acres of private land had been subdivided and further development would have threatened the adjoining ACEC.
- Weatherman Draw ACEC (4,365 acres plus 7,912 acres): The proposed 7,912 acre expansion of the ACEC includes the 2009 donation of 621 acres of private land to the BLM.

The preferred alternative (Alternative D) proposes two additional ACECs: Grove Creek ACEC (8,251 acres) and Pryor Foothills RNA ACEC (2,606 acres).

The BLM Billings Field Office conducted an inventory of certain waterways to determine eligibility and suitability for inclusion into the National Wild and Scenic Rivers System for designation by Congress and drafted interim management prescriptions for those waterway segments determined ''suitable'' in the planning process.

Following the close of the public review and comment period on this draft RMP/EIS, public comments will be used to revise the BLM Billings and Pompeys Pillar National Monument draft RMP/EIS in preparation for its release to the public as the BLM Billings and Pompeys Pillar Proposed RMP and Final EIS. While one combined RMP/EIS has been prepared, two separate Records of Decision (RODS) will be issued for the Billings Field Office and for Pompeys Pillar National Monument. The BLM will respond to each substantive comment by making appropriate revisions to the document or by explaining why a comment did not warrant a change. Notice of the availability of the Proposed RMP and Final EIS will be posted in the **Federal Register**.

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, 40 CFR 1506.10, 43 CFR 1610.2.

Theresa M. Hanley,

Acting State Director.

[FR Doc. 2013–07196 Filed 3–28–13; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L1610000.PQ0000/LLCAC09000]

Notice of Availability of the Clear Creek Management Area Proposed Resource Management Plan and Final Environmental Impact Statement, California

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 Proposed Resource Management Plan (RMP)/Final Environmental Impact Statement (EIS) for the Clear Creek Management Area (CCMA) and by this notice is announcing its availability.

DATES: BLM planning regulations (43 CFR 1610) state that any person who meets the conditions as described in the regulations may protest the BLM's Proposed RMP and Final EIS. A person who meets the conditions and files a protest, must file the protest within 30 days of the date that the Environmental Protection Agency (EPA) publishes its notice in the **Federal Register**.

ADDRESSES: Copies of the CCMA Proposed RMP and Final EIS have been sent to affected Federal, State, and local government agencies and to other stakeholders. Copies of the CCMA Proposed RMP and Final EIS are available for public inspection at the Hollister Field Office, 20 Hamilton Court, Hollister, California 95023. Interested persons may also review the

CCMA Proposed RMP and Final EIS at the following Web site: *http://www.blm.gov/ca/hollister.* All protests must be in writing and mailed to one of the following addresses:

Regular Mail: BLM Director (210) , Attention: Brenda Williams, P.O. Box 71383, Washington, DC 20024–1383.

Overnight Mail: BLM Director (210), Attention: Brenda Williams, 20 M Street SE., Room 2134LM, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Sky Murphy, Planning and Environmental Coordinator, telephone (831) 630–5039; address Hollister Field Office, 20 Hamilton Court, Hollister, California 95023; email *smurphy@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 planning area covers about 75,000 acres, including about 63,000 surface acres and 64,000 acres of subsurface mineral estate in San Benito and Fresno counties, California. The CCMA RMP will provide a framework to guide management decisions for the use and protection of the resources managed by the Hollister Field Office. The CCMA is currently managed under the 1984 Hollister RMP and subsequent amendments. The purpose of the CCMA RMP is to establish goals, objectives, and management actions for BLM-administered lands in CCMA that address current issues, and conditions.

The need to develop the CCMA RMP arose from changes in circumstances since the current land use plan decisions were adopted. For example, the EPA's CCMA Asbestos Exposure and Human Health Risk Assessment (2008) provides significant new information that must be incorporated into the RMP to evaluate the public health risk associated with BLM land use authorizations.

A Notice of Availability of the CCMA Draft RMP/EIS was published in the **Federal Register** on December 4, 2009. The Draft RMP/EIS was available for public review for 135 days. Comments on the Draft RMP/EIS were considered, and incorporated as appropriate into the proposed plan. For example, the BLM made changes to the route and trail designations between the Draft and Final EIS. These changes did not significantly alter the proposed land use decisions for transportation and travel management in the CCMA.

The Hollister Field Office, through a collaborative planning process, has worked extensively with interested and affected individuals, groups, and local, State, and Federal agencies in the development of the Proposed RMP and Final EIS. The primary issues include public health and safety, recreation, protection of sensitive natural and cultural resources, livestock grazing, guidance for energy and mineral development, and land tenure adjustments. The Proposed RMP maintains the designation of the 30,000-acre Serpentine Area of Critical Environmental Concern (ACEC) to protect public health and safety while also protecting special status species and cultural, historic, and scenic resources values. Restrictions on use of public lands within the Serpentine ACEC include limitations on motorized and non-motorized activities to minimize human health risks from exposure to asbestos by reducing airborne emissions of asbestos.

For example, the CCMA Proposed RMP designates the Serpentine ACEC as a ''limited'' vehicle use area based on the human health risks from exposure to asbestos; and use would be limited to highway-licensed vehicles by permit only. Under the Proposed RMP, the remaining lands in the CCMA management zones are also designated as ''limited'' vehicle use areas where motorized vehicle use would be limited to highway-licensed vehicles and all-terrain vehicles. In addition to the proposed action, the BLM considered six additional alternatives, ranging from a no action alternative, which would continue historic recreational use in the area, to complete closure of the area prohibiting all public access. Other action alternatives analyzed variations of limited annual visitor use days, seasonal use restrictions, limited OHV recreation opportunities in the Serpentine ACEC based on vehicle types, minimum age requirements, vehicle access for non-motorized recreation opportunities inside the Serpentine ACEC, and enhancing new OHV recreation opportunities outside of the ACEC.

Comments on the Draft RMP/EIS received from the public and through internal BLM review were considered and incorporated as appropriate into the Proposed RMP/Final EIS. Public comments resulted in the following changes to the preferred alternative in the Draft RMP/EIS: additional information added to the Hazardous Materials and Public Health and Safety section; increased miles of designated routes to provide greater vehicle access with an emphasis on supporting non-motorized recreation opportunities in CCMA; retention of public lands surrounding Baker, Byles, and Cane Canyons; and pursuit of partnerships with local private landowners, non-profit organizations, and the California Department of Fish and Wildlife to develop public easements to BLM lands in the Tucker management zone. These changes do not significantly change proposed land use plan decisions set forth in the Draft RMP/EIS.

Instructions for filing a protest with the Director of the BLM regarding the CCMA Proposed RMP and Final EIS may be found in the ''Dear Reader'' letter of the CCMA Proposed RMP and Final EIS and at 43 CFR 1610.5–2. All protests must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above. Emailed and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the emailed or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct emails to *bhudgens@blm.gov* and faxed protests to the attention of the BLM protest coordinator at 202–912–7212.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest 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 and 1506.10, 43 CFR 1610.2 and 1610.5.

Thomas Pogacnik,

Deputy State Director.

[FR Doc. 2013–07337 Filed 3–28–13; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–12390; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: History Colorado, formerly Colorado Historical Society, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: History Colorado, formerly Colorado Historical Society, has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact History Colorado. Disposition of the human remains to the Indian tribes stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact History Colorado at the address below by April 29, 2013.

ADDRESSES: Sheila Goff, History Colorado, 1200 Broadway, Denver, CO 80203, telephone (303) 866–4531, email *Sheila.goff@state.co.us.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of History Colorado, Denver, CO. The human remains were removed from Suncor Energy USA Pipeline Company property, Adams County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by History Colorado professional staff in consultation with representatives of the Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Comanche Nation, Oklahoma; Crow Tribe of Montana; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pawnee Nation of Oklahoma; Pueblo of Cochiti, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Shoshone Tribe of the Wind River Reservation, Wyoming; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma; and Zuni Tribe of the Zuni Reservation, New Mexico. The Apache Tribe of Oklahoma; Fort Sill Apache Tribe of Oklahoma; and the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota, were invited to consult but did not participate. Hereafter all tribes listed above are referred to as ''The Consulted and Invited Tribes.''

History and description of the remains

In March 2012, human remains representing, at minimum, one individual were removed from Suncor Energy USA Pipeline Company property in Adams County, CO. The human remains were discovered while Suncor was excavating a trench as part of mitigation efforts concerning high levels of benzene in the soil. The Adams County Coroner initially believed this was a forensic case and removed the remains with the assistance of a Metro State College forensic anthropologist. The burial investigation and extensive osteological analysis determined that the remains were of a middle-aged male of Native American ancestry found in a secondary burial and of no forensic interest. The remains were then transferred to History Colorado, where they are referred to as Office of Archaeology and Historic Preservation No. 288. No known individuals were identified. No associated funerary objects are present.

At the time of the excavation and removal of these human remains, the land from which the remains and objects were removed was not the tribal land of any Indian tribe. In August 2012, History Colorado consulted with all Indian tribes who are recognized as aboriginal to the area from which these Native American human remains were removed. These tribes are the Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana. None of these Indian tribes agreed to accept control of the human remains. They requested in writing that this individual be dispostioned according to the *Process for Consultation, Transfer and Reburial of Culturally Unidentifiable Native American Human Remains Originating From Inadvertent Discoveries on Colorado State and Private Lands (Process).* Consultation with the additional tribes listed under Consultation in this notice was conducted October 2012 to January 2013 to determine disposition. Under the *Process,* the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah agreed to accept disposition of the human remains.

In 2006, History Colorado, in partnership with the Colorado Commission of Indian Affairs, Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah, conducted tribal consultations among the tribes with ancestral ties to the State of Colorado to develop the process for disposition of culturally unidentifiable Native American human remains and associated funerary objects originating from inadvertent discoveries on Colorado State and private lands. As a result of the consultation, a process was developed, *Process for Consultation, Transfer, and Reburial of Culturally Unidentifiable Native American Human Remains and Associated Funerary Objects Originating From Inadvertent Discoveries on Colorado State and Private Lands,* (2008, unpublished, on file with the Colorado Office of Archaeology and Historic Preservation). The remains described above were recovered in the Great Plains Consultation Region, established by the *Process,* and tribes consulted are those who have expressed

their wishes to be notified of discoveries in this region.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. On November 3–4, 2006, the *Process* was presented to the Review Committee for consideration. A January 8, 2007, letter on behalf of the Review Committee from the Designated Federal Officer transmitted the provisional authorization to proceed with the *Process* upon receipt of formal responses from the Jicarilla Apache Nation, New Mexico, and the Kiowa Indian Tribe of Oklahoma, subject to forthcoming conditions imposed by the Secretary of the Interior. On May 15–16, 2008, the responses from the Jicarilla Apache Nation, New Mexico and the Kiowa Indian Tribe of Oklahoma were submitted to the Review Committee. On September 23, 2008, the Assistant Secretary for Fish and Wildlife and Parks, as the designee for the Secretary of the Interior, transmitted the authorization for the disposition of culturally unidentifiable human remains according to the *Process* and NAGPRA, pending publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

Determinations made by History Colorado

Officials of History Colorado have determined that:

- Based on osteological analysis and burial context, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Pursuant to 43 CFR 10.11(c)(2)(ii) and the *Process,* the disposition of the human remains may be to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Sheila Goff, History Colorado, 1200 Broadway, Denver, CO 80203, telephone (303) 866–4531, email *Sheila.goff@state.co.us,* by April 29, 2013. Disposition of the human remains to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah may proceed after that date if no additional requestors come forward.

History Colorado is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: February 19, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–07358 Filed 3–28–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11979; PCU00RP14.R50000–PPWOCRADN0]

Notice of Inventory Completion: University of Washington, Department of Anthropology, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Washington, Department of Anthropology, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Burke Museum acting on behalf of the University of Washington, Department of Anthropology. Disposition of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the University of Washington at the address below by April 29, 2013.

ADDRESSES: Dr. Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of Washington, Department of Anthropology and in the physical custody of the Burke Museum. The human remains and associated funerary objects were removed from San Juan County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by the Burke Museum and University of Washington professional staff in consultation with representatives of the Lummi Tribe of the Lummi Reservation, Washington; Nooksack Indian Tribe; Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington); Sauk-Suiattle Indian Tribe; Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington); Suquamish Indian Tribe of the Port Madison Reservation; Swinomish Indians of the Swinomish Reservation of Washington; Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington); and the Upper Skagit Indian Tribe. In 1995, as part of the NAGPRA compliance process, these remains were reported to the Confederated Tribes and Bands of the Yakama Nation; Confederated Tribes of the Chehalis Reservation; Confederated Tribes of the Colville Reservation; Hoh Indian Tribe (previously listed as the Hoh Indian Tribe of the Hoh Indian Reservation, Washington); Jamestown S'Klallam Tribe; Kalispel Indian Community of the Kalispel Reservation; Lower Elwha Tribal Community (previously listed as the Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington); Lummi Tribe of the Lummi Reservation; Makah Indian Tribe of the Makah Indian Reservation; Muckleshoot Indian Tribe (previously listed as the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington); Nisqually Indian Tribe (previously listed as the Nisqually Indian Tribe of the Nisqually Reservation, Washington); Nooksack

Indian Tribe; Port Gamble Band of S'Klallam Indians (previously listed as the Port Gamble Indian Community of the Port Gamble Reservation, Washington); Puyallup Tribe of the Puyallup Reservation; Quileute Tribe of the Quileute Reservation; Quinault Indian Nation (previously listed as the Quinault Tribe of the Quinault Reservation, Washington); Sauk-Suiattle Indian Tribe; Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation (previously listed as the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington); Skokomish Indian Tribe (previously listed as the Skokomish Indian Tribe of the Skokomish Reservation, Washington); Spokane Tribe of the Spokane Reservation; Squaxin Island Tribe of the Squaxin Island Reservation; Stillaguamish Tribe of Indians of Washington (previously listed as Stillaguamish Tribe of Washington); Suquamish Indian Tribe of the Port Madison Reservation; Swinomish Indians of the Swinomish Reservation of Washington; Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington); and the Upper Skagit Indian Tribe (hereafter all tribes listed in this section are referred to as ''The Consulted and Notified Tribes'').

History and Description of the Remains

In 1979, human remains representing, at minimum, one individual (Specimen #10) were removed from San Juan Island, WA. No known individuals were identified. The one associated funerary object is one lot of non-human bone.

Determinations Made by the University of Washington, Department of Anthropology

Officials of the University of Washington, Department of Anthropology, have determined that:

- Based on cranial and dental morphology, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- The Point Elliot Treaty of January 22, 1855, was signed by representatives from the Lummi Tribe of the Lummi Reservation; Muckleshoot Indian Tribe (previously listed as the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington); Nooksack Indian Tribe; Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington); Sauk-Suiattle Indian Tribe; Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington); Suquamish Indian Tribe of the Port Madison Reservation; Swinomish Indians of the Swinomish Reservation of Washington; Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington); and the Upper Skagit Indian Tribe (hereafter referred to as ''The Aboriginal Tribes''). The Point Elliot Treaty provided an agreement between The Aboriginal Tribes and the United States Government for land in western Washington. The land from which the Native American human remains and associated funerary objects were removed (San Juan Island) was a part of the aboriginal land ceded by the Point Elliot Treaty.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to The Aboriginal Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary object or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849, before April 29, 2013. Disposition of the human remains and associated funerary object to The Aboriginal Tribes may proceed after that date if no additional requestors come forward.

The University of Washington, Department of Anthropology is responsible for notifying The Consulted and Notified Tribes that this notice has been published.

Dated: March 4, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–07357 Filed 3–28–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–12389; PCU00RP14.R50000–PPWOCRADN0]

Notice of Inventory Completion: University of Washington, Department of Anthropology, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Washington, Department of Anthropology, has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Burke Museum acting on behalf of the University of Washington, Department of Anthropology. Disposition of the human remains to the Indian tribes stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the University of Washington at the address below by April 29, 2013.

ADDRESSES: Dr. Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the University of Washington, Department of Anthropology and in the physical custody of the Burke Museum. The human remains were removed from an unknown location, most likely near the Snake River, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Burke Museum and University of Washington

professional staff in consultation with representatives of the Confederated Tribes and Bands of the Yakama Nation; Confederated Tribes of the Colville Reservation; Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon); Nez Perce Tribe (previously listed as the Nez Perce Tribe of Idaho); and the Wanapum Band of Priest Rapids, a non-Federally recognized Indian group. The Shoshone-Bannock Tribes of the Fort Hall Reservation and the Shoshone Tribe of the Wind River Indian Reservation, Wyoming, were invited to consult but did not participate. In 1995, these remains were originally reported to the Confederated Tribes and Bands of the Yakama Nation; Confederated Tribes of the Chehalis Reservation; Confederated Tribes of the Colville Reservation; Hoh Indian Tribe (previously listed as the Hoh Indian Tribe of the Hoh Indian Reservation, Washington); Jamestown S'Klallam Tribe; Kalispel Indian Community of the Kalispel Reservation; Lower Elwha Tribal Community (previously listed as the Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington); Lummi Tribe of the Lummi Reservation; Makah Indian Tribe of the Makah Indian Reservation; Muckleshoot Indian Tribe (previously listed as the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington); Nisqually Indian Tribe (previously listed as the Nisqually Indian Tribe of the Nisqually Reservation, Washington); Nooksack Indian Tribe; Port Gamble Band of S'Klallam Indians (previously listed as the Port Gamble Indian Community of the Port Gamble Reservation, Washington); Puyallup Tribe of the Puyallup Reservation; Quileute Tribe of the Quileute Reservation; Quinault Indian Nation (previously listed as the Quinault Tribe of the Quileute Reservation, Washington); Sauk-Suiattle Indian Tribe; Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation (previously listed as the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington); Skokomish Indian Tribe (previously listed as the Skokomish Indian Tribe of the Skokomish Reservation, Washington); Spokane Tribe of the Spokane Reservation; Squaxin Island Tribe of the Squaxin Island Reservation; Stillaguamish Tribe (previously listed as the Stillaguamish Tribe of Washington); Suquamish Indian Tribe of the Port Madison Reservation; Swinomish Indians of the Swinomish Reservation; Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington); and the Upper Skagit Indian Tribe. Hereafter, all tribes listed in this section are referred to as ''The Consulted, Invited, and Notified Tribes.''

History and description of the remains

In 1985, human remains representing, at minimum, one individual (Specimen #7) were removed from an unknown location along the Snake River, most likely in Washington. No known individuals were identified. No associated funerary objects are present.

Determinations made by the University of Washington, Department of Anthropology

Officials of the University of Washington, Department of Anthropology, have determined that:

- Based on cranial morphology, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains were removed is the aboriginal land of the Walla Walla, Palus, and Nez Perce. The Walla Walla are represented by the present day members of the Confederated Tribes of the Umatilla Indian Reservation (previously listed as the confederated Tribes of the Umatilla Reservation, Oregon). The Palus are represented by the present day Confederated Tribes and Bands of the Yakama Nation; Confederated Tribes of the Colville Reservation; Confederated Tribes of the Umatilla Indian Reservation (previously listed as the confederated Tribes of the Umatilla Reservation, Oregon); and the Nez Perce Tribe (previously listed as Nez Perce Tribe of Idaho) (hereafter referred to as ''The Aboriginal Land Tribes'').
- Multiple lines of evidence, including treaties, Acts of Congress, and Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of The Aboriginal Land Tribes.
- Other credible lines of evidence indicate that the land from which the Native American human remains were removed is the aboriginal land of The Aboriginal Land Tribes and the Wanapum Band of Priest Rapids, a non-Federally recognized Indian group.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Aboriginal Land Tribes and the Wanapum Band, a non-Federally recognized Indian group.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849, before April 29, 2013. Disposition of the human remains to The Aboriginal Land Tribes and the Wanapum Band, a non-Federally recognized Indian group may proceed after that date if no additional requestors come forward.

The University of Washington, Department of Anthropology is responsible for notifying The Consulted, Invited, and Notified Tribes that this notice has been published.

Dated: February 19, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–07360 Filed 3–28–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–12395; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Slater Museum of Natural History, University of Puget Sound, Tacoma, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Slater Museum of Natural History, University of Puget Sound, has completed an inventory of human remains in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Burke Museum acting on behalf of the Slater Museum of Natural History. Disposition of the human remains to the Indian tribes stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Burke Museum at the address below by April 29, 2013.

ADDRESSES: Peter Lape, Burke Museum, University of Washington, Box 353010,

Seattle, WA 98195–3010, telephone (206) 685–3849.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Slater Museum of Natural History and in the physical custody of the Burke Museum. The human remains were removed from unknown locations, most likely in the state of Washington.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Slater Museum of Natural History and Burke Museum professional staff in consultation with representatives of the Coeur D'Alene Tribe (previously listed as the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho); Confederated Tribes and Bands of the Yakama Nation; Confederated Tribes of the Chehalis Reservation; Confederated Tribes of the Colville Reservation; Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon); Confederated Tribes of the Warm Springs Reservation of Oregon; Cowlitz Indian Tribe; Jamestown S'Klallam Tribe; Kalispel Indian Community of the Kalispel Reservation; Lower Elwha Tribal Community (previously listed as the Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington); Lummi Tribe of the Lummi Reservation; Makah Indian Tribe of the Makah Indian Reservation; Muckleshoot Indian Tribe (previously listed as the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington); Nez Perce Tribe (previously listed as Nez Perce Tribe of Idaho); Nooksack Indian Tribe; Port Gamble of S'Klallam Indians (previously listed as the Port Gamble Indian Community of the Port Gamble Reservation, Washington); Puyallup Tribe of the Puyallup Reservation; Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington); Skokomish Indian Tribe (previously listed as the Skokomish Indian Tribe of the Skokomish Reservation, Washington); Snoqualmie Indian Tribe (previously listed as the Snoqualmie Tribe, Washington); Spokane Tribe of the Spokane Reservation; Squaxin Island Tribe of the Squaxin Island Reservation; Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington); Suquamish Indian Tribe of the Port Madison Reservation; Swinomish Indians of the Swinomish Reservation of Washington; Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington); Upper Skagit Indian Tribe; and the Wanapum Band of Priest Rapids, a non-Federally recognized Indian group.

The following tribes with aboriginal territory in the state of Washington were also invited to consult but did not participate: the Hoh Indian Tribe (previously listed as the Hoh Indian Tribe of the Hoh Indian Reservation, Washington); Nisqually Indian Tribe (previously listed as the Nisqually Indian Tribe of the Nisqually Reservation, Washington); Quileute Tribe of the Quileute Reservation; Quinault Indian Nation (previously listed as the Quinault Tribe of the Quinault Reservation, Washington); Sauk-Suiattle Indian Tribe; and the Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation (previously listed as the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington). Hereafter all tribes listed in this section are referred to as ''The Consulted and Invited Tribes.''

History and Description of the Remains

At unknown dates, human remains representing, at minimum, five individuals were removed from unknown sites located throughout the state of Washington. The human remains were not the result of systematic archaeological collections; rather they are believed to have been collected by the general public or by wildlife biologists during their fieldwork. The remains lack specific documentation but are believed to have most likely been removed from within Washington State. The majority of documented remains at one time in the Slater Museum of Natural History's possession were removed from locations in Washington State. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Slater Museum of Natural History

Officials of the Slater Museum of Natural History have determined that:

- Based on cranial morphology and dental traits, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains and the associated funerary object were removed is the aboriginal land of the Coeur D'Alene Tribe (previously listed as the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho); Confederated Tribes and Bands of the Yakama Nation; Confederated Tribes of the Chehalis Reservation; Confederated Tribes of the Colville Reservation; Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon); Confederated Tribes of the Warm Springs Reservation of Oregon; Cowlitz Indian Tribe; Hoh Indian Tribe (previously listed as the Hoh Indian Tribe of the Hoh Indian Reservation, Washington); Jamestown S'Klallam Tribe; Kalispel Indian Community of the Kalispel Reservation; Lower Elwha Tribal Community (previously listed as the Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington); Lummi Tribe of the Lummi Reservation; Makah Indian Tribe of the Makah Indian Reservation; Muckleshoot Indian Tribe (previously listed as the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington); Nisqually Indian Tribe (previously listed as the Nisqually Indian Tribe of the Nisqually Reservation, Washington); Nez Perce Tribe (previously listed as Nez Perce Tribe of Idaho); Nooksack Indian Tribe; Port Gamble of S'Klallam Indians (previously listed as the Port Gamble Indian Community of the Port Gamble Reservation, Washington); Puyallup Tribe of the Puyallup Reservation; Quileute Tribe of the Quileute Reservation, Washington; Quinault Indian Nation (previously listed as the Quinault Tribe of the Quinault Reservation, Washington); Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington); Sauk-Suiattle Indian Tribe; Shoalwater Bay IndianTribe of the Shoalwater Bay Indian Reservation (previously listed as the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington); Skokomish Indian Tribe (previously listed as the Skokomish Indian Tribe of the Skokomish Reservation, Washington); Snoqualmie Indian Tribe (previously listed as the

Snoqualmie Tribe, Washington); Spokane Tribe of the Spokane Reservation; Squaxin Island Tribe of the Squaxin Island Reservation; Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington); Suquamish Indian Tribe of the Port Madison Reservation; Swinomish Indians of the Swinomish Reservation of Washington; Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington) and the Upper Skagit Indian Tribe (hereafter referred to as ''The Aboriginal Land Tribes'').

• Multiple lines of evidence, including treaties, Acts of Congress, and Executive Orders, indicate that the land from which the Native American human remains and the associated funerary object were removed is the aboriginal land of The Aboriginal Land Tribes.

• Other credible lines of evidence, indicate that the land from which the Native American human remains and the associated funerary object were removed is the aboriginal land of The Aboriginal Land Tribes; the Confederated Tribes of the Warm Springs Reservation of Oregon; and the Wanapum Band of Priest Rapids, a non-Federally recognized Indian group.

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of five individuals of Native American ancestry.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Aboriginal Land Tribes. The Confederated Tribes of the Chehalis Reservation; Confederated Tribes of the Colville Reservation; Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon); Confederated Tribes of the Warm Springs Reservation of Oregon; Puyallup Tribe of the Puyallup Reservation; Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington); Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington); Suquamish Indian Tribe of the Port Madison Reservation; Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington); Upper Skagit Indian Tribe; and the Wanapum Band of Priest Rapids, a non-Federally recognized Indian group, all of which belong to the Washington State Inter-Tribal Consortium-Slater Museum, have come together to jointly claim the human remains. The Coeur D'Alene Tribe (previously listed as the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho); Confederated Tribes and Bands of the Yakama Nation; Jamestown S'Klallam Tribe; Lummi Tribe of the Lummi Reservation; Skokomish Indian Tribe (previously listed as the Skokomish Indian Tribe of the Skokomish Reservation); and the Snoqualmie Indian Tribe (previously listed as the Snoqualmie Tribe, Washington) have stated their support for the disposition of the human remains to the Washington State Inter-Tribal Consortium-Slater Museum.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849, before April 29, 2013. Disposition of the human remains to the Washington State Inter-Tribal Consortium-Slater Museum may proceed after that date if no additional requestors come forward.

The Burke Museum is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: February 20, 2013.

Melanie O'Brien,

Acting Manager, National NAGPRA Program.

[FR Doc. 2013–07370 Filed 3–28–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–12434; PCU00RP14.R50000–PPWOCRADN0]

Notice of Inventory Completion: University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Pennsylvania Museum of Archaeology and Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the University of Pennsylvania Museum of Archaeology and Anthropology. Repatriation of the human remains to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the University of Pennsylvania Museum of Archaeology and Anthropology at the address below by April 29, 2013.

ADDRESSES: Dr. Julian Siggers, University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA 19104–6324, telephone (215) 898–4050.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA. The human remains were removed from unknown sites in Polk County, TN, Gilmer County, GA, and Cherokee County, NC.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Pennsylvania Museum of Archaeology and Anthropology professional staff in consultation with representatives of the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

At an unknown date, human remains representing, at minimum, two individuals were removed by an unknown individual from a cave near the Hiwassee River between Fort Butler in Murphy, NC, and Fort Cass in Charleston, TN, near Springtown, (today Reliance) in Polk County, TN. According to museum and archival documents, the remains were discovered in a cave near an ancient battleground north of the Hiwassee River. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, two individuals were removed from an

unknown location near the town of Ellijay, along the Ellijay River, in Gilmer County, GA, by an unknown individual. Museum documentation indicates the remains were not buried and may have been removed from a cave or rock-shelter context. No known individuals were identified. No associated funerary objects are present.

Dr. Joel Martin, U.S. Army Medical Director at Fort Cass, obtained all of the remains above sometime after May 16, 1838, but prior to August 1, 1838. Dr. Martin subsequently sent the remains to Dr. Samuel G. Morton, who accessioned these remains into his collection prior to 1839. From approximately 1830 until Dr. Morton's death in 1851, the Academy of Natural Sciences in Philadelphia provided storage space for Dr. Morton's collection.

At an unknown date prior to June 1846, human remains representing, at minimum, two individuals were removed from a mound in Cherokee County, NC, by Dr. James F.E. Hardy of Asheville, NC. Dr. Hardy sent the remains to Dr. Samuel G. Morton for inclusion in his study of human crania. Dr. Morton donated the remains to the Academy of Natural Sciences in Philadelphia on June 9, 1846. Archival documentation describes one of the individuals as ''an Indian well known in the County * * * He was one of the greatest ball players in his tribe. While playing ball he slipped & fell & dislocated his spine & died immediately.'' Museum documentation and a physical assessment of the remains identified trauma consistent with the injuries in this account and injuries one might receive while playing the Cherokee stickball game. Historical records and consultation information give accounts of men being seriously injured and dying while playing the Cherokee stickball game. No known individuals were identified. No associated funerary objects are present.

In 1853, Dr. Morton's collection, including all of the remains described above, was purchased from Dr. Morton's estate and formally presented to the Academy of Natural Sciences. In 1966, Dr. Morton's collection was loaned to the University of Pennsylvania Museum of Archaeology and Anthropology. In 1997, the collection was formally gifted to the University of Pennsylvania Museum.

The human remains have been identified as Native American based on the specific cultural and geographic attribution in the museum records. Collector's records, museum documentation, and published sources (Morton 1839, 1840, and 1849; Meigs 1857) identify the human remains above as Cherokee. According to consultation information, historically, the Cherokee buried their deceased; however, certain circumstances may have prevented this from happening. Thus, consultation and archival documentation reveal that human remains found in cave or rock shelter contexts are not uncommon during the Historic Period when forced removal and epidemics resulted in the deaths of many Cherokee individuals beginning in 1735 through the Removal Period. Scholarly publications, land cession records, and consultation information indicate that the areas from which the human remains were removed are within the traditional aboriginal territory of the Cherokee Indians and many known historic Cherokee occupation sites within these areas have been identified.

Determinations Made by the University of Pennsylvania Museum of Archaeology and Anthropology

Officials of the University of Pennsylvania Museum of Archaeology and Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of six individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Julian Siggers, Director, University of Pennsylvania Museum of Archaeology & Anthropology, University of Pennsylvania, 3260 South Street, Philadelphia, PA 19104, telephone (215) 898–4050, before April 29, 2013. Repatriation of the human remains to the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma may proceed after that date if no additional claimants come forward.

The University of Pennsylvania Museum of Archaeology & Anthropology is responsible for notifying the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: February 26, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–07356 Filed 3–28–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–12448; PCU00RP14.R50000–PPWOCRADN0]

Notice of Inventory Completion: Yale Peabody Museum of Natural History, New Haven, CT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Yale Peabody Museum of Natural History has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Yale Peabody Museum of Natural History. Repatriation of the human remains to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Yale Peabody Museum of Natural History at the address below by April 29, 2013.

ADDRESSES: Professor Derek E.G. Briggs, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Yale Peabody Museum of Natural History. The human remains were removed from Memaloose Island and The Dalles, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National

Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by the Yale Peabody Museum of Natural History professional staff in consultation with representatives of the Confederated Tribes and Bands of the Yakama Nation and the Confederated Tribes of the Warm Springs Reservation of Oregon.

History and Description of the Remains

In 1871, human remains representing, at minimum, one individual were collected in The Dalles, OR, by the Yale College Scientific Expedition, led by Othniel C. Marsh. These human remains were transferred to the Yale Peabody Museum of Natural History in 1872. No known individuals were identified. No associated funerary objects are present.

Because the human remains exhibit cultural modification (cranial reshaping) typical of Native American remains found in this region, the human remains are believed to be Native American. Based on historical records, museum catalog records, the geographic origin of the remains, and the description of traditional territory, these human remains are believed to be culturally affiliated with the Confederated Tribes and Bands of the Yakama Nation and the Confederated Tribes of the Warm Springs Reservation of Oregon.

In 1871, human remains representing, at minimum, 45 individuals were removed from Memaloose Island near The Dalles, OR, by the Yale College Scientific Expedition. The human remains were transferred to the Yale Peabody Museum of Natural History in February of 1873 by Oscar Harger, a student on the Expedition. No known individuals were identified. The 11 associated funerary objects are stones, a copper rod, glass and shell beads, a copper bead necklace fragment, and an incised bone artifact fragment.

Based on historical records, museum catalog records, the geographic origin of the remains, and the description of traditional territory, these human remains are believed to be culturally affiliated with the Confederated Tribes and Bands of the Yakama Nation and the Confederated Tribes of the Warm Springs Reservation of Oregon.

In 1874, human remains representing, at minimum, 226 individuals were removed from Memaloose Island and The Dalles, OR, by S. R. Evans. The human remains were transferred to the Yale Peabody Museum of Natural History in 1874. No known individuals were identified. The 100 associated funerary objects are glass and shell beads, animal bones, fibers, one chert projectile point, and pebbles.

Based on historical records, museum catalog records, the geographic origin of the remains, and the description of traditional territory, these human remains are believed to be culturally affiliated with the Confederated Tribes and Bands of the Yakama Nation and the Confederated Tribes of the Warm Springs Reservation of Oregon.

Determinations Made by the Yale Peabody Museum of Natural History

Officials of the Yale Peabody Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 272 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 111 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes and Bands of the Yakama Nation and the Confederated Tribes of the Warm Springs Reservation of Oregon.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remain should contact Professor Derek E.G. Briggs, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752 before April 29, 2013. Repatriation of the human remains and associated funerary objects to the Confederated Tribes and Bands of the Yakama Nation and the Confederated Tribes of the Warm Springs Reservation of Oregon may proceed after that date if no additional claimants come forward.

The Yale Peabody Museum of Natural History is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation and the Confederated Tribes of the Warm Springs Reservation of Oregon that this notice has been published.

Dated: February 26, 2013.

Melanie O'Brien,

Acting Manager, National NAGPRA Program.

[FR Doc. 2013–07348 Filed 3–28–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–12406; PCU00RP14.R50000–PPWOCRADN0]

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS. The human remains and cultural items were removed from Madison, Jefferson, and Adams counties, MS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Natchez Trace Parkway.

This notice corrects the minimum number of individuals, the number and types of associated funerary objects, the tribes determined to be culturally affiliated, and the spelling of two Indian tribes for a Notice of Inventory Completion previously published in the **Federal Register** (66 FR 32846–32847, June 18, 2001). A reassessment of the inventory during tribal consultation prior to repatriation revealed an increased number of associated funerary objects and fewer individuals. Following consultation, three additional tribes were determined to have a relationship of shared group identity with the human remains and associated funerary objects.

In the **Federal Register** (66 FR 32846–32847, June 18, 2001), ''Muscogee (Creek) Nation, Oklahoma'' is substituted for ''Muskogee (Creek) Nation, Oklahoma'' wherever the latter occurs.

In the **Federal Register** (66 FR 32846–32847, June 18, 2001), ''United Keetoowah Band of Cherokee Indians'' is substituted for ''United Keetowah Band of Cherokee Indians'' wherever the latter occurs.

In the **Federal Register** (66 FR 32846–32847, June 18, 2001), paragraphs number 4 through 6 are corrected by

substituting the following three paragraphs and inserting the fourth:

The 63 human remains and 1,809 associated funerary objects described below were recovered from three different sites.

In 1963 and 1964, human remains representing 8 individuals were recovered from the Boyd site during an authorized National Park Service project to mitigate construction impacts from the Natchez Trace Parkway. No known individuals were identified. The 59 associated funerary objects are 22 shell beads, 24 pieces of a single Baytown Plain ceramic jar, and 13 ceramic sherds.

The Boyd site is located in Madison County, MS, and consists of a village area and six mounds. On the basis of artifacts recovered during the excavations, the village area was occupied during the Woodland period (A.D. 300–700), while the mounds were built during the Mississippian period (A.D. 1000–1650). The human remains and associated funerary objects were associated with the Mississippian period use of the site. One burial was recovered with fragments of a Baytown Plain ceramic jar, a ceramic type often associated with the Late Woodland and Early Mississippian period (A.D. 700–1200). One burial contained glass beads similar to those found at trading sites and historic Indian villages of the 18th century in Georgia and Alabama. These beads are possibly associated with a historic American Indian Choctaw presence at the site.

In 1949, human remains representing 30 individuals were recovered from the Gordon Mounds site during a legally authorized National Park Service excavation prior to the construction of the Natchez Trace Parkway. No known individuals were identified. The 590 associated funerary objects are 1 Mazique incised cup, 372 vessel fragments, 1 Mazique incised pot, 2 Addis Plain bowls, 1 effigy bowl, 1 core, 200 faunal elements, 2 flakes, 1 piece of shatter, 4 points, 1 flake tool, 1 piece of charcoal, 1 discoidal, 1 celt, and 1 pot.

In the **Federal Register** (66 FR 32846–32847, June 18, 2001), paragraph number 8 is corrected by substituting the following paragraph and inserting the second:

In 1948, human remains representing one individual were recovered from the Emerald Mound site during legally authorized excavation projects. No known individuals were identified. The 37 associated funerary objects are 25 vessel fragments and 12 faunal elements.

In 1972, human remains representing 24 individuals were recovered from the Emerald Mound site during legally authorized excavation projects. No known individuals were identified. The 1,123 associated funerary objects are 644 vessel fragments, 35 faunal elements, 226 unmodified stones, 89 pieces of daub, 35 flakes, 6 flake tools, 25 fire-cracked rocks, 4 pebble tools, 26 pieces of shatter, 29 cores, and 4 pieces of cinder.

In the **Federal Register** (66 FR 32846–32847, June 18, 2001), paragraph number 12 is corrected by substituting the following paragraph:

Based on the above mentioned information, the superintendent of Natchez Trace Parkway has determined that, pursuant to 25 U.S.C. 3001(9) the human remains listed above represent the physical remains of 63 individuals of Native American ancestry. The superintendent of Natchez Trace Parkway has also determined that, pursuant 25 U.S.C. 3001(3)(A), the 1,809 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony. Lastly, the superintendent of Natchez Trace Parkway has determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects recovered from the Boyd site, Gordon Mounds site, and Emerald Mound site, and the Cherokee Nation; Chickasaw Nation; Choctaw Nation of Oklahoma; Mississippi Band of Choctaw Indians; The Muscogee (Creek) Nation; and United Keetoowah Band of Cherokee Indians in Oklahoma.

In the **Federal Register** (66 FR 32846–32847, June 18, 2001), the last sentence of paragraph number 13 is corrected by substituting the following sentence:

Repatriation of the human remains and associated funerary objects to the Cherokee Nation; Chickasaw Nation; Choctaw Nation of Oklahoma; Mississippi Band of Choctaw Indians; The Muscogee (Creek) Nation; and United Keetoowah Band of Cherokee Indians in Oklahoma may begin after that date if no additional claimants come forward.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dale Wilkerson, Acting Superintendent, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, MS 38803, telephone (662) 680–4005, before April 29, 2013. Repatriation of the human remains and associated funerary objects to the Cherokee Nation; Chickasaw Nation; Choctaw Nation of Oklahoma; Mississippi Band of Choctaw Indians; The Muscogee (Creek) Nation; and United Keetoowah Band of Cherokee Indians in Oklahoma may proceed after that date if no additional claimants come forward.

Natchez Trace Parkway is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Chickasaw Nation; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Jena Band of Choctaw Indians; Kialegee Tribal Town; Miccosukee Tribe of Indians; Mississippi Band of Choctaw Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); Shawnee Tribe; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; Thlopthlocco Tribal Town; Tunica-Biloxi Indian Tribe; and United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: February 21, 2013.

Mariah Soriano,

Acting Manager, National NAGPRA Program.

[FR Doc. 2013–07346 Filed 3–28–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–12466; PCU00RP14.R50000–PPWOCRADN0]

Notice of Intent To Repatriate Cultural Items: The Colorado College, Colorado Springs, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Colorado College, in consultation with the appropriate Indian tribe, has determined that the cultural item meets the definition of unassociated funerary object and repatriation to the Hopi Tribe of Arizona may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact The Colorado College.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural item should contact The Colorado College at the address below by April 29, 2013.

ADDRESSES: Jermyn Davis, Chief of Staff, President's Office, Colorado College, Armstrong Hall, Room 201, 14 E. Cache La Poudre, Colorado Springs, CO 80903, telephone (719) 389–6201.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of The Colorado College that meets the definition of unassociated funerary object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

The unassociated funerary object is a corrugated ceramic cooking vessel (Lang-Bixby 318). Between 1897 and 1898, human remains, associated and unassociated funerary objects, as well as other cultural items were removed from a cliff ruin in a canyon tributary of Comb Wash, San Juan County, UT, under the auspices of the Lang Expedition of 1897–1898. Prior to 1900, General William Jackson Palmer acquired what became known as the Lang-Bixby Collection, which he subsequently transferred to The Colorado College. Beginning in the late 1960s, the Lang-Bixby Collection was transferred, along with other collections from The Colorado College Museum, through long-term loans to the Fine Arts Center (formerly known as the Taylor Museum and the Colorado Springs Fine Arts Center) and the Denver Museum of Nature & Science (formerly known as the Denver Museum of Natural History). In 1993, the Fine Arts Center included the unassociated funerary objects from the Lang-Bixby Collection in its NAGPRA summary.

The unassociated funerary object is ancestral Puebloan based on type and style. The human remains and associated funerary objects from this collection were described in two Notices of Inventory Completion (NICs) published in the **Federal Register** (69 FR 19232–19233, April 12, 2004, corrected by 74 FR 42105–42106, August 20, 2009). The other 36 unassociated funerary objects from this same location were described in a Notice of Intent to Repatriate (NIR) published in the **Federal Register** (77 FR 15798, March 16, 2012). The human remains and funerary objects were determined to be Ancestral Puebloan. A relationship of shared group identity can reasonably be traced between ancestral Puebloan peoples and modern Puebloan peoples based on oral tradition and scientific studies. The human remains, associated funerary objects, and unassociated funerary objects described in the notices above have been repatriated to the Hopi Tribe of Arizona. A preponderance of the evidence supports cultural affiliation of the unassociated funerary object in this notice to the Hopi Tribe of Arizona.

Determinations Made by The Colorado College

Officials of The Colorado College have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and the Hopi Tribe of Arizona.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary object should contact Jermyn Davis, Chief of Staff, President's Office, Colorado College, Armstrong Hall, Room 201, 14 E. Cache La Poudre, Colorado Springs, CO 80903, telephone (719) 389–6201, before April 29, 2013. Repatriation of the unassociated funerary object to the Hopi Tribe of Arizona may proceed after that date if no additional claimants come forward.

The Colorado College is responsible for notifying the Hopi Tribe of Arizona that this notice has been published.

Dated: February 28, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–07359 Filed 3–28–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–12450; PCU00RP14.R50000–PPWOCRADN0]

Notice of Intent To Repatriate Cultural Items: Yale Peabody Museum of Natural History, New Haven, CT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Yale Peabody Museum of Natural History, in consultation with the appropriate Indian tribes, has determined that the cultural items meet the definition of unassociated funerary objects, and repatriation to the Indian tribes stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the Yale Peabody Museum of Natural History.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the Yale Peabody Museum of Natural History at the address below by April 29, 2013.

ADDRESSES: Professor Derek E.G. Briggs, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Yale Peabody Museum of Natural History that meets the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1871, three unassociated funerary objects were recovered from Memaloose Island, OR, by the Yale College Scientific Expedition. The objects were transferred to the Yale Peabody Museum of Natural History in 1873 by Oscar Harger, a student of the Expedition. These objects include a wooden bowl, a stone mortar, and a wooden comb.

Catalog records and historic documentation indicate the objects were recovered from Native American graves and therefore meet the definition of unassociated funerary objects. The objects were recovered within the traditional territory of the Confederated Tribes and Bands of the Yakama Nation and the Confederated Tribes of the Warm Springs Reservation of Oregon.

Sometime prior to 1902, two unassociated funerary objects were removed from The Dalles, Wasco County, OR, by an unknown person. The objects were transferred to the Yale Peabody Museum of Natural History in 1902 by Mr. and Mrs. William H. Moseley of New Haven, CT. Catalog records indicate the two objects, a string of rolled metal tube beads and a string of shell beads, were recovered from Native American graves and therefore meet the definition of unassociated funerary objects. The objects were recovered within the traditional territory of the Confederated Tribes and Bands of the Yakama Nation and the Confederated Tribes of the Warm Springs Reservation of Oregon.

Based on museum catalog records of the objects, the geographic origin of the objects, and the description of traditional territory of the tribes, these objects are believed to be culturally affiliated with the Confederated Tribes and Bands of the Yakama Nation and the Confederated Tribes of the Warm Springs Reservation of Oregon.

Determinations Made by the Yale Peabody Museum of Natural History

Officials of the Yale Peabody Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the five cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes and Bands of the Yakama Nation and the Confederated Tribes of the Warm Springs Reservation of Oregon.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Professor Derek E.G. Briggs, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752 before April 29, 2013. Repatriation of the unassociated funerary objects to the Confederated Tribes and Bands of the Yakama Nation and the Confederated Tribes of the Warm Springs Reservation of Oregon may proceed after that date if no additional claimants come forward.

The Yale Peabody Museum of Natural History is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation and the Confederated Tribes of the Warm Springs Reservation of Oregon that this notice has been published.

Dated: February 26, 2013.

Melanie O'Brien,

Acting Manager, National NAGPRA Program.

[FR Doc. 2013–07352 Filed 3–28–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–12405; PCU00RP14.R50000–PPWOCRADN0]

Notice of Intent To Repatriate a Cultural Item: U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, in consultation with the appropriate Indian tribes, has determined that a cultural item meets the definition of unassociated funerary object and repatriation to the Indian tribe stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural item may contact Natchez Trace Parkway.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural item should contact Natchez Trace Parkway at the address below by April 29, 2013.

ADDRESSES: Dale Wilkerson, Acting Superintendent, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, MS, 38803, telephone (662) 680–4005.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS that meets the definition of unassociated funerary object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Natchez Trace Parkway.

History and Description of the Cultural Item

In 1972, a funerary object was removed from the Emerald Mound site in Adams County, MS, during legally authorized excavation projects. The whereabouts of the human remains are unknown, and it is not clear from excavation documentation if the remains were excavated. The one unassociated funerary object is an Addis Plain vessel.

The Emerald Mound site consists of two mounds and a plaza area. On the basis of artifacts recovered during excavation, the site was occupied during the late precontact phase of the Mississippian period (A.D. 1200–1650, or later). Ceramic types that have been historically associated with the Natchez Indians were found throughout the site. Mound construction and burial practices at the site were also consistent with those of the Natchez Indians.

Historical evidence indicates the dispersal of the Natchez Indians into Cherokee, Chickasaw, and Creek tribal groups. In 1542, Hernando de Soto's expedition heard of, and later encountered hostile Indians along the lower Mississippi River believed to have been the Natchez and their allies. In 1682, the de La Salle expedition specifically identified the Natchez as living along the banks of the lower Mississippi River. Following an unsuccessful rebellion against the French in 1729, the Natchez were dispersed. About 400 individuals surrendered to the French and were sent to the West Indies as slaves. The remaining Natchez withdrew among the Chickasaw and ultimately separated into two main bands, one settling among the Upper Creeks and the other uniting with the Cherokee. The Natchez language was still spoken by some in the Creek Nation until the early 20th century and by some among the Cherokee until the 1940s. Given territorial proximity and complexities of modern Cherokee tribal alignments in Oklahoma, both the Cherokee Nation and the United Keetoowah Band of Cherokee Indians are likely to include tribal members of Natchez descent.

Determinations Made by Natchez Trace Parkway

Officials of Natchez Trace Parkway have determined that:

• Pursuant to 25 U.S.C. 3001(3)(B), the cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and the Cherokee Nation; Chickasaw Nation; The Muscogee (Creek) Nation; and United Keetoowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary object should contact Dale Wilkerson, Acting Superintendent, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, MS 38803, telephone (662) 680–4005, before April 29, 2013. Repatriation of the unassociated funerary object to the Cherokee Nation; Chickasaw Nation; The Muscogee (Creek) Nation; and United Keetoowah Band of Cherokee Indians in Oklahoma may proceed after that date if no additional claimants come forward.

Natchez Trace Parkway is responsible for notifying the Cherokee Nation; Chickasaw Nation; The Muscogee (Creek) Nation; and United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: February 21, 2013.

Mariah Soriano,

Acting Manager, National NAGPRA Program.

[FR Doc. 2013–07374 Filed 3–28–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–12404; PCU00RP14.R50000–PPWOCRADN0]

Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, in consultation with the appropriate Indian tribes, has determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Indian tribe stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact Natchez Trace Parkway.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact Natchez Trace Parkway at the address below by April 29, 2013.

ADDRESSES: Dale Wilkerson, Acting Superintendent, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, MS, 38803, telephone (662) 680–4005.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Natchez Trace Parkway.

History and Description of the Cultural Items

In 1963 and 1964, funerary objects were removed from the Boyd site in Madison County, MS, during an authorized National Park Service project to mitigate construction impacts from the Natchez Trace Parkway. The whereabouts of the human remains are unknown. The excavation report's description of advanced bone deterioration for these burials suggests the remains were left in the ground due to their fragility. The 461 unassociated funerary objects are 1 jar, 6 bifaces, 1 vessel, 2 vessel fragments, 250 glass beads, 7 nails, 1 nail fragment, 5 bone buttons, 8 stone knives/bifaces, 3 celts, 1 shell pendant, 167 shell beads, 1 quartz crystal, 1 ferruginous sandstone, 1 ochre fragment, 3 perforators/points, and 3 shells.

The Boyd site consists of a village area and six mounds. On the basis of artifacts recovered during the excavations, the village area is believed to have been occupied during the Woodland period (A.D. 300–700). The six mounds were built and occupied during the Late Woodland through Middle Mississippian periods (A.D. 1000–1350). One burial was exhumed with fragments of a Baytown Plain ceramic jar, a ceramic type often associated with the Late Woodland and Early Mississippian period (A.D. 700–1200). The construction of these mounds and the presence of shell tempered pottery are indicative of the Middle Mississippian period (A.D. 1200–1350). The mounds suggest a possible centralized authority and thus social stratification during this period, similar to that found among the Natchez.

Historical evidence indicates the dispersal of the Natchez Indians into Cherokee, Chickasaw, and Creek tribal groups. In 1542, Hernando de Soto's expedition encountered Indians along the lower Mississippi River believed to have been the Natchez and their allies. In 1682, the de La Salle expedition specifically identified the Natchez as living along the banks of the lower Mississippi River. Following an unsuccessful rebellion against the French in 1729, the Natchez were dispersed. About 400 individuals surrendered to the French and were sent to the West Indies as slaves. The remaining Natchez withdrew among the Chickasaw and ultimately separated into two main bands, one settling among the Upper Creeks and the other uniting with the Cherokee. The Natchez language was still spoken by some in the Creek Nation until the early 20th century and by some among the Cherokee until the 1940s. Given territorial proximity and complexities of modern Cherokee tribal alignments in Oklahoma, both the Cherokee Nation and the United Keetoowah Band of Cherokee Indians are likely to include tribal members of Natchez descent.

A historic Choctaw presence is indicated by the glass beads, buttons, and nails found in association with an intrusive historic burial at the site. The glass beads are similar to those found at trading sites and historic Indian villages in Georgia and Alabama, suggesting a Choctaw occupation from the late 18th through the early 19th centuries.

Determinations Made by Natchez Trace Parkway

Officials of Natchez Trace Parkway have determined that:

• Pursuant to 25 U.S.C. 3001(3)(B), the 461 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the

evidence, to have been removed from a specific burial site of a Native American individual.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Cherokee Nation; Chickasaw Nation; Choctaw Nation of Oklahoma; Mississippi Band of Choctaw Indians; The Muscogee (Creek) Nation; and United Keetoowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Dale Wilkerson, Acting Superintendent, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, MS 38803, telephone (662) 680–4005, before April 29, 2013. Repatriation of the unassociated funerary objects to the Cherokee Nation; Chickasaw Nation; Choctaw Nation of Oklahoma; Mississippi Band of Choctaw Indians; The Muscogee (Creek) Nation; and United Keetoowah Band of Cherokee Indians in Oklahoma may proceed after that date if no additional claimants come forward.

Natchez Trace Parkway is responsible for notifying the Cherokee Nation; Chickasaw Nation; Choctaw Nation of Oklahoma; Mississippi Band of Choctaw Indians; The Muscogee (Creek) Nation; and United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: February 21, 2013.

Mariah Soriano,

Acting Manager, National NAGPRA Program.

[FR Doc. 2013–07371 Filed 3–28–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–12433; PCU00RP14.R50000–PPWOCRADN0]

Notice of Intent To Repatriate Cultural Items: University of Denver Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Denver Museum of Anthropology, in consultation with the appropriate Indian tribes, has determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Indian tribes stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the University of Denver Museum of Anthropology.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the University of Denver Museum of Anthropology at the address below by April 29, 2013.

ADDRESSES: Anne Amati, University of Denver Museum of Anthropology, 2000 E. Asbury Avenue, Denver, Colorado, 80208, telephone (303) 871–2687.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the University of Denver Museum of Anthropology, Denver, CO, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1968, the University of Denver Museum of Anthropology acquired the collection of Mr. Fallis F. Rees, an amateur archeologist, who researched ancient civilizations. He housed his artifact collection in his Ko-Kas-Ki Museum in Pinedale, CO, before transferring it to the University of Denver Museum of Anthropology. The following cultural items came to the University of Denver Museum of Anthropology as part of the Rees Collection.

At an unknown date, two stone figurine fragments (DU 3915 A–B) were removed from unknown sites near Gila Crossing Ruin in Maricopa or Pinal County, AZ, by an unknown individual. At an unknown date, one stone figurine fragment (DU 3915 C), depicting a female head and partial torso, was removed from an unknown site in the Gila River area, AZ, by an unknown individual. Fallis Rees obtained this object from Frank Midvale, a southwestern archeologist who lived and worked in southern and central Arizona. All three figurines (DU 3915 A–C) resemble Santa Cruz Phase figurines from the Snaketown site and are made from vesicular basalt. The archeological evidence places the Snaketown site within the archeologically-defined Hohokam tradition. Museum records indicate the figurine fragments were removed from cremation burials.

At an unknown date, one stone cylinder with flat base (DU 3973) was removed from an unknown site near Phoenix Ruins in Maricopa County, AZ, by an unknown individual. The cylinder features a shallow depression on one end with two rattlesnakes carved head to tail on the rim. Fallis Rees obtained this object from Frank Midvale, a southwestern archeologist who lived and worked in southern and central Arizona. DU 3973 is identified as belonging to the Santa Cruz or Sacaton Phase of the Hohokam archeological tradition. Museum records indicate the cylinder was removed from a cremation burial.

At an unknown date, two stone palettes (DU 3984 and 3987) were removed from unknown sites in Arizona by an unknown individual. DU 3984 features irregular incised triangles on the rim. DU 3987 is greenish-grey in color and features an incised groove border, beveled edges and a smoothed back. At an unknown date, one stone palette (DU 3986) was removed from an unknown site near Phoenix in Maricopa County, AZ, in the Salt River Valley, by an unknown individual. DU 3986 is made from soapstone and features a shallow incised border on a smoothed surface. At an unknown date, one stone palette (DU3989) was removed from an unknown site in New River, Maricopa County, AZ, by an unknown individual. DU 3989 features a water bird design with double incised lines inside the border and notched edges. Areas of loss have been reconstructed at some point prior to 1968. Fallis Rees obtained this object from Frank Midvale, a southwestern archeologist who lived and worked in southern and central Arizona. DU 3984 is identified as belonging to the Sacaton Phase of the Hohokam Archeological tradition. Museum records identify DU 3986, 3987, and 3989 as part of the Hohokam Archeological tradition. Consultation and museum records indicate that palettes are known to be associated with burials.

At an unknown date, one stone fragment (DU 3991), identified as part of a fetish, was removed from an unknown site near Gila Butte in Pinal County, AZ, by an unknown individual. The fragment features painted designs in black and white, partial double perforations, and beveled edges. At an unknown date, one stone fragment (DU

3992) was removed from an unknown site near Cashion in Maricopa County, AZ, by an unknown individual. The fragment features one edge with a continuous curved arc and the other edge with uneven curves including one partial perforation near one end. Both stone fragments (DU 3991 and 3992) show evidence of being burned and are believed to have been removed from cremation burials. Museum records identify the stone fragments as part of the Hohokam Archeological tradition.

The Gila River Indian Community of the Gila River Indian Reservation, Arizona, and the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona, have submitted repatriation claims for the cultural items described in this notice, on behalf of themselves and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona and the Tohono O'odham Nation of Arizona (hereinafter referred to as ''The Four Southern Tribes of Arizona''). The Gila River Indian Community of the Gila River Indian Reservation, Arizona, has requested the repatriation of DU 3915 A–C, 3984, 3987 and 3991. The Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona, has requested the repatriation of DU 3973, 3986, 3989, and 3992.

The Gila River Indian Community of the Gila River Reservation, Arizona, and the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona, provided archeological, biological, geographical, kinship, linguistic, historical and oral tradition evidence establishing a close relationship of shared group identity that can be traced both historically and prehistorically between the Four Southern Tribes of Arizona and the Hohokam tradition. Oral tradition evidence also indicates a close relationship of shared group identity that can be traced both historically and prehistorically between the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico, and the Hohokam tradition.

Determinations Made by the University of Denver Museum of Anthropology

Officials of the University of Denver Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 10 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Anne Amati, University of Denver Museum of Anthropology, 2000 E Asbury Ave, Denver, Colorado, 80208, telephone (303) 871–2687, before April 29, 2013. Repatriation of the unassociated funerary objects to the Gila River Indian Community of the Gila River Reservation, Arizona, and the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona, on behalf of the Four Southern Tribes of Arizona may proceed after that date if no additional claimants come forward.

The University of Denver Museum of Anthropology is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: February 26, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–07353 Filed 3–28–13; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–823]

Certain Kinesiotherapy Devices and Components Thereof; Commission Determination To Review the Final Initial Determination of the Administrative Law Judge and To Extend the Target Date for Completion of the Investigation by Two Weeks to June 7, 2013

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the final initial determination (''final ID'' or ''ID'') of the presiding administrative law judge (''ALJ'') in its entirety in the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''). The ALJ found no violation of section 337. The Commission has further determined to extend the target date for completion of the investigation by two weeks to June 7, 2013.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3041. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 10, 2012, based on a complaint filed by Standard Innovation Corporation of Ottawa, ON, Canada and Standard Innovation (US) Corp. of Wilmington, Delaware (collectively, ''Standard Innovation''). 77 FR 1504 (Jan. 10, 2012). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended 19 U.S.C. 1337,

by reason of infringement of certain claims of United States Patent Nos. 7,931,605 (''the '605 patent'') and D605,779 (''the '779 patent''). The complaint named twenty one business entities as respondents, several of which have since been terminated from the investigation based upon consent order stipulations. On July 25, 2012, the Commission determined not to review an ID (Order No. 25) granting Standard Innovation's motion to withdraw the '779 patent from the investigation.

An evidentiary hearing was held from August 21, 2012, to August 24, 2012.

On January 8, 2013, the ALJ issued a final ID finding no violation of section 337. The ALJ also issued a recommended determination on remedy and bonding on January 22, 2013. Specifically, the ALJ found that Standard Innovation had not satisfied the economic prong of the domestic industry requirement. The ALJ found, however, that the accused products infringe the asserted claims, that the asserted claims were not shown to be invalid, and that the technical prong of the domestic industry requirement was shown to be satisfied.

On January 22, 2013, Standard Innovation and the Commission investigative attorney filed petitions for review of the final ID. Also on January 22, 2013, the respondents remaining in the investigation (Lelo Inc., Leloi AB, PHE, Inc. d/b/a Adam & Eve, Nalpac Enterprises, Ltd. d/b/a/Nalpac, Ltd., E.TC. Inc. d/b/a Eldorado Trading Company, Inc., Williams Trading Co. Inc., Honey's Place Inc. and Lover's Lane & Co.) filed a joint contingent petition for review. On January 30, 2013, the parties filed responses to the petitions.

Having examined the final ID, the petitions for review, the responses thereto, and the relevant portions of the record in this investigation, the Commission has determined to review the final ID in its entirety. The Commission has further determined to extend the target date for completion of the investigation by two weeks to June 7, 2013.

The parties are requested to brief their positions on only the following questions, with reference to the applicable law and the evidentiary record:

1. Please provide evidentiary support in the record showing U.S. investments relating to the components that are relied on by complainant to meet the domestic industry requirement, including as appropriate information relating to component providers, contractors, and subcontractors.

2. Please comment on the significance of the relative contribution of domestic inputs as compared to total production (domestic and foreign) of complainant's products alleged to practice the '605 patent.

3. Please provide evidentiary support in the record regarding whether the U.S. investments alleged by complainant are significant or substantial in the context of the complainant's business, the relevant industry, and market realities.

4. Please explain how component purchasing expenditures for U.S. components not made specifically for the domestic industry products constitute an investment in plant and equipment, employment of labor or capital, or an investment in exploitation under 19 U.S.C. 1337(a)(3).

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is requested to supply the expiration date of the patent at issue and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on April 8, 2013, and should be no more than 25 pages. Reply submissions must be filed no later than the close of business on April 15, 2013, and should be no more than 15 pages. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must do so in accordance with Commission rule 210.4(f), 19 CFR 210.4(f), which requires electronic filing. The original document and eight true copies thereof must also be filed on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of 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 is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and under sections 210.42–.46, .51(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.46, .51(a)).

Issued: March 25, 2013.
By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–07297 Filed 3–28–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–909 (Second Review)]

Low Enriched Uranium From France; Notice of Commission Determination to Conduct a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on low enriched uranium from France would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* March 8, 2013.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On March 8, 2013, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (77 FR 71626, December 3, 2012) was adequate and that the respondent interested party group response was inadequate. The Commission also found that other circumstances warranted conducting a full review. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.
Issued: March 26, 2013

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–07326 Filed 3–28–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–875]

Certain Radio Frequency Identification (''RFID'') Products And Components Thereof; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 22, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Neology, Inc. of Poway, California. A letter supplementing the complaint was filed on March 7, 2013. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain radio frequency identification (''RFID'') products and components thereof by reason of infringement of U.S. Patent No. 7,081,819 (''the '819 Patent''); U.S. Patent No. 7,671,746 (''the '746 Patent''); and U.S. Patent No. 6,690,264 (''the '264 Patent''). The complaint further alleges that an industry exists in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.10 (2012).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 25, 2013, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain radio frequency identification (''RFID'') products and components thereof by reason of infringement of one or more of claims 1–2 of the '819 patent; claims 8–12 and 15–17 of the '746 patent; and claims 1–18 of the '264 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Neology, Inc., 12760 Danielson Court, Suite A, Poway, CA 92064

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Federal Signal Corporation, 1415 West 22nd Street, Suite 1100, Oakbrook, IL 60523

Federal Signal Technologies, LLC, 2 Technology Drive, Suite 100, Irvine, CA 92618

Sirit Corp., 2 Technology Drive, Suite 100, Irvine, CA 92618

3M Company, 3M Center, St. Paul, MN 55144–1000

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)-(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: March 26, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–07376 Filed 3–28–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0023]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Import/Export Declaration for List I and List II Chemicals, DEA Forms 486 and 486A

ACTION: 60-Day Notice.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until May 28, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cathy A. Gallagher, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; telephone (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of Information Collection 1117–0023

(1) *Type of Information Collection:* Extension of a currently approved collection to include online reporting.

(2) *Title of the Form/Collection:* Import/Export Declaration for List I and List II Chemicals.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number: DEA Forms 486 and 486A.

Component: Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Not-for-profit; State, local, and tribal government.

Abstract: Persons importing, exporting, and conducting international transactions with List I and List II chemicals must notify DEA of those transactions in advance of their occurrence, including information regarding the person(s) to whom the chemical will be transferred and the quantity to be transferred. Persons must also provide return declarations, confirming the date of the importation and transfer, and the amounts of the chemical transferred. For the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, importers must report all information known to them on the chain of distribution of the chemical from the manufacturer to the importer. This information is used to prevent shipments not intended for legitimate purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The below table presents information regarding the number of respondents, responses, and associated burden hours. Note that all hour calculations have been rounded up to the nearest hour.

Form	Number of respondents	Number of responses	Average time per response (hours)	Mins.	Total hours
	2012	2012			2012
Form 486—Export (Facsimile)	189	8,395	0.2833	17	2,379
Form 486—Export (Online)	25	434	0.1333	8	58
Form 486—Export Return Declaration (Facsimile)	189	5,357	0.1166	7	625
Form 486—Export Return Declaration (Online)	25	311	0.0833	5	26
Form 486—Import (Facsimile)	119	1,593	0.3330	20	531
Form 486—Import (Online)	2	3	0.1167	10	1
Form 486—Import Return Declaration * (Facsimile)	119	1,138	0.2000	12	228
Form 486—Import Return Declaration * (Online)	2	3	0.1000	6	1
Form 486A—Import (Facsimile)	26	336	0.4000	24	135
Form 486A—Import (Online)	0	0	0.1167	10	1
Form 486A—Import Return Declaration * (Facsimile)	26	213	0.2000	12	43
Form 486A—Import Return Declaration * (Online)	0	0	0.1000	6	1
Form 486—International (brokered)	15	366	0.2833	17	104
Form 486—International (brokered) Return Declaration	15	83	0.1333	8	12
Quarterly Reports for Imports of Acetone, 2-Butanone, and Toluene	50	150	0.5	30	75
Total	802	18,382			4,220

* DEA assumes 10% of all imports will not be transferred in the first thirty days and will necessitate submission of a subsequent return declaration.

(6) An estimate of the total public burden (in hours) associated with the collection: It is estimated that there are 4,220 annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: March 26, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–07325 Filed 3–28–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Electrical Protective Equipment and Electric Power Generation, Transmission, and Distribution Standards

ACTION: Notice.

SUMMARY: On March 29, 2013, the Department of Labor (DOL) will submit the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Electrical Protective Equipment and Electric Power Generation, Transmission, and Distribution Standards,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before April 29, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on March 30, 2013, or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The Electrical Protective Equipment Standard at 29 CFR 1910.137 and the Electric Power Generation, Transmission, and Distribution Standard at 29 CFR 1910.269 address safety procedures for the use of electrical protective equipment and the installation and maintenance of electric lines and on equipment for workers in the workplace. Pursuant to those regulations, this ICR seeks continued PRA approval for requirements that covered employers certify the electrical protective equipment used by their workers have passed specified tests and to certify each worker received specified training.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0190. The current approval is scheduled to expire on March 31, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on January 23, 2013 (78 FR 4873).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section by April 29, 2013. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0190. The OMB is

particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Electrical Protective Equipment and Electric Power Generation, Transmission, and Distribution Standards.

OMB Control Number: 1218–0190.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 20,765.

Total Estimated Number of Responses: 329,466.

Total Estimated Annual Burden Hours: 8,218.

Total Estimated Annual Other Costs Burden: $0.

Dated: March 25, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–07323 Filed 3–28–13; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request: Transmittal of Unemployment Insurance Materials

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Transmittal of Unemployment Insurance Materials,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before April 29, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: Social Security Act (SSA) section 303(a)(6) requires, as a condition of a State receiving an administrative grant, that State law contain provision for the making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require and compliance with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports. Regulations 20 CFR 601.3, in part, implement this requirement by requiring submission of all relevant State materials, such as statutes, executive and administrative orders, legal opinions, rules, regulations, interpretations, court opinions, etc. In addition, the Unemployment Compensation for Federal Civilian Employees program regulations at 20 CFR 609.1(d)(1) and the Unemployment Compensation for Ex-Service Members program regulations at 20 CFR 614.1(d)(1) require submission of certain documents to ensure States properly administer these programs. Trade Adjustment Assistance (which includes Trade Readjustment Allowances) program regulations provide similar requirements at 20 CFR 617.52(c)(1).

Form MA–8–7 is the mechanism for implementing these submittal requirements, the purpose of which is to provide the Secretary with sufficient information to determine if (a) employers in a State qualify for tax credits under the Federal Unemployment Tax Act; (b) the State meets the requirements for obtaining administrative grants under SSA Title III; and (c) the State is fulfilling its obligations under Federal unemployment compensation programs.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0222. The current approval is scheduled to expire on June 30, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on December 7, 2012 (77 FR 73053).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0222. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Transmittal of Unemployment Insurance Materials.

OMB Control Number: 1205–0222.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 301.

Total Estimated Annual Burden Hours: 75.

Total Estimated Annual Other Costs Burden: $0.

Dated: March 25, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–07365 Filed 3–28–13; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request: Multiple Worksite Report and the Report of Federal Employment and Wages

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, ''Multiple Worksite Report and the Report of Federal Employment and Wages,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before April 29, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, 725 17th Street, NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: States use the Multiple Worksite Report to collect employment and wages data from non-Federal businesses engaged in multiple operations within a State and subject to State Unemployment Insurance laws. The Report of Federal Employment and Wages is designed for Federal establishments covered under the Unemployment Compensation for Federal Employees program. These data are used for sampling, benchmarking, and economic analysis.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220–0134. The current approval is scheduled to expire on May 31, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on December 19, 2012 (77 FR 75198).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220–0198. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–BLS.

Title of Collection: Multiple Worksite Report and the Report of Federal Employment and Wages.

OMB Control Number: 1220–0134.

Affected Public: Federal Government and Private Sector—businesses and other for profits and not-for-profit institutions.

Total Estimated Number of Respondents: 136,058.

Total Estimated Number of Responses: 544,232.

Total Estimated Annual Burden Hours: 201,365.

Total Estimated Annual Other Costs Burden: $0.

Dated: March 25, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–07368 Filed 3–28–13; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions from Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: 2013–01, UBS Financial Services Inc., D–11610; 2013–02, Atlas Energy, Inc. Employee Stock Ownership Plan, D–11664; 2013–03, Central Pacific Bank 401(k) Retirement and Savings Plan, D–11666; 2013–04, Silchester International Investors LLP, D–11671; 2013–05, EquiLend Holdings LLC, D–11724; and, 2013–06, Coca-Cola Company and Red Re, Inc., L–11738.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department, as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011) [1] and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

UBS Financial Services Inc. Located in Weehawken, New Jersey

[Prohibited Transaction Exemption 2013–01; Exemption Application No. D–11610]

Exemption

Section I: Covered Transactions

The sanctions resulting from the application of Code section 4975, by reason of Code section 4975(c)(1)(A) and (D)–(E), shall not apply, effective January 4, 2002, until December 9, 2005, to (1) principal trades by UBS Financial Services Inc. (the Applicant) with certain plans, subject to Code section 4975, but not subject to Title I of ERISA (the IRAs), which resulted in the IRAs purchasing or selling securities from the Applicant (collectively, the Transactions); and (2) compensation paid by the IRAs to the Applicant in connection with the Transactions (the Transaction Compensation).

This exemption is subject to the conditions set forth below in Sections II and III.

Section II: Specific Conditions

(a) The Transactions and the Transaction Compensation were corrected (1) pursuant to the requirements set forth in the Department's Voluntary Fiduciary Correction Program (the VFC Program) [2] and (2) in a manner consistent with those transactions described in the Applicant's VFC Program application, dated March 5, 2010 (the VFC Program Application), that were substantially similar to the Transactions but that involved plans described in Code section 4975(e)(1) and subject to Title I of ERISA (the Qualified Plan Transactions).

(b) The Applicant received a ''no-action letter'' from the Department in connection with the Qualified Plan Transactions described in the VFC Program Application.

(c) An independent fiduciary confirmed that the methods utilized to correct the Transactions and Transaction Compensation were sufficient to return each affected IRA to at least the position that it would have been in had the Transactions and Transaction Compensation not occurred, and that the correction methods were properly applied to the Transactions and Transaction Compensation based on a review of a representative sample of the corrections, selected at random by the independent fiduciary.

For purposes of this exemption, a fiduciary is ''independent'' if it is independent of and unrelated to Applicant and its affiliates. In this regard, a fiduciary will not be deemed independent of Applicant and its affiliates if: (1) such fiduciary directly or indirectly controls, is controlled by, or is under common control with Applicant or its affiliates, (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption, except that it may receive compensation for acting as an independent fiduciary from Applicant in connection with the transactions described herein, if the amount or payment of such compensation is not contingent upon, or in any way affected by such fiduciary's decision; or (3) the annual gross revenue received by the fiduciary and its affiliates, in any fiscal year, from Applicant or its affiliates exceeds one percent (1%) of the annual gross revenue from all sources (for federal income tax purposes) of the fiduciary and its affiliates for their prior tax year.

(d) The terms of the Transactions and the Transaction Compensation were at least as favorable to the IRAs as the terms generally available in arm's-length transactions between unrelated parties.

(e) The Transactions and Transaction Compensation were not part of an agreement, arrangement or understanding designed to benefit a disqualified person, as defined in Code section 4975(e)(2).

(f) The Applicant did not take advantage of the relief provided by the VFC Program and Prohibited Transaction Exemption 2002–51 [3] (PTE 2002–51) for three (3) years prior to the date of the Applicant's submission of the VFC Program Application.

Section III: General Conditions

(a) The Applicant maintains, or causes to be maintained, for a period of six (6) years from the date of any Transaction such records as are necessary to enable the persons described in Section III(b)(1) to determine whether the conditions of this exemption have been met, except that:

(1) A separate prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of Applicant, the records are lost or destroyed prior to the end of the six-year period; and

(2) No disqualified person with respect to an IRA, other than Applicant, shall be subject to excise taxes imposed by Code section 4975, if such records are not maintained, or are not available for examination, as required by Section III(b)(1).

(b)(1) Except as provided in Section III(b)(2), the records referred to in Section III(a) are unconditionally available at their customary location for examination during normal business hours by:

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

[2] 71 FR 20262 (April 19, 2006).

[3] 67 FR 70623 (Nov. 25, 2002), as amended, 71 FR 20135 (April 19, 2006).

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission;

(B) Any fiduciary of any IRA that engaged in a Transaction, or any duly authorized employee or representative of such fiduciary; or

(C) Any owner or beneficiary of an IRA that engaged in a Transaction or a representative of such owner or beneficiary.

(2) None of the persons described in Sections III(b)(1)(B) and (C) shall be authorized to examine trade secrets of Applicant, or commercial or financial information which is privileged or confidential.

(3) Should Applicant refuse to disclose information on the basis that such information is exempt from disclosure, Applicant shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Effective Date: This exemption is effective from January 4, 2002 until December 9, 2005.

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption on or before December 16, 2012. During the comment period, the Department received one (1) comment on the proposed exemption. The sole comment was submitted by the Applicant. The Department received no hearing requests during the comment period.

The Applicant commented that the compensation test for the independent fiduciary that is set forth in Section II(c) of the proposed exemption did not cover compensation received by the independent fiduciary and its ''affiliates'', while item 10 of the facts and representations set forth with the proposed exemption included the term ''affiliates'' in its discussion of the independent fiduciary's compensation. As a result, the Applicant requests that the term ''affiliates'' be inserted into Section II(c) of the exemption for purposes of clarity. The Department concurs, and, accordingly, the final exemption has been amended to include ''affiliates'' in Section II(c) of the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 16, 2012, at 77 FR 68835.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Shiker of the Department, telephone (202) 693–8552. (This is not a toll-free number.)

Atlas Energy, Inc. Employee Stock Ownership Plan (the Plan) Located in Philadelphia, Pennsylvania

[Prohibited Transaction Exemption 2013–02; Exemption Application No. D–11664]

Exemption

The restrictions of sections 406(a)(1)(A), 406(a)(1)(D)–(E), 406(a)(2), 406(b)(1)–(2) and 407(a) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and 4975(c)(1)(D)–(E) of the Code, shall not apply, as of February 17, 2011, to the past acquisition and holding of certain units of Atlas Pipeline Holdings, L.P. (the AHD Units) by the Plan in connection with a merger (the Merger) of Arkham Corporation with and into Atlas Energy, Inc. (the Company), a party in interest with respect to the Plan, provided that the following conditions were satisfied:

(a) The Plan's acquisition and holding of the AHD Units in connection with the Merger occurred as a result of an independent act of the Company as a corporate entity;

(b) All shareholders of the Company, including the Plan, were treated in a like manner with respect to all aspects of the Merger;

(c) An independent fiduciary determined that the consideration received by the Plan pursuant to the Merger was not less than fair market value and that the overall terms and conditions of the Merger were fair to the Plan;

(d) All shareholders of the Company, including the Plan, received the same proportionate number of AHD Units based upon the number of shares of Company stock held by such shareholders;

(e) Pursuant to the terms of the Plan and in connection with the Merger, each participant was entitled to direct the independent fiduciary as to how to vote the Company shares allocated to his or her account; and

(f) No commissions or other fees associated with the Merger were paid by the Plan except for brokerage charges and fees with respect to the subsequent sale of the AHD Units, which were paid by the Plan to a person who is not affiliated with any Plan fiduciary.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 28, 2012, at 77 FR 76770.

Effective Date: This exemption will be effective February 17, 2011.

FOR FURTHER INFORMATION CONTACT: Eric A. Raps of the Department, telephone (202) 693–8532. (This is not a toll-free number).

Central Pacific Bank 401(k) Retirement and Savings Plan (the Plan) Located in Honolulu, HI

[Prohibited Transaction Exemption 2013–03; Exemption Application No. D–11666]

Exemption

Section I: Transactions

Effective for the period beginning April 11, 2011 and ending May 6, 2011, the restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and 4975(c)(1)(E) of the Code,[4] shall not apply:

(a) To the acquisition of certain subscription right(s)(the Right or Rights) by the individually-directed account(s) (the Account or Accounts) of certain participant(s) in the Plan in connection with an offering (the Offering) of shares of common stock (the Stock) of Central Pacific Financial Corporation (CPFC) by CPFC, a party in interest with respect to the Plan; and

(b) To the holding of the Rights received by the Accounts during the subscription period of the Offering; provided that the conditions, as set forth in Section II of this exemption, were satisfied for the duration of the acquisition and holding.

Section II: Conditions

The relief provided in this exemption is conditioned upon adherence to the material facts and representations described, herein, and as set forth in the application file, and upon compliance with the conditions, as set forth in this exemption.

(a) The receipt of the Rights by the Accounts occurred in connection with the Offering, and the Rights were made available by CPFC to all shareholders of the Stock of CPFC, including the Accounts;

(b) The acquisition of the Rights by the Accounts resulted from an independent corporate act of CPFC;

(c) Each shareholder of the Stock, including each of the Accounts, received the same proportionate number of Rights, and this proportionate

[4] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

number of Rights was based on the number of shares of Stock held by each such shareholder;

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investment of the Accounts by the individual participants in the Plan, all or a portion of whose Accounts in the Plan held the Stock (the Invested Participant(s));

(e) The decision with regard to the holding and disposition of the Rights by an Account was made by the Invested Participant whose Account received the Rights;

(f) If any of the Invested Participants failed to give instructions as to the exercise of the Rights received in the Offering, such Rights were sold in blind transactions on the New York Stock Exchange and the proceeds from such sales were distributed *pro-rata* to the Accounts in the Plan of such Invested Participants;

(g) No brokerage fees, no commissions, and no fees or expenses were paid by the Plan or by the Accounts to any related broker in connection with the sale of any of the Rights or in connection with the exercise of any of the Rights, and no brokerage fees, no commissions, no subscription fees, and no other charges were paid by the Plan or by the Accounts with respect to the acquisition and holding of the Stock; and

(h) Based on the difference ($1.13) between the average proceeds per Right ($6.05) received by other holders who sold Rights during the Offering and the average proceeds per Right ($4.92) received by Invested Participants whose Accounts sold Rights, between April 26, 2011 and May 3, 2011, CPFC will make a corrective payment to the Plan in the amount of $30,618.48 ($1.13 × 27,096 Rights sold), plus a lost earnings component on such amount, calculated at a 2.83% annual rate of interest for the period from May 6, 2011, to the date of the grant of this exemption, and will distribute such corrective payment, and the lost earnings component, *pro rata* to the Accounts of each of the 186 Invested Participants whose Accounts in the Plan sold the 27,096 Rights.

Effective Date: This exemption is effective for the period beginning on April 11, 2011, the commencement date of the Offering, and ending on May 6, 2011, the close of the Offering.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on November 16, 2012, at 77 FR 68838.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693–8551. (This is not a toll-free number.)

Silchester International Investors LLP (Silchester or the Applicant) Located in London, England

[Prohibited Transaction Exemption 2013–04; Exemption Application No. D–11671]

EXEMPTION

Section I. Covered Transactions

The restrictions of section 406(a)(1)(A), 406(a)(1)(D), and section 406(b)(2) of ERISA, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and section 4975(c)(1)(D) of the Code, shall not apply to the cross trading of securities (the cross trades, or the transactions) between various Accounts managed by Silchester, where at least one of the Accounts involved in the cross trade is an ERISA Account, if the conditions set forth in Section II have been met.

Section II. Conditions

(a) Each cross trade is a purchase or sale of securities by an ERISA Account for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available.

(b) A cross trade may only be effected on the first business date of the month.

(c) Each cross trade is effected at a price equal to the security's ''independent current market price'' (within the meaning of section 270.17a-7(b) of Title 17, Code of Federal Regulations) on the business date that immediately precedes the first business date of the month on which the cross trade occurs.

(d) No brokerage commission, fees or other remuneration is paid in connection with a cross trade involving an ERISA Account. Notwithstanding the above, customary transfer fees or brokerage fees dictated by local market restrictions may be applicable, the fact of which is disclosed in advance to an Independent Fiduciary. In the event local market restrictions require the use of a broker-dealer, and only in such event, broker-dealers that are not Affiliates of Silchester or the trustee of any Account that is a commingled fund will be used to execute the transaction, and no more than reasonable compensation will be paid to such unaffiliated broker-dealer to execute the cross trade. In any event, neither Silchester nor the trustee of any ERISA Account will receive a commission, fee, or other remuneration directly or indirectly from an ERISA Account in connection with a cross trade involving an ERISA Account (provided that the trustee of an Account may be expected to receive remuneration on foreign exchange transactions in the ordinary course that would be received irrespective of whether the trade was a cross trade or if the securities were sold in the market).

(e) Prior to engaging in any cross trade for an ERISA Account or at the inception of any new relationship between Silchester and a Plan, Silchester shall deliver to the Independent Fiduciary (i) a written disclosure regarding the conditions under which cross trades may take place (which disclosure will be separate from any other agreement or disclosure in respect of the ERISA Account, including the Policies and Procedures); (ii) a written copy of the Policies and Procedures; and (iii) written instructions (via email correspondence or otherwise) directing the Independent Fiduciary to give appropriate consideration to: (A) The responsibilities, obligations and duties imposed upon fiduciaries by Part 4 of Title I of the Act, (B) whether the terms of the cross trades are fair to the Plan and its participants and beneficiaries, and to the ERISA Account, and are comparable to, and no less favorable than, terms obtainable at arm's-length between unaffiliated parties, and (C) whether the cross trades are in the best interest of the Plan and its participants and beneficiaries and of the ERISA Account. The receipt of the instructions described in clause (iii) must be acknowledged in writing (via email correspondence or otherwise) by the Independent Fiduciary.

(f) Prior to engaging in any cross trade for an ERISA Account, Silchester must receive authorization from the Independent Fiduciary of such ERISA Account to engage in cross trades involving the ERISA Account at Silchester's discretion, which authorization must be provided in a written document in advance of any such cross trades, and must be separate from any other written agreement or disclosure between Silchester and the ERISA Account or Plan, as applicable. Such authorization will only be effective if the Independent Fiduciary has already received the disclosures described in paragraph (e) above.

(g) The Independent Fiduciary shall represent, in its authorization of participation for an ERISA Account, that it has the requisite knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of investing in the ERISA Account and to be capable of

protecting the Plan's interests in connection with the investment or that it has obtained expert advice that allows it to adequately evaluate its investment in the ERISA Account. If such Independent Fiduciary cannot make the foregoing representations, then the authorization described herein will not be effective.

(h) Both on an annual basis and each time Silchester provides notice to the Independent Fiduciary in writing that a new fund or new Separately Managed Account may engage in cross trades, a designated representative of Silchester will advise each such Independent Fiduciary in writing that it can revoke the authorization described in paragraph (f) at any time in writing by withdrawing from the ERISA Account (or in the case of an ERISA Account that is a Separately Managed Account, by written notice to the Applicant).

(i) On a quarterly basis, Silchester will provide (or cause to be provided) to each Independent Fiduciary a written report detailing all cross trades in which the ERISA Account participated during such quarter, including the following information, as applicable: (i) The identity of each security bought or sold; (ii) the number of shares or units traded; (iii) the Accounts involved in the cross trade; and (iv) the trade price and the total U.S. dollar value of each security involved in the cross trade and the method used to establish the trade price. The quarterly report will be provided to the Independent Fiduciary prior to the end of the next following quarter.

(j) Silchester will not base its fee schedule on a Plan's consent to cross trading, nor is any other service (other than the investment opportunities and cost savings available through a cross trade) conditioned on the Plan's consent.

(k) Silchester adopts, and cross trades will be effected in accordance with, the Policies and Procedures, which will be made further available to an Independent Fiduciary upon request.

(l) A member of Silchester's compliance group reviews cross trades within 10 business days of the cross trades to confirm compliance with the Policies and Procedures and report to the compliance group regarding such member's findings, and Silchester designates an individual member of its compliance group to be responsible for annually reviewing a sampling of each ERISA Account's cross trades that is sufficient in size and nature to determine compliance with the Policies and Procedures described herein with respect to each such ERISA Account and, following such review, such individual shall issue an annual written report no later than 90 calendar days following the end of the ERISA Account's fiscal year to which it relates, signed under penalty of perjury, to each Independent Fiduciary describing the actions performed during the course of the review, the level of such compliance, and any specific instances of non-compliance.

(m) An Independent Auditor conducts an Exemption Audit on an annual basis, the audit period for which will be the ERISA Account's fiscal year. Following completion of the Exemption Audit, the Independent Auditor shall issue a written report to Silchester (with copies thereof delivered to each Independent Fiduciary) presenting its specific findings regarding the level of compliance with: (1) The Policies and Procedures and (2) the objective requirements of the exemption. The written report shall also contain the Independent Auditor's overall opinion regarding whether Silchester's program complied with: (1) the Policies and Procedures and (2) the objective requirements of the exemption. The Exemption Audit and the written report must be completed within six months following the end of the fiscal year to which the Exemption Audit relates.

(n) The ERISA Account has at least U.S. $100 million in assets.

(o) Each underlying investor in a commingled fund ERISA Account and each ERISA Account that is a Separately Managed Account shall represent in writing (which representation is deemed to be repeated upon each subsequent investment in such ERISA Account) that it is a ''qualified purchaser,'' as that term is defined in section 2(a)(51)(A) of the Investment Company Act of 1940, as amended.

(p) Silchester will conduct cross trades involving an ERISA Account only when triggered by contributions or withdrawals initiated by investors in such ERISA Account where:

(1) Contributions from one Account can be matched against withdrawals from another Account and the confirmed net contributions/withdrawals (as the case may be) from the ERISA Account exceed U.S. $10 million or 10 basis points or 0.1% of the value of the ERISA Account (whichever is less); and

(2) The ERISA Account's forecasted residual cash balance when adjusted for month-end cash flows after the cross trade will be within 50 basis points or 0.5% of the cash weightings of each such other Account.

(q) Silchester will not include an ERISA Account in a cross trade during any period in which the weightings of 14 or more securities in the ERISA Account individually differ by more than 50 basis points from the weightings of the same securities in the other Accounts; and none of the circumstances under which different weightings across the funds may arise or increase will be the result of any discretionary or opportunistic actions by Silchester.

(r) The U.S. dollar amount determined for the cross trade will be prorated across all of the securities eligible for the cross trade in each of the Accounts, based on each Account's relative weighting of each security included in the cross trade, subject to the restrictions and/or exclusions set forth in the Policies and Procedures.

(s) No cross trades will be conducted between an ERISA Account and any Account in which Silchester and/or its Affiliates (together or separately) own 10% or more of the outstanding units in such Account in the aggregate.

(t) Silchester maintains or causes to be maintained for a period of six years from the date of any cross trade such records as are necessary to enable the persons described in paragraph (u)(i) below to determine whether the conditions of this exemption have been met, provided that (i) a separate prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Silchester, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than Silchester shall be subject to a civil penalty that may be assessed under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination as required by paragraph (u)(i) below.

(u)(i) Except as provided below in paragraph (u)(ii), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (t) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department,

(B) Any Independent Fiduciary, Plan investing in an Account, or such Plan's designated representative, and

(C) The Independent Auditor; and

(ii) None of the persons described above in paragraphs (u)(i)(B)–(C) shall be authorized to examine trade secrets of Silchester, or commercial or financial information which is privileged or confidential, and should Silchester refuse to disclose information on the basis that such information is exempt from disclosure, Silchester shall, by the

close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section III. Definitions

(a) The term ''Account'' is a group trust, a commingled fund, or a Separately Managed Account, holding assets over which the Applicant has discretion.

(b) The term ''Affiliate'' of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with, the person;

(2) Any officer, director, employee, relative, or partner of the person; or

(3) Any corporation or partnership of which such person is an officer.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''ERISA Account'' means an Account the assets of which are ''plan assets'' within the meaning of section 3(42) of the Act and 29 CFR 2510.3–101, as amended.

(e) The term ''Exemption Audit'' means an engagement with an Independent Auditor that consists of the following:

(1) A review of the Policies and Procedures for consistency with each of the objective requirements of this exemption;

(2) A test of a sample of the ERISA Account's cross trades during the audit period that is sufficient in size and nature to afford the Independent Auditor a reasonable basis:

(A) To make specific findings regarding whether the ERISA Account's cross trades are in compliance with: (i) The Policies and Procedures; and (ii) the objective requirements of this exemption. The findings will specifically address the pro rata calculation for a cross trade and will ensure that the exclusions set forth in the Policies and Procedures have been applied on a reasonable and consistent basis; and

(B) To render an overall opinion regarding the level of compliance with the Policies and Procedures and the objective requirements of the exemption.

(3) Issuance of a written report describing the actions performed by the Independent Auditor during the course of its review in connection with the Exemption Audit and the Independent Auditor's findings with respect thereto.

(f) The term ''Independent Auditor'' means an auditor with appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions, capable of issuing the written report required in connection with the Exemption Audit, that derives less than 5% of its annual gross revenue from Silchester, and so represents the foregoing in writing.

(g) The term ''Independent Fiduciary'' means a plan fiduciary for each Plan investor in a commingled fund ERISA Account or, in the case of an ERISA Account that is a Separately Managed Account, the plan fiduciary for such Separately Managed Account, provided that in either case such plan fiduciary is not Silchester or any Affiliate of Silchester and has no interest in the subject transactions beyond the interest of such Plan.

(h) The term ''Plan'' means an employee benefit plan described in section 3(3) of the Act or a plan described in section 4975(e)(1) of the Code.

(i) The term ''Policies and Procedures'' means written cross trading policies and procedures adopted by Silchester that are designed to assure compliance with the conditions for the exemption, and provide clear guidelines regarding how and under what circumstances cross trades will be effected by Silchester on behalf of an ERISA Account, including (but not limited to) descriptions of (i) triggering transactions for identifying when a cross trade is available, (ii) cross trade procedures that must be followed when implementing a cross trade, (iii) pricing of securities included in a cross trade, (iv) reporting of cross trade transactions and related information, and the (v) Exemption Audit.

(j) The term ''Separately Managed Account'' means a separately managed account over which the Applicant has discretion and either: (1) Such separately managed account is not subject to Title I of the Act or section 4975 of the Code or (2) the Plan whose assets are held in the separately managed account has assets of at least U.S. $100 million, provided that if the assets of a Plan whose assets are held in the separately managed account are invested in a master trust containing the assets of Plans maintained by employers in the same controlled group, then such master trust has assets of at least U.S. $100 million.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption on or before February 6, 2013. During the comment period, the Department received one written comment from the Applicant concerning an update to the procedure applicable to Plans withdrawing from the Group Trust that is described in the Summary of Facts and Representations (the Summary) in the notice of proposed exemption. The Applicant's comment and the Department's response thereto are described below. The Department received no other written comments and no hearing requests.

Applicant's Comment

The Applicant's comment concerned an update to the procedure for a Plan's withdrawal from the Group Trust, as described in the Summary. Section II(h) of the proposed exemption provides that, ''[b]oth on an annual basis and each time Silchester provides notice to the Independent Fiduciary in writing that a new fund or new Separately Managed Account may engage in cross trades, a designated representative of Silchester will advise each such Independent Fiduciary in writing that it can revoke the authorization [for Silchester to engage in cross trades on behalf of an ERISA Account] at any time in writing by withdrawing from the ERISA Account * * *.'' In Representation 28 of the Summary, the Applicant states that ''the Group Trust's withdrawal provisions are described in the Group Trust's Confidential Private Offering Memorandum and delineated in the Group Trust Agreement * * * [which] provides that a Plan may withdraw all or part of its units in the Group Trust on the first business day of each calendar month (referred to as a dealing day) upon six business days' prior written notice.''

According to the Applicant, Silchester intends to update the Group Trust Agreement and the Confidential Private Offering Memorandum, which update will include an amendment to the notice period required for an ERISA Account's withdrawal from six business days to ten business days. The Applicant notes that, in accordance with Silchester's standard practice and the Group Trust Agreement, ERISA Accounts participating in the Group Trust will be notified 60 days in advance of such amendment to the Group Trust Agreement becoming effective. The Department takes note of the amendment to the Group Trust Agreement and of the corresponding modification to Representation 28.

After giving full consideration to the entire record, including the written comment, the Department has decided to grant the exemption, as described

above. The complete application file is made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption published in the **Federal Register** on December 28, 2012 at 77 FR 76784.

FOR FURTHER INFORMATION CONTACT: Warren M. Blinder of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

EquiLend Holdings LLC (EquiLend), Located in New York, New York

[Prohibited Transaction Exemption 2013–05; Exemption Application No. D–11724]

Exemption

Section I. Sale of EquiLend Products to Plans

The restrictions of ERISA section 406(a)(1)(A) and (D) and the sanctions resulting from the application of Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) and (D), shall not apply, effective October 1, 2012, to the sale or licensing of certain data and/or analytical tools to a plan by EquiLend, a party in interest with respect to such plan.

This exemption is subject to the following conditions:

(a) The terms of any such sale or licensing are at least as favorable to the plan as the terms generally available in an arm's-length transaction involving an unrelated party;

(b) Any data sold/licensed to the plan will be limited to:

(1) Current and historical data related to transactions, whether or not proposed or occurring on EquiLend's electronic securities lending platform (the Platform) or,

(2) Data derived from current and historical data using statistical or computational techniques; and

(c) Each analytical tool sold/licensed to the plan will be an objective statistical or computational tool designed to permit the evaluation of securities lending activities.

Section II. Use of Platform by Owner Lending Agent/Sale of EquiLend Products to Plans Represented by Owner Lending Agent/Provision of Securities Lending Data Involving Plans to EquiLend by Owner Lending Agent

The restrictions of ERISA sections 406(a)(1)(A) and (D) and 406(b), FERSA section 8477(c)(2), and the sanctions resulting from the application of Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) and (D) through (F), shall not apply, effective October 1, 2012, to: (1) The participation in the Platform by an equity owner of EquiLend (an Equity Owner), in its capacity as a securities lending agent for a plan (an Owner Lending Agent); (2) the sale or licensing of certain data and/or analytical tools by EquiLend to a plan for which an Equity Owner acts as a securities lending agent; and (3) the provision by an Owner Lending Agent to EquiLend of securities lending data based on off-Platform securities lending transactions conducted by an Owner Lending Agent on behalf of a plan.

This exemption is subject to the following conditions:

(a) In the case of participation in the Platform on behalf of a plan, to the extent an applicable exemption is required, the securities lending transactions conform to the provisions of Prohibited Transaction Class Exemption (PTE) 2006–16 (71 FR 63786 (Oct. 31, 2006)) (or its successor), and/or any applicable individual exemption;

(b) None of the fees imposed by EquiLend for securities lending transactions conducted through the use of the Platform at the direction of an Owner Lending Agent will be charged to a plan;

(c) Each securities lender and securities borrower participating in a securities lending transaction through EquiLend will be notified by EquiLend as to its responsibilities with respect to compliance, as applicable, with ERISA, the Code, and FERSA. This requirement may be met by including such notification in the participation, subscription or other user agreement required to be executed by each participant in EquiLend;

(d) EquiLend will not act as a principal in any securities lending transaction involving plan assets;

(e) Each Owner Lending Agent will provide prior written notice to its plan clients of its intention to participate in EquiLend;

(f)(1) Except as otherwise provided in paragraph (i), the arrangement pursuant to which the Owner Lending Agent utilizes the services of EquiLend on behalf of a plan for securities lending:

(A) Is subject to the prior written authorization of an independent fiduciary (an authorizing fiduciary) as defined in paragraph (b) of Section III). For purposes of subparagraph (f)(1), the requirement that the authorizing fiduciary be independent shall not apply in the case of an Equity Owner Plan;

(B) May be terminated by the authorizing fiduciary, without penalty to the plan, within the lesser of: (i) The time negotiated for such notice of termination by the plan and the Owner Lending Agent, or (ii) five business days. Notwithstanding the foregoing, the requirement for prior written authorization will be deemed satisfied in the case of any plan for which the authorizing fiduciary has previously provided written authorization to the Owner Lending Agent pursuant to PTE 2006–16 (or any predecessor or successor thereto), unless such authorizing fiduciary objects to participation in the Platform in writing to the Owner Lending Agent within 30 days following disclosure of the information described in paragraphs (e) and (g) of this Section to such authorizing fiduciary;

(2) Except as otherwise provided in paragraph (i), each purchase or license of a securities lending-related product from EquiLend on behalf of a plan by an Owner Lending Agent:

(A) Is subject to the prior written authorization of an authorizing fiduciary. For purposes of subparagraph (f)(2), the requirement for prior written authorization shall not apply to any purchase or licensing of an EquiLend securities lending-related product by an Equity Owner Plan if the fee or cost associated with such purchase or licensing is not paid by the Equity Owner Plan; and

(B) May be terminated by the authorizing fiduciary within: (i) The time negotiated for such notice of termination by the plan and the Owner Lending Agent; or (ii) five business days, whichever is lesser, in either case without penalty to the plan, provided that, such authorizing fiduciary shall be deemed to have given the necessary authorization in satisfaction of this subparagraph (f)(2) with respect to each specific product purchased or licensed pursuant thereto unless such authorizing fiduciary objects to the Owner Lending Agent within 15 days after the delivery of information regarding such specific product to the authorizing fiduciary in accordance with paragraph (g) of this exemption; and

(3) Except as otherwise provided in paragraph (i), provision by an Owner Lending Agent to EquiLend of securities lending data based on off-Platform securities lending transactions conducted on behalf of a plan:

(A) Is subject to the prior written authorization of an authorizing fiduciary; and

(B) May be terminated by the authorizing fiduciary with respect to the future provision of data within the lesser of (i) the time negotiated for such notice of termination by the plan and the Owner Lending Agent or (ii) five business days, in either case without penalty to the plan. Notwithstanding the foregoing, the requirement for prior written authorization will be deemed satisfied unless such authorizing fiduciary objects to provision by the Owner Lending Agent to EquiLend of such data in writing to the Owner Lending Agent within 30 days following disclosure of the information described in paragraph (g) of this Section to such authorizing fiduciary.

(g) The authorization(s) described in paragraph (f) of this Section shall not be deemed to have been made unless the Owner Lending Agent has furnished the authorizing fiduciary with any reasonably available information that the Owner Lending Agent reasonably believes to be necessary for the authorizing fiduciary to determine whether such authorization should be made, and any other reasonably available information regarding the matter that the authorizing fiduciary may reasonably request. This includes, but is not limited to: (1) A statement that the Equity Owner, as securities lending agent, has a financial interest in the successful operation of EquiLend, (2) a statement, provided on an annual basis, that the authorizing fiduciary may terminate the arrangement(s) described in (f) above at any time, and (3) a statement that the Owner Lending Agent intends to provide to EquiLend securities lending data based on off-Platform securities lending transactions conducted by the Owner Lending Agent on behalf of the plan;

(h) Any purchase or licensing of data and/or analytical tools with respect to securities lending activities by a plan pursuant to this Section complies with the relevant conditions of Section I and will be authorized in advance by an authorizing fiduciary in accordance with the applicable procedures of paragraphs (f), (g) and (i);

(i) In the case of a pooled separate account maintained by an insurance company qualified to do business in a state or a common or collective trust fund maintained by a bank or trust company supervised by a state or federal agency (Commingled Investment Fund), the requirements of paragraph (f) of this Section shall not apply, provided that—

(1) The information described in paragraph (g) (including information with respect to any material change in the arrangement) of this Section and a description of the operation of the Platform (including a description of the fee structure paid by securities lenders and borrowers), shall be furnished by the Owner Lending Agent to the authorizing fiduciary (described in paragraph (b) of Section III) with respect to each plan whose assets are invested in the account or fund, not less than 30 days prior to implementation of any such arrangement or material change thereto, or, not less than 15 days prior to the purchase or license of any specific securities lending-related product, and, where requested, upon the reasonable request of the authorizing fiduciary. For purposes of this subparagraph, the requirement that the authorizing fiduciary be independent shall not apply in the case of an Equity Owner Plan;

(2) In the event any such authorizing fiduciary notifies the Owner Lending Agent that it objects to participation in the Platform, or to the purchase or license of any EquiLend securities lending-related tool or product, or to the further provision by an Owner Lending Agent to EquiLend of securities lending data based on off-Platform securities lending transactions conducted on behalf of the plan, the plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the account or fund, without penalty to the plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans. In the case of a plan that elects to withdraw pursuant to the foregoing, such withdrawal shall be effected prior to the implementation of, or material change in, the arrangement or purchase or license, but any existing arrangement need not be discontinued by reason of a plan electing to withdraw; and

(3) In the case of a plan whose assets are proposed to be invested in the pooled account or fund subsequent to the implementation of the arrangements and which has not authorized the arrangements in the manner described in paragraphs (i)(1) and (i)(2), the plan's investment in the account or fund shall be authorized in the manner described in paragraph (f)(1)(A), (f)(2)(A), and (f)(3)(A);

(j) The Equity Owner, together with its affiliates (as defined in Section III(a)), does not own at the time of the execution of a securities lending transaction on behalf of a plan by the Equity Owner (i.e., in its capacity as Owner Lending Agent) through EquiLend or at the time of the purchase, or commencement of licensing, of data and/or analytical tools by the plan, more than 20% of:

(1) If EquiLend is a corporation, including a limited liability company taxable as a corporation, the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of EquiLend, or

(2) If EquiLend is a partnership, including a limited liability company taxable as a partnership, the capital interest or the profits interest of EquiLend;

(k) Any information, authorization, or termination of authorization may be provided by mail or electronically; and

(l) No Equity Owner Plan, as defined in Section III(e), will participate in the Platform, other than through a Commingled Investment Fund in which the aggregate investment of all Equity Owner Plans at the time of the transaction constitutes less than 20% of the total assets of such fund. Notwithstanding the foregoing, this prohibition shall not apply to the participation by an Equity Owner Plan as of the date that the aggregate loan balance of all securities lending transactions entered into through EquiLend by all participants outstanding on such date (excluding transactions entered into on behalf of Equity Owner Plans) is equal to or greater than $10 billion; provided that if such aggregate loan balance is later determined to be less than $10 billion, no additional participation by an Equity Owner Plan (other than through a Commingled Investment Fund) shall occur until such time as the $10 billion threshold amount is again met.

Section III. Defintions

For purposes of this exemption:

(a) An ''affiliate'' of another person means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in ERISA section 3(15)) of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(b) The term ''authorizing fiduciary'' means, with respect to an Owner Lending Agent, a plan fiduciary who is independent of such Owner Lending Agent. In this regard, an authorizing

fiduciary will not be considered independent of an Owner Lending Agent if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Owner Lending Agent; or

(2) Such fiduciary directly or indirectly receives any compensation or other consideration from the Owner Lending Agent or an affiliate for his or her own personal account in connection with any securities lending transaction described herein; provided that Commingled Investment Funds and Equity Owner Plans maintained by such Owner Lending Agent or an affiliate will not be deemed affiliates of such Owner Lending Agent for purposes of this subparagraph (2).

For purposes of Section II, no Equity Owner or any affiliate may be an authorizing fiduciary except in the case of an Equity Owner Plan. Notwithstanding the foregoing, the requirements for consent by an authorizing fiduciary with respect to participation in the Platform, and the annual right of such fiduciary to terminate such participation, shall be deemed met to the extent that the Owner Lending Agent's proposed utilization of the services of EquiLend on behalf of a plan for securities lending has been approved by an order of a United States district court.

(c) The term ''Owner Lending Agent'' means an Equity Owner in its capacity as a fiduciary of a plan acting as securities lending agent in connection with the loan of plan assets that are securities.

(d) The term ''Equity Owner'' means an entity that either directly or through an affiliate owns an equity ownership interest in EquiLend.

(e) The term ''Equity Owner Plan'' means a plan which is established or maintained by an Equity Owner of EquiLend as an employer of employees covered by such plan, or by its affiliate.

(f) The terms ''plan'' means:

(1) An ''employee benefit plan'' within the meaning of ERISA section 3(3), subject to Part 4 of Subtitle B of Title I of ERISA,

(2) A ''plan'' that is within the meaning of Code section 4975(e)(1) and subject to Code section 4975, or

(3) The Federal Thrift Savings Fund.

Effective Date: The exemption is effective October 1, 2012 with respect to arrangements entered into on or after that date. The provisions of PTE 2002–30 shall continue to apply to arrangements entered into before October 1, 2012.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 16, 2012 at 77 FR 68844.

FOR FURTHER INFORMATION CONTACT: Brian Shiker of the Department, telephone (202) 693–8552. (This is not a toll-free number.)

Coca-Cola Company (TCCC) and Red Re, Inc. (Red Re), Located in Atlanta, Georgia and Charleston, South Carolina, respectively

[Prohibited Transaction Exemption 2013–06; Exemption Application No. L–11738]

Exemption

Section I. Transactions

The restrictions of sections 406(a)(1)(D) and 406(b) of the Act shall not apply to:

(a) The reinsurance of risks and the receipt of premiums therefrom by Red Re, an affiliate of TCCC, as the term ''affiliate'' is defined in Section III(a)(1) below, in connection with group term life insurance sold by Metropolitan Life Insurance Company or any successor insurance company (a Fronting Insurer) to The Coca-Cola Company Health and Welfare Benefits Plan (the Actives Plan) and to The Coca-Cola Company Retiree Benefits Plan (the Retiree Plan); and

(b) The reinsurance of risks and the receipt of premiums therefrom by Red Re in connection with accidental death and dismemberment insurance (AD&D) sold by a Fronting Insurer to the Actives Plan and to the Retiree Plan; provided the conditions set forth in Section II, below, are satisfied.[5]

Section II. Conditions

The relief provided in this exemption is conditioned upon adherence to the material facts and representations described herein, and as set forth in the application file, and upon compliance with the following conditions:

(a) Red Re—

(1) Is a party in interest with respect to the Plans by reason of a stock or partnership affiliation with TCCC that is described in section 3(14)(E) or 3(14)(G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one state, as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Director of the Department of Insurance of its domiciliary state (South Carolina), which has neither been revoked nor suspended;

(4)(A) Has undergone and shall continue to undergo an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction covered by this exemption; or

(B) Has undergone a financial examination (within the meaning of the law of South Carolina) by the Director of the South Carolina Department of Insurance within five (5) years prior to the end of the year preceding the year in which such reinsurance transaction has occurred; and

(5) Is licensed to conduct reinsurance transactions by South Carolina, whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Plans pay no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Plans with respect to the direct sale of such contracts or the reinsurance thereof;

(d) In the initial year of every contract involving Red Re and a Fronting Insurer, there will be an immediate and objectively determined benefit to participants and beneficiaries of the Plans in the form of increased benefits, and such benefits will continue in all subsequent years of each contract and in every renewal of each contract, and will approximate the increase in benefits that are effective January 1, 2013, as described in the Notice of Proposed Exemption (the Notice);

(e) In the initial year and in subsequent years of coverage provided by a Fronting Insurer, the formula used by the Fronting Insurer to calculate premiums will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the Fronting Insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Fronting Insurer has a financial strength rating of ''A'' or better from A. M. Best Company (A. M. Best). The reinsurance arrangement between the Fronting Insurer and Red Re will be indemnity insurance only, (*i.e.,* the Fronting Insurer will not be relieved of liability to the Plans should Red Re be unable or unwilling to cover any liability arising from the reinsurance arrangement);

[5] The Actives Plan and the Retiree Plan are, herein, collectively referred to as the ''Plans.''

(g) The Plans retain an independent, qualified fiduciary or successor to such fiduciary, as defined in Section III(c), below, (the I/F) to analyze the transactions and to render an opinion that the requirements of Section II(a) through (f) and (h) of this exemption have been satisfied;

(h) Participants and beneficiaries in the Plans will receive in subsequent years of every contract of reinsurance involving Red Re and a Fronting Insurer no less than the immediate and objectively determined increased benefits such participant and beneficiary received in the initial year of each such contract involving Red Re and the Fronting Insurer;

(i) The I/F will: monitor the transactions herein on behalf of the Plans on a continuing basis to ensure such transactions remain in the interest of the Plans; take all appropriate actions to safeguard the interests of the Plans; and enforce compliance with all conditions and obligations imposed on any party dealing with the Plans; and

(j) In connection with the provision to participants in the Plans of the group term life insurance and the AD&D coverage provided by a Fronting Insurer which is reinsured by Red Re, the I/F will review all contracts (and any renewal of such contracts) of the reinsurance of risks and the receipt of premiums therefrom by Red Re and must determine that the requirements of this exemption and the terms of the benefit enhancements continue to be satisfied.

Section III. Definitions

(a) The term, ''affiliate,'' of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) For purposes of the exemption, an I/F is a person, or a successor to such person, who is not an affiliate of TCCC and:

(1) Does not have an ownership interest in TCCC, in Red Re, or in an affiliate of either;

(2) Is not a fiduciary with respect to the Plans prior to its appointment to serve as the I/F;

(3) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(4) Has appropriate training, experience, and facilities to act on behalf of the Plans regarding the subject transactions in accordance with the fiduciary duties and responsibilities prescribed by the Act.

For purposes of this definition of an ''I/F,'' no organization or individual may serve as an I/F for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) for that fiscal year exceeds two percent (2%) of that organization's or individual's annual gross income from all sources for the prior fiscal year from TCCC or from Red Re, or from an affiliate of either (including amounts received for services as I/F under any prohibited transaction exemption granted by the Department).

In addition, no organization or individual who is an I/F, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from TCCC or from Red Re, or from any affiliate of either during the period that such organization or individual serves as an I/F, and continuing for a period of six (6) months after such organization or individual ceases to be the I/F, or negotiates any such transaction during the period that such organization or individual serves as the I/F.

In the event a successor I/F is appointed to represent the interests of the Plans with respect to the subject transactions, there should be no lapse in time between the resignation or termination of the former I/F and the appointment of the successor I/F.

*Effective Date:*This exemption is effective as of January 1, 2013.

Written Comments

In the Notice, the Department invited all interested persons to submit written comments and requests for a hearing within 35 days of the date of the publication on December 28, 2012, of the Notice in the **Federal Register**. The Notice stated that all comments and requests for hearing were due by February 1, 2013. In a telephone conversation on January 8, 2013, TCCC informed the Department that the notification to all interested persons of the publication of the Notice in the **Federal Register** was not completed until January 14, 2013, because the New Year's holiday and other issues delayed the first class mailing to all such interested persons. In order to ensure that all interested persons would have thirty (30) days to submit written comments and requests for a hearing, the Department required (and TCCC agreed) to an extension of time for the submission of comments and requests for a hearing from such interested persons. Accordingly, the deadline for all comments and requests for hearing was extended to February 13, 2013. In a letter dated February 12, 2013, TCCC confirmed that the required notification was sent to all interested persons via first class mail no later than January 14, 2013.

During the comment period, the Department received no requests for a hearing. However, the Department did receive two written comments from TCCC in letters, dated February 12 and February 15, 2013. In the February 12 letter, TCCC requested clarification of the operative language of the Notice. In addition, TCCC informed the Department of corrections to the information that appeared in the Summary of Facts and Representations (SFR) of the Notice. In the February 15 letter, TCCC clarified the comments it had made in the February 12 letter, at the Department's request. TCCC's comments and the Department's amendments are discussed in paragraphs 1–4, below, in an order that corresponds to the appearance of the relevant language in the Notice.

1. TCCC has requested a modification to the language of Section I(b), as set forth on page 76779, in column 2, lines 68–73 and in column 3, lines 1–4 of the Notice. With regard to Section I(b), TCCC requests that the Department make clear that the covered transactions include the reinsurance of the group term life insurance benefits offered under both the Retiree Plan and the Actives Plan.

The Department concurs with TCCC's request and has amended the language of Section I(b) in the exemption. The Department has also corrected the phrase, ''accidental death and disability,'' in Section I(b) of the Notice on page 76779, in column 2, lines 70–71, to read ''accidental death and dismemberment.''

In addition, in order to make clear that the covered transactions include the reinsurance of the AD&D benefits offered under both the Retiree Plan and the Actives Plan, the Department has amended the language of Section I(a).

Accordingly, Sections I(a) and (b) of the exemption read as follows:

(a) The reinsurance of risks and the receipt of premiums therefrom by Red Re, an affiliate of TCCC, as the term ''affiliate'' is defined in Section III(a)(1) below, in connection with group term life insurance sold by Metropolitan Life Insurance Company or any successor insurance company (a Fronting Insurer) to The Coca-Cola Company Health and Welfare Benefits Plan (the Actives Plan) and to The Coca-Cola Company Retiree Benefits Plan (the Retiree Plan); and

(b) The reinsurance of risks and the receipt of premiums therefrom by Red Re in connection with accidental death and dismemberment insurance (AD&D) sold by a Fronting Insurer to the Actives Plan and to the Retiree Plan; provided the conditions set forth in Section II, below, are satisfied.

2. The Department has also clarified Section II(d) of the conditions of the exemption, as set forth in the Notice on page 76780, in column 1, line 2, in order to ensure that any benefit enhancements that are substituted will approximate those that became effective on January 1, 2013. Accordingly, Section II(d), as amended, reads as follows:

(d) In the initial year of every contract involving Red Re and a Fronting Insurer, there will be an immediate and objectively determined benefit to participants and beneficiaries of the Plans in the form of increased benefits, and such benefits will continue in all subsequent years of each contract and in every renewal of each contract, and will approximate the increase in benefits that are effective January 1, 2013, as described in the Notice of Proposed Exemption (the Notice).

3. The Department has also clarified Section II(j) of the conditions of the exemption, as set forth in the Notice on page 76780, in column 1, lines 56–68, and in column 2, lines 1–2 on its own initiative. As published in the Notice, Section II(j) states:

(j) At the conclusion of the five-year period (the 5-Year Period), from January 1, 2013 to December 31, 2017, in which MetLife has provided a rate guarantee in connection with the provision to participants in the Plans of the group term life insurance and the AD&D coverage which is reinsured by Red Re, the I/F will review any renewal of the reinsurance of risks and the receipt of premiums therefrom by Red Re and must determine that the requirements of this proposed exemption and the terms of the benefit enhancements continue to be satisfied.

The Department notes that the relief provided by the exemption will extend beyond the five year period in which MetLife will provide a rate guarantee in connection with the provision to the participants in the Plans of the group term life insurance and the AD&D coverage which is reinsured by Red Re. In order to clarify the role of the I/F with respect to the renewal of the contract with MetLife and all contracts and renewals with any Fronting Insurer which are reinsured by Red Re, Section II(j) has been revised to read as follows:

(j) In connection with the provision to participants in the Plans of the group term life insurance and the AD&D coverage provided by a Fronting Insurer which is reinsured by Red Re, the I/F will review all contracts (and all renewals of such contracts) of the reinsurance of risks and the receipt of premiums therefrom by Red Re and must determine that the requirements of this exemption and the terms of the benefit enhancements continue to be satisfied.

4. In addition to the changes discussed above, TCCC has requested clarifications to the SFR of the Notice.

a. TCCC states that Representation 6, as set forth in the SFR on page 76781, in column 1, lines 65–68, omits the fact that the Retiree Plan also provides basic life insurance to its participants. Further, TCCC indicates with respect to the last sentence of Representation 6, as set forth in the SFR on page 76781, in column 2, line 21, the conversion period is thirty-one (31) days, not sixty (60) days. Finally, TCCC points out that with respect to the second paragraph of Representation 6, as set forth in the SFR on page 76781, in column 2, line 28, that the ''retiree only'' supplemental AD&D coverage available includes increments of $50,000 and $100,000, as well as increments of $200,000, $300,000, and $400,000.

b. TCCC indicates that the proposed new AD&D benefit described in Representation 13 of the SFR on page 76782, in column 1, line 58, ends at age 70 for retirees.

c. TCCC points out that in Representation 15 of the SFR on page 76782, in column 2, line 22, the effective date shown in the second sentence should be ''January 1, 2013,'' not ''January 1, 2012.'' In addition, TCCC explains that in Representation 13 of the SFR on page 76782, in column 2, lines 30–35, the coverage maximums in the Plans are different. In this regard, the text of the SFR, according to TCCC, correctly describes the increase in the maximum to $2 million in the Actives Plan. TCCC also states that the maximum coverage applicable to the Retiree Plan remains at $1.5 million. Finally, TCCC explains that in Representation 13 of the SFR on page 76782, in column 2, lines 54–55, the Spouse Education Benefit discussed covers four (4) years, rather than three (3) years.

After full consideration and review of the entire record, including the written comments filed by TCCC, the Department has determined to grant the exemption, as amended, corrected, and clarified above. Comments and responses submitted to the Department by TCCC have been included as part of the public record of the exemption application. Copies of the comments from TCCC have been posted on the Department's Web site at *http://www.dol.gov/ebsa.* The complete application file (L–11738), including all supplemental submissions received by the Department, is available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published on December 28, 2012 at 77 FR 76779.

FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8551 (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of

whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 26th day of March, 2013.

Lyssa E. Hall,

Acting Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2013–07380 Filed 3–28–13; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Notice of Funding Availability for Calendar Year 2014 Competitive Grant Funds Request for Proposals: 2014 Competitive Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering Federal funds provided for civil legal services to low-income people.

This Request for Proposals (RFP) announces the availability of competitive grant funds and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to eligible clients in the service area(s) of the states and territories identified below. The exact amount of congressionally appropriated funds and the date, terms, and conditions of their availability for calendar year 2014 have not been determined.

DATES: This RFP is available the week of April 8, 2013. Legal Services Corporation must receive all applicants' Notice of Intent to Compete (NIC) on or before May 10, 2013, 5:00 p.m., E.T. Other key application and filing dates, including the dates for filing grant applications, are published at *www.grants.lsc.gov/resources/notices.*

ADDRESSES: Legal Services Corporation: Competitive Grants, located at 3333 K Street NW., Third Floor, Washington, DC, 20007–3522.

FOR FURTHER INFORMATION CONTACT: The Office of Program Performance by email at *competition@lsc.gov,* or visit the grants competition Web site at *www.grants.lsc.gov.*

SUPPLEMENTARY INFORMATION: LSC will accept proposals from any of the following entities: (1) Non-profit organizations that have as a purpose the provision of legal assistance to eligible clients; (2) private attorneys; (3) groups of private attorneys or law firms; (4) state or local governments; or (5) sub-state regional planning and coordination agencies that are composed of sub-state areas and whose governing boards are controlled by locally elected officials.

The RFP, containing the NIC and grant application, guidelines, proposal content requirements, service area descriptions, and specific selection criteria, will be available at *www.grants.lsc.gov* the week of April 8, 2013.

Below are the service areas for which LSC is requesting grant proposals. Service area descriptions will be available at *www.grants.lsc.gov/about-grants/where-we-fund.* LSC will post all updates and/or changes to this notice at *www.grants.lsc.gov.* Interested parties are asked to visit *www.grants.lsc.gov* regularly for updates on the LSC competitive grants process.

State or Territory	Service Area(s)
Alabama	MAL.
American Samoa	AS–1.
Arizona	AZ–2, AZ–3, AZ–5, MAZ, NAZ–5, NAZ–6.
Arkansas	AR–6, AR–7, MAR.
California	CA–1, CA–27, CA–28, NCA–1.
Connecticut	CT–1.
Delaware	MDE.
District of Columbia	DC–1.
Illinois	IL–3, IL–7.
Kentucky	KY–10, KY–2, KY–5, KY–9, MKY.
Louisiana	LA–1, LA–12, MLA.
Maryland	MD–1, MMD.
Massachusetts	MA–10, MA–11.
Michigan	MI–12, MI–13, MI–15, MI–9, MMI, NMI–1.
Minnesota	MN–1, MN–4, MN–5, MN–6, MMN.
Mississippi	MS–10, MS–9, MMS, NMS–1.
Missouri	MO–3, MO–4, MO–5, MO–7, MMO.
New Hampshire	NH–1.
New Mexico	NM–1, NM–5, MNM, NNM–2, NNM–4.
New York	NY–9.
North Dakota	ND–3, MND, NND–3.
Ohio	OH–18, OH–20, OH–21, OH–23, MOH.
Oklahoma	MOK, NOK–1.
Pennsylvania	PA–24.
Puerto Rico	PR–2.
South Dakota	SD–2, SD–4, NSD–1.
Tennessee	TN–10, TN–4, TN–7, TN–9, MTN.
Texas	TX–13, TX–14, TX–15, MTX, NTX–1.
Vermont	VT–1.
Virginia	VA–17, VA–18, VA–19, VA–20, MVA.
West Virginia	WV–5.
Wisconsin	WI–5, MWI.
Wyoming	WY–4, NWY–1.

Dated: March 21, 2013.

Victor Fortuno,

General Counsel & Vice President, Legal Services Corporation.

[FR Doc. 2013–07269 Filed 3–28–13; 8:45 am]

BILLING CODE 7050–01–P

LIBRARY OF CONGRESS

United States Copyright Office

[Docket No. 2013–3]

Resale Royalty Right; Public Hearing

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of public hearing.

SUMMARY: The United States Copyright Office will host a public hearing to discuss issues relating to the consideration of a federal resale royalty right in the United States. The meeting will provide a forum for interested parties to address the legal and factual questions raised in the comments received by this Office in response to its September 2012 Notice of Inquiry.[1]

DATES: The public hearing will take place on April 23, 2013, from 1:00 p.m. to 5:00 p.m. The Copyright Office strongly prefers that requests for participation be submitted electronically. A participation request form is posted on the Copyright Office

[1] 77 FR 58175 (Sept. 19, 2012), available at *http://www.copyright.gov/fedreg/2012/77fr58175.pdf.*

Web site at *http://www.copyright.gov/docs/resaleroyalty/*. Persons who are unable to submit a request electronically should contact Jason M. Okai, Counsel for Policy and International Affairs, at 202–707–9444.

ADDRESSES: The public hearing will take place in the Copyright Office Hearing Room, LM–408 of the Madison Building of the Library of Congress, 101 Independence Avenue SE., Washington, DC 20559.

FOR FURTHER INFORMATION CONTACT: Karyn Temple Claggett, Associate Register of Copyrights and Director of Policy and International Affairs, by email at *kacl@loc.gov* or by telephone at 202–707–1027; or Jason Okai, Counsel for Policy and International Affairs, by email at *jokai@loc.gov* or by telephone at 202–707–9444.

SUPPLEMENTARY INFORMATION:

Background

At the request of Congress, the Copyright Office is reviewing: (1) how the current copyright legal system affects and supports visual artists; and (2) how a federal resale royalty right for visual artists would affect current and future practices of groups or individuals involved in the creation, licensing, sale, exhibition, dissemination, and preservation of works of visual art. The Office published a general Notice of Inquiry on September 19, 2012 seeking comments from the public. The Notice provided background on the Office's previous review of this issue in its December 1992 report titled *Droit De Suite: The Artist's Resale Royalty*[2] (the ''1992 Report'') as well as recent international developments. After extending the deadline for the public to submit comments until December 5, 2012, the Office received fifty-nine comments from various interested parties. The comments raised a variety of issues, including purely legal matters as well as specific experiences and perspectives of individual artists, corporate entities, and collecting societies. All comments, along with the Notice of Inquiry, are available at *http://www.copyright.gov/docs/resaleroyalty/*. The Office now announces a public hearing to receive further input on issues raised in the comments. The agenda and the process for submitting requests to participate in or observe the public hearing is available on the Copyright Office Web site.

[2] U.S. Copyright Office, Droit De Suite: The Artist's Resale Royalty (1992), available at *http://www.copyright.gov/history/droit_de_suite.pdf*.

Subjects of Public Hearing

The public hearing will cover the following topics: (1) The changing legal landscape; (2) portability of the secondary art market; (3) effect on the primary art market and the incentive to create new works; (4) first sale and the free alienability of property; (5) visual artists and sales of works; (6) the Equity for Visual Artists Act; (7) effect on museums; and (8) constitutional concerns. Each of these topics is explained in more detail below.

1. *The changing legal landscape.* In its 1992 Report, the Copyright Office did not recommend adoption of a resale royalty right in U.S. law.[3] That report, however, also noted that Congress might wish to reexamine whether the United States should implement a resale royalty law if the European Union harmonized its resale royalty law.[4] In response to the September 19, 2012 Notice of Inquiry, several commenters stated that China, which has established itself as a major art market, is also considering a resale royalty right in pending domestic legislation. Many commenters also noted that even though the European Union harmonized its resale royalty law through its *Droit de Suite* Directive of 2001 (the ''EU Directive''), nothing has changed substantively in the United States since the Copyright Office's 1992 Report and there is therefore no need to consider adopting a resale royalty now.

Have there been changes in the worldwide legal landscape, art market, or business practices since the Office's 1992 Report that support or undermine implementation of a resale royalty?

2. *Portability of the Secondary Art Market.* Some commenters expressed concern that if the United States adopts a resale royalty right, a substantial portion of the U.S. art market will shift to markets where no resale royalty exists currently. Conversely, some commenters cited figures showing that the German, United Kingdom, and French markets actually grew after the EU Directive was implemented, while in the United States and Switzerland, where there is no resale right, the markets declined.

What factors, other than implementation of a resale royalty right, affect the portability of the art market? What are the experiences in countries following the implementation of a resale royalty where one did not exist previously? For example, if China implements a resale royalty, how would this impact the worldwide market?

3. *Effect on the Primary Art Market and the Incentive to Create New Works.* Some commenters addressed whether a resale royalty fosters creativity for young artists, contributes to the financial sustainability of visual artists, motivates artists to produce more artistic works, and enhances an artist's reputation thereby generating more primary and secondary sales. Some comments stated that the existence of a resale royalty would not incentivize artists to create and that the royalty only would benefit a very few artists who are already professionally and financially successful.

The Office is interested in learning more about the effect of a federal resale royalty on the primary art market and whether it is an incentive for artists to create new work. Additionally, the Office would like further information on whether the payment of a resale royalty to artists' heirs foster creativity and, if so, how.

4. *First Sale and the Free Alienability of Property.* Some commenters suggested that a resale royalty is incompatible with the first sale doctrine set forth in 17 U.S.C. 109. These commenters argued that a resale royalty provides an ongoing property right each time an artwork is sold (subsequent to its initial sale), prevents buyers from acquiring unencumbered title to a work of art, and adds a layer of complexity to secondary transactions. Other commenters argued that a resale royalty does not conflict with the ability to freely transfer property because the royalty simply would require payment when a subsequent sale has been made and does not otherwise restrict the transfer or sale of a particular work of art.

In light of these comments, the Office has the following questions: To what extent, if any, are the first sale doctrine and a resale royalty right incompatible? Would a resale royalty have a detrimental effect on the initial sale of the artwork? Should the right to claim royalties on secondary sales be waivable and, if so, what effect would that have on initial sales of artwork?

5. *Visual Artists and Sales of Works.* Many commenters suggested that visual artists are at a great disadvantage in relation to creators of other copyrighted works because visual artists are not paid for the subsequent resale of their original works and do not enjoy a benefit proportional to the success of their work. Thus, these commenters cautioned that without a resale royalty, visual artists are excluded from the most significant profits that their works may generate following its creation.

Commenters opposing a resale royalty noted that copyright law does not assure that each type of work will generate

[3] 1992 Report at 149.

[4] *Id.*

similar levels of remuneration and it is not the role of copyright law to elevate one type of work over another. These commenters further claimed that any perceived inequities in the amount of remuneration for a particular category of work exists because of the characteristics of that type of work and the attendant methods of exploitation for those works.

Thus, the Office is interested in whether there is such an inequity and, if so, to what extent, if any, a resale royalty will affect it.

6. *The Equity for Visual Artists Act.* The Office received twenty-five comments that either cited to the Equality for Visual Artists Act (''EVAA'') [5] or commented directly on the proposed legislation. The Office is interested in hearing more about what provisions should or should not appear in any resale royalty legislation and, more specifically, views on the following EVAA provisions:

a. *Transaction Types.* The current version of the EVAA applies only to live auction sales when the auction house meets certain eligibility requirements. Many comments noted that a resale royalty limited to certain live auction sales would not represent the majority of secondary art sales and would therefore fail to benefit a significant number of artists. Other commenters noted that, due to the high volume of transactions, it would simply be impractical to apply the right to additional types of sales such as online auctions, private sales, or gallery sales. The Office would like more information on the proper universe of sales to which the resale royalty should be applied.

b. *Scope.* A few comments noted that some art buyers view art as more than paintings, sculptures, or photographs and therefore any definition of art for the purposes of establishing a resale right should be broader than that in the EVAA. The Office thus would like further input regarding what types of artwork should or should not be included in any potential legislation.

c. *Collection and Distribution of Royalties.* Commenters stated that, generally, either a government agency or a designated collection society administers the resale royalty in most jurisdictions that have such a royalty law. These government agencies or collection societies identify qualifying sales, collect funds, deduct an administrative fee, and redistribute the monies to the artists. The collecting society scheme proposed in the EVAA would be different because the collecting society would not only collect the royalty and redistribute it to the artists, but it would also use royalty monies to fund an escrow account from which it would distribute grants to museums to purchase more art. The Office would appreciate more information on the pros and cons of such a structure.

d. *Duration.* Many commenters favor keeping the term of the resale royalty right consistent with the term of copyright because such a term could easily be tracked and calculated and also allows for the royalty payments to an artist's heirs. The Office would like to learn more about how to calculate a justifiable term for a resale royalty right.

e. *Threshold Value.* The EVAA establishes that a resale royalty would only be paid on artwork sales of $10,000 or more. Some comments noted that a $10,000 threshold amount would exclude many types of works, *e.g.,* photographs and prints, but also many artists whose work is resold in the secondary market for less than $10,000. Other comments suggested that too low of a threshold would result in a situation where the cost of administrating some royalty payments would be higher than the cost of administering the payments. The Office is thus interested in learning more about whether there should be a minimum threshold before a resale royalty is owed and, if so, what that threshold should be.

f. *Payment.* Based on a review of the comments, determining which entity should be responsible for payment of the royalty following the resale of a work is somewhat controversial. Jurisdictions that have a resale royalty differ on which party is responsible for paying the royalty. The EVAA provides that the party responsible for remitting the royalty to the collecting society would be the party responsible for receiving the ''money or other consideration'' from the sale. The Office would like further information on which party should be responsible for paying any resale royalty to the author.

g. *Royalty Rate.* Some comments noted that the EVAA's proposed 7% royalty would be one of the highest rates in the world. Many of the comments suggested a 5% royalty with or without a limit on total remuneration as the most consistent with worldwide practice. The Office would like more information on what a reasonable royalty rate could be and how to determine what is reasonable.

7. *Effect on Museums.* Under the EVAA, museums are eligible to receive grants for purchasing art based on a portion of the resale royalty paid to the author. One comment noted that the EVAA may inadvertently undermine the ways in which museums acquire and deacession works as well as limit museums' access to certain pricing information related to works or art. The Office is interested in learning more about the impact of these grants on museums' purchasing behavior.

8. *Constitutional Concerns.* Two companies submitted comments highlighting constitutional concerns over federal resale royalties. The Office is interested in hearing from parties wishing to elaborate on the arguments summarized below.

a. *Retroactivity and Due Process.* One comment expressed concerns that if a resale royalty would apply retroactively to purchases already concluded it would benefit artists at the expense of buyers and collectors that already purchased the artwork without the requirement to pay a royalty on the secondary sale. In addition, the comment stated that while application of a royalty to new works may be permissible under the Copyright Clause of the U.S. Constitution, its retroactive application raises due process concerns. Thus, the Office would like to hear more regarding whether retroactive legislation would be barred by the Due Process Clause of the U.S. Constitution.

b. *Takings.* One comment noted that applying a resale royalty to pre-existing works may implicate the Takings Clause of the U.S. Constitution through a limitation on the free alienation of property and the transfer of the royalty payment from one individual to another. The Office would like to learn more about whether pre-existing works would implicate the Takings Clause.

c. *Prohibition Against Bills of Attainder.* One comment noted that a federal resale royalty law such as the proposed EVAA may raise issues under the constitutional prohibition on bills of attainder because it specifies particular types of auctioneers that must pay the royalty. For example, the EVAA proposes that the royalty shall apply if the sale takes place in a public auction house that has annual sales in the previous year of over $25 million—excluding online and private sales. The Office is thus interested in more information on the relationship between the EVAA's limitations and the constitutional prohibition on bills of attainder.

Requests To Participate

Requests to participate should be submitted online at *http://www.copyright.gov/docs/resaleroyalty/.* The requestor should also indicate, in order of preference, the sessions in

[5] H.R. 3688, 112th Cong. (2011); S. 2000, 112th Cong. (2011).

which the requestor wishes to participate. Depending upon the level of interest, the Copyright Office may not be able to seat every participant in every session he or she requests, so it is helpful to know which topics are most important to each participant. In addition, please note that while an organization may bring multiple representatives, only one person per organization may participate in a particular session. A different person from the same organization may, of course, participate in another session. Requestors who already have submitted a comment in response to the Office's September 19, 2012 Notice of Inquiry, or who will be representing an organization that has submitted a comment, are asked to identify their comments on the request form. Requestors who have not submitted comments should include a brief summary of their views on the topics they wish to discuss directly on the request form. Nonparticipants who wish to attend and observe the discussion should note that seating is limited and, for nonparticipants, will be available on a first come, first served basis.

Dated: March 25, 2013.

Karyn A. Temple-Claggett,

Associate Register of Copyrights and Director of Policy and International Affairs.

[FR Doc. 2013–07270 Filed 3–28–13; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs (1130).

Date/Time: Wednesday, May 1, 2013, 12:30 p.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Stafford II, Room 555, Arlington, VA—THE ADVISORY COMMITTEE MEMBERS WILL ATTEND VIRTUALLY.

Type Of Meeting: Open.

Contact Person: Sue LaFratta, Office of Polar Programs (OPP). National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8030.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs, and activities on the polar research community, to provide advice to the Director of OPP on issues related to long-range planning.

Agenda: Discussion of Committee of Visitors' reports on Antarctic and Arctic programs.

Dated: March 26, 2013.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2013–07331 Filed 3–28–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Request for Information (RFI): Reducing Investigator's Administrative Workload for Federally Funded Research

Key Dates

Release Date: March 25, 2013.
Response Date: May 24, 2013.

Issued by

National Science Foundation (NSF).

Purpose

This RFI offers principal investigators with Federal research funding the opportunity to identify Federal agency and university requirements that contribute most to their administrative workload and to offer recommendations for reducing that workload. Members of the National Science Board's Task Force on Administrative Burdens do not wish to increase your administrative workload with this request and you may choose to answer only those questions that are most pertinent to you. Your responses will provide vital input so that we can implement agency-level changes and offer recommendations to reduce unnecessary and redundant administrative requirements.

Background

Over the past decade two Federal Demonstration Partnership (FDP) Faculty Workload Surveys (2005 and 2012) indicate that administrative burdens associated with Federal research funding are consuming roughly 42% of an awardee's available research time, a figure widely cited in numerous articles and reports. To help address these issues, the National Science Board (Board) recently created a Task Force on Administrative Burdens. The Task Force is charged with examining the burden imposed on Federally-supported researchers at U.S. colleges, universities, and non-profit institutions. Responses to this RFI will be considered as the Board develops recommendations to ensure investigators' administrative workload is at an appropriate level.

Request for Information

The Task Force is seeking a response to the questions below. In your response, please reference the question number to which you are responding.

Sources of Administrative Work and Recommendations for Reducing Work

1. What specific requirements associated with your Federally-funded grants require you personally to do the greatest amount of administrative work? Where possible, please indicate whether the origin of that administrative work is a requirement at your institution, a Federal requirement, or a requirement from another institution. What recommendations would you offer that might help to reduce the level of work?

2. Principal investigators responding to the FDP's 2012 Faculty Workload Survey identified the following sources of administrative work, in addition to human subject protection and animal care treated below, as particularly burdensome for Federal grantees:

- Grant progress report submissions;
- Finances (e.g. managing budget-to-actual expenses, equipment and supplies purchases, and other financial issues/requirements);
- Personnel management, hiring, and employee evaluation, and visa issues;
- Effort reporting;
- Conflict of interest;
- Responsible conduct of research;
- Lab safety/security;
- Data sharing; and,
- Sub-contracts (e.g. overseeing: progress toward project goals and deadlines; budget expenditures, invoices, and other financial matters; and, compliance and safety/security issues).

If not addressed in question 1, for any of the areas listed, do you believe that the associated requirements significantly increase the amount of administrative work you personally need to perform? Where possible please indicate whether the source of the required administrative work is a requirement at your institution, a Federal requirement, or a requirement from another institution. What recommendations would you offer that might help to reduce the level of work?

3. Do you receive administrative support from your institution for Federal grants? If yes, for what specific preparation, reporting, and compliance requirements do you receive administrative support? Is the amount of support excellent, good, adequate, poor, or non-existent? Where does your administrative support come from within the institution (e.g. office of the

vice president for research, office of sponsored programs, a department, a laboratory, others)? What additional administrative support would you like to receive from your institution?

Institutional Review Boards (IRB)/ Institutional Animal Care and Use Committees (IACUC)

4. If you are conducting human or vertebrate animal research requiring IRB or IACUC approval, what requirements (e.g. preparing protocols for initial review, annual reviews and re-writes, completing revisions requested by reviewers, and satisfying training and other Federal requirements) create the most administrative work? Is the work completed primarily by you or others? Are there particular practices used by your university's IRB/IACUC process that contribute to or subtract from the administrative work you must perform to meet Federal and Institutional requirements? What recommendations would you offer that might help to reduce the level of work?

Proposals

5. Investigators responding to the FDP 2012 Faculty Workload Survey indicated that 15 percent of their research time associated with a Federal award is devoted to proposal preparation. Are there administrative tasks associated with proposal preparation that increase your personal administrative workload? Please provide specific examples. What recommendations would you offer Federal agencies for reducing the level of administrative work necessary to submit a grant proposal while maintaining the details needed to evaluate the merit and feasibility of the proposed research?

Agency Specific Requirements and Multiple Agencies

6. From which agencies do you receive Federal funding? In your opinion, have you observed outcomes related to data or information that you have provided at the request of Federal agencies? If you receive funding from multiple agencies do you believe that there are overlapping or redundant interagency requests or requirements that increase your administrative workload? How might these requirements be streamlined across Federal agencies?

7. If you receive funding from NSF, are there NSF-specific requirements that you believe create significant administrative work for you? What steps would you suggest NSF take to reduce the level of work necessary to comply with the requirement(s)?

Reform Efforts

8. The Office of Management of Budget (OMB) has recently proposed reforms to administrative requirements for Federal awards, including:

(a) Guidance that clarifies the circumstances under which institutions may charge administrative support as a direct cost under certain conditions, including where the support is integral to a project or activity, can be specifically allocated to it, is explicitly included in the budget, and is not also recovered as indirect costs.

(b) Reforms to effort reporting, including using employee payroll reports from institutional automated payroll systems to comply with effort reporting requirements.

What if any effect do you believe these proposed reforms would have on your administrative workload? Would you utilize direct charging if the guidance is finalized? To what extent would you utilize it (i.e., what % of funds)?

Professional/Institutional Information

The following information will allow us to assess the influence of institution size/administrative capacity, academic rank, and field of study on the level and type of administrative work reported but is not required.

9. What is your academic rank? What is your field of study? Please indicate which of the following best describes your institution:

- Public research institution with medical school
- Public research institution without medical school
- Private research institution
- Public master's institution
- Private master's institution
- Primarily undergraduate institution
- Minority-serving institution
- Non-profit/for profit institution

How to Submit a Response

All responses and should be submitted by email to: *Administrative-Reform@nsf.gov.*

Responses to this RFI will be accepted through May 24, 2013. You will not receive individualized feedback on any suggestions. Individual or aggregate responses may be referenced in a final report; however the Board will not attribute any comments by name. Email addresses will be anonymized and responses kept confidential consistent with our obligations to comply with a judicial or administrative subpoena, or a FOIA request pursuant to 5 U.S.C. 552. Please note that any personal information contained within the body of the email/response (i.e. signature lines) will be retained if not deleted by the sender. No basis for claims against the U.S. Government shall arise as a result of a response to this request for information or from the Government's use of such information. Any questions or inquiries should be sent to: *Administrative-Reform-Inquiries@nsf.gov.*

Ann Bushmiller,

Senior Legal Counsel, National Science Board.

[FR Doc. 2013–07313 Filed 3–28–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0148]

Supplemental Environmental Impact Statement for the Ross In-Situ Uranium Recovery Project in Crook County, Wyoming

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft supplemental environmental impact statement; request for comment.

SUMMARY: By letter dated January 4, 2011, Strata Energy, Inc., (Strata) submitted an application to the U.S. Nuclear Regulatory Commission (NRC) for a new source materials license for the proposed Ross *In-Situ* Uranium Recovery (ISR) Project (Ross Project) proposed to be located in Crook County, Wyoming. The NRC is issuing for public comment a Draft Supplemental Environmental Impact Statement (Draft SEIS) for the Ross Project. The Draft SEIS is Supplement 5 to NUREG–1910, ''Generic Environmental Impact Statement for *In-Situ* Leach Uranium Milling Facilities.''

DATES: Submit comments by May 13, 2013. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2011–0148. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0148. 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, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

• *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Johari Moore, Project Manager, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington DC, 20555–0001; telephone: 301–415–7694; email: *Johari.Moore@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2011–0148 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 any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0148.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents associated with the Ross Project through the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The Draft SEIS (NUREG–1910, Supplement 5) is available in ADAMS under Accession Number ML13078A036. NUREG–1910 is available in ADAMS under Accession Numbers ML091480244 (Volume 1) and ML091480188 (Volume 2).

• *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–2011–0148 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 that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely 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 that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Further Information

Under the NRC's environmental protection regulations in part 51 of Title 10 of the *Code of Federal Regulations* (10 CFR), which implement the National Environmental Policy Act of 1969 (NEPA), preparation of an Environmental Impact Statement (EIS) or supplement to an EIS (SEIS) is required for issuance of a license to possess and use source material for uranium milling (see 10 CFR 51.20(b)(8)).

In May 2009, the NRC staff issued NUREG–1910, ''Generic Environmental Impact Statement for *In-Situ* Leach Uranium Milling Facilities'' (herein referred to as the GEIS). In the GEIS, the NRC assessed the potential environmental impacts from construction, operation, aquifer restoration, and decommissioning of an in situ leach uranium milling facility (also known as an ISR facility) located in four specific geographic regions of the western United States. The proposed Ross Project is located within the Nebraska-South Dakota-Wyoming Uranium Milling Region identified in the GEIS. The Draft SEIS supplements the GEIS and incorporates by reference relevant portions from the GEIS, and uses site-specific information from Strata's license application and independent sources to fulfill the requirements in 10 CFR 51.20(b)(8).

The Draft SEIS for the proposed Ross Project may also be accessed on the internet at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/* by selecting ''NUREG–1910'' and then ''Supplement 5,'' or on the NRC's Ross Project Web page at *http://www.nrc.gov/materials/uranium-recovery/license-apps/ross.html.* Additionally, a copy of the Draft SEIS will be available at the following public libraries:

Crook County Library, Hulett Branch, 401 Sager Street, Hulett, WY 82720.

Crook County Library, Moorcroft Branch, 105 E Converse, Moorcroft, WY 82721.

The Draft SEIS was prepared in response to an application submitted by Strata by letter dated January 4, 2011. The applicant proposes the construction, operation, aquifer restoration, and decommissioning of an ISR facility.

The Draft SEIS was prepared by the NRC and its contractor, Attenuation Environmental Company, in cooperation with the U.S. Bureau of Land Management (BLM). The NRC has prepared this Draft SEIS in compliance with NEPA and the NRC's regulations for implementing NEPA (10 CFR part 51).

The proposed Ross Project will be located approximately 34.6 kilometers (km) (21.5 miles [mi]) north of the town of Moorcroft, Wyoming and would encompass approximately 697 hectares (ha) (1,721 acres [ac]).

The Draft SEIS is being issued as part of the NRC's process to decide whether to issue a license to Strata pursuant to 10 CFR Part 40. In the Draft SEIS, the NRC staff has assessed the potential environmental impacts from the construction, operation, aquifer restoration, and decommissioning of the proposed Ross Project. The NRC staff assessed the impacts of the proposed action and its alternatives on land use; historical and cultural resources; visual and scenic resources; climatology, meteorology and air quality; geology, minerals and soils; water resources; ecological resources; socioeconomics; environmental justice; noise; traffic and transportation; public and occupational health and safety; and waste management. Additionally, the Draft SEIS analyzes and compares the benefits and costs of the proposed action.

The NRC staff evaluated site-specific data and information on the Ross Project to determine if Strata's proposed activities and the site characteristics were consistent with those evaluated in the GEIS. NRC then determined which relevant sections of, and impact conclusions in, the GEIS could be incorporated by reference. The NRC staff also determined if additional data or analysis was needed to assess the potential environmental impacts for a

specific environmental resource area. The NRC documented its assessments and conclusions in the Draft SEIS.

In addition to the action proposed by Strata, the NRC staff addressed the no-action alternative, as well as alternative location for proposed facility. All the alternatives were analyzed in detail. The no-action alternative serves as a baseline for comparing the potential environmental impacts of the proposed action.

After weighing the impacts of the proposed action and comparing the alternatives, the NRC staff, in accordance with 10 CFR 51.71(f), sets forth its preliminary recommendation regarding the proposed action. Unless safety issues mandate otherwise, the NRC staff preliminarily recommends that the proposed action be approved (*i.e.,* the NRC should issue a source material license for the proposed Ross Project).

The Draft SEIS is being issued for public comment. The public comment period on the Draft SEIS begins with publication of this notice and continues until May 13, 2013. Written comments should be submitted as described in the **ADDRESSES** section of this document. The NRC will consider comments received or postmarked after that date to the extent practical.

Dated at Rockville, Maryland, this 20th day of March 2013.

For the U.S. Nuclear Regulatory Commission.

Aby Mohseni,

Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2013–07332 Filed 3–28–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0001]

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Week of April 1, 2013

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland

STATUS: Public and Closed

Week of April 1, 2013—Tentative

Tuesday April 2, 2013

9:25 a.m. Affirmation Session (Public Meeting) (Tentative)

Motion to Quash Subpoena Filed by the Shaw Group, Inc. (Tentative)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

* * * * *

*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 Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@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: March 26, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–07466 Filed 3–27–13; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, April 10, 2013, at 11 a.m.

PLACE: Commission Hearing Room, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public. The open session will be audiocast. The audiocast may be accessed via the Commission's Web site at *http://www.prc.gov.* A period for public comment will be offered following consideration of the last numbered item in the open session.

MATTERS TO BE CONSIDERED: The agenda for the Commission's April 10, 2013 meeting includes the items identified below.

PORTIONS OPEN TO THE PUBLIC:

1. Report on legislative activities.
2. Report on communications with the public.
3. Report from the Office of General Counsel on the status of Commission dockets.
4. Report from the Office of Accountability and Compliance.
5. Report from the Office of the Secretary and Administration.
6. Presentation by Deputy Assistant Secretary for Passport Services Brenda S. Sprague, Bureau of Consular Affairs, U.S. Department of State, on the Postal Service's participation in the State Department's passport issuance program. Chairman's Public Comment Period (Opportunity for brief comments or questions from the public.)

PORTION CLOSED TO THE PUBLIC:

7. Discussion of pending litigation.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001, at 202–789–6820 (for agenda-related inquiries) and Shoshana M. Grove, Secretary of the Commission, at 202–789–6800 or *shoshana.grove@prc.gov* (for inquiries related to meeting location, access for handicapped or disabled persons, the audiocast, or similar matters).

By direction of the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–07454 Filed 3–27–13; 4:15 pm]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATES AND TIMES: April 9, 2013, at 9:00 a.m.

PLACE: Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Tuesday, April 9, 2013 at 9:00 a.m.

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board,

U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2013–07434 Filed 3–27–13; 11:15 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

Board Votes to Close March 5, 2013, Meeting

By telephone vote on March 5, 2013, members of the Board of Governors of the United States Postal Service met and voted unanimously to close to public observation its meeting held in Washington, DC, via teleconference. The Board determined that no earlier public notice was possible.

Matters Considered

1. Strategic Issues.

General Counsel Certification

The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Requests for information about the meeting should be addressed to the Secretary of the Board, Julie S. Moore, at (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2013–07433 Filed 3–27–13; 11:15 am]

BILLING CODE 7710–12–P

RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

Agency Information Collection Activities: Renewal of Currently Approved Collection; Comment Request

AGENCY: Recovery Accountability and Transparency Board.

ACTION: Notice and request for comments.

SUMMARY: The Recovery Accountability and Transparency Board (Board) invites comments on the proposed renewal of a currently approved information collection as required by the Paperwork Reduction Act of 1995 (PRA).

DATES: Interested persons are invited to submit comments on or before May 28, 2013.

ADDRESSES: Send comments to Atticus Reaser, Office of General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue NW., Suite 700, Washington, DC 20006. Alternatively, you can email comments to *comments@ratb.gov.* Please be sure to identify the title of the collection in the subject line.

FOR FURTHER INFORMATION CONTACT: Atticus Reaser, General Counsel, 202–254–7900.

SUPPLEMENTARY INFORMATION: The PRA and its implementing regulations, 5 CFR part 1320, require federal agencies to provide 60 days notice to the public for comment on information collection activities—including renewals of currently approved information collections—before seeking approval of such activities by the Office of Management and Budget (OMB). Accordingly, the Board invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for the Board to properly execute its functions; (ii) the accuracy of the Board's estimates of the burden of the information collection activities; (iii) ways for the Board to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for the Board to minimize the burden of information collection activities on the public.

The Board is planning to submit the following currently approved information collection to OMB for review and approval of renewal under the PRA:

Title of Collection: Section 1512 Data Elements—Federal Financial Assistance.

ICR Reference No.: 201004–0430–001.

OMB Control No.: 0430–0004.

ICR Status: The approval for this ICR is scheduled to expire on 07/31/2013.

Description: Section 1512 of the American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (2009) (Recovery Act), requires recipients of Recovery Act funds to report on the use of those funds. These reports are submitted to FederalReporting.gov, and certain information from these reports is then posted publically. This collection pertains only to recipients of federal financial assistance.

More specifically, prime recipients, sub-recipients, and vendors who receive federal financial assistance Recovery Act funds are required to submit section 1512 data elements as set forth in the *Recipient Reporting Data Dictionary* (available electronically at *https://www.federalreporting.gov/federalreporting/downloads.do*). The following is a cumulative summary of the reporting guidance issued by the Office of Management and Budget (OMB) in its June 22, 2009, guidance entitled, ''Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009'' (M–09–21), and its December 18, 2009, guidance entitled, ''Updated Guidance on the American Recovery and Reinvestment Act—Data Quality, Non-Reporting Recipients, and Reporting of Job Estimates'' (M–10–08):

Prime Recipients: The prime recipient is ultimately responsible for the reporting of all data required by section 1512 of the Recovery Act and the OMB Guidance, including the Federal Funding Accountability and Transparency Act (FFATA) data elements for the sub-recipients of the prime recipient required under section 1512(c)(4). In addition, the prime recipient must report three additional data elements associated with any vendors receiving funds from the prime recipient for any payments greater than $25,000. Specifically, the prime recipient must report the identity of the vendor by reporting the DUNS number, the amount of the payment, and a description of what was obtained in exchange for the payment. If the vendor does not have a DUNS number, then the name and zip code of the vendor's headquarters will be used for identification.

Sub-Recipients of the Prime Recipient: The sub-recipients of the prime recipient may be required by the prime recipient to report the FFATA data elements required under section 1512(c)(4) for payments from the prime recipient to the sub-recipient. The reporting sub-recipients must also report one data element associated with any vendors receiving funds from that sub-recipient. Specifically, the sub-recipient must report, for any payments greater than $25,000, the identity of the vendor by reporting the DUNS number, if available, or otherwise the name and zip code of the vendor's headquarters.

Required Data: The specific data elements to be reported by prime recipients and sub-recipients are included in the *Recipient Reporting Data Dictionary.* Below are the basic reporting requirements to be reported on prime recipients, recipient vendors, sub-recipients, and sub-recipient vendors. Where noted, the information is not entered by the recipient but rather is derived from another source:

Prime Recipient

1. Funding Agency Code
2. Awarding Agency Code

3. Program Source (TAS)
4. Award Number
5. Order Number
6. Recipient DUNS Number
7. Parent DUNS (derived from CCR)
8. Recipient Type (derived from CCR)
9. CFDA Number
10. Government Contracting Office Code
11. Recipient Congressional District
12. Recipient Account Number
13. Final Report (not FFATA)
14. Award Type
15. Award Date
16. Award Description
17. Project Name or Project/Program Title
18. Quarterly Activities/Project
19. Project Status
20. Activity Code (NAICS or NTEE–NPC)
21. Number of Jobs
22. Descriptions of Jobs Created/Retained
23. Amount of Award
24. Total Federal Amount ARRA Funds Received/Invoiced
25. Total Federal Amount of ARRA Expenditure
26. Total Federal ARRA Infrastructure Expenditure
27. Infrastructure Purpose and Rationale
28. Infrastructure Contact Information
29. Recipient Primary Place of Performance
30. Recipient Indication of Reporting Applicability
31. Recipient Officer Names and Compensation (if applicable)
32. Total Number of Sub-Awards to Individuals
33. Total Amount of Sub-Awards to Individuals
34. Total Number of Payments to Vendors Less Than $25,000/Award
35. Total Amount of Payments to Vendors Less Than $25,000/Award
36. Total Number of Sub-Awards Less Than $25,000/Award
37. Total Amount of Sub-Awards Less Than $25,000/Award

Sub-Recipient

1. Sub-Recipient DUNS
2. Sub-Award Number
3. Sub-Recipient Name and Address (derived from CCR)
4. Sub-Recipient Congressional District
5. Amount of Sub-Award
6. Total Sub-Award Funds Disbursed
7. Sub-Award Date
8. Sub-Recipient Place of Performance
9. Sub-Recipient Indication of Reporting Applicability
10. Sub-Recipient Officer Names and Compensation (if applicable)

Vendor

1. Award Number—Prime Recipient Vendor
2. Sub-Award Number—Sub-Recipient Vendor
3. Vendor DUNS Number
4. Vendor HQ Zip Code + 4
5. Vendor Name
6. Product and Service Description
7. Payment Amount

Affected Public: Recipients, as defined in section 1512(b)(1) of the Recovery Act, of Recovery Act funds (specifically, Federal financial assistance).

Total Estimated Number of Respondents: 24,356.

Frequency of Responses: Quarterly.

Total Estimated Annual Burden Hours: 160,263.

Dated: March 26, 2013.

Atticus J. Reaser,

General Counsel, Recovery Accountability and Transparency Board.

[FR Doc. 2013–07324 Filed 3–28–13; 8:45 am]

BILLING CODE 6820–GA–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17Ad–10, SEC File No. 270–265, OMB Control No. 3235–0273.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17Ad–10, (17 CFR 240.17Ad–10), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17Ad–10 generally requires registered transfer agents to: (1) Create and maintain current and accurate securityholder records; (2) promptly and accurately record all transfers, purchases, redemptions, and issuances, and notify their appropriate regulatory agency if they are unable to do so; (3) exercise diligent and continuous attention in resolving record inaccuracies; (4) disclose to the issuers for whom they perform transfer agent functions and to their appropriate regulatory agency information regarding record inaccuracies; (5) buy-in certain record inaccuracies that result in a physical over issuance of securities; and (6) communicate with other transfer agents related to the same issuer. These requirements assist in the creation and maintenance of accurate securityholder records, enhance the ability to research errors, and ensure the transfer agent is aware of the number of securities that are properly authorized by the issuer, thereby avoiding over issuance.

The rule also has specific recordkeeping requirements. It requires registered transfer agents to retain certificate detail that has been deleted for six years and keep current an accurate record of the number of shares or principal dollar amount of debt securities that the issuer has authorized to be outstanding. These mandatory requirements ensure accurate securityholder records and assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information.

There are approximately 464 registered transfer agents. We estimate that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–10 is approximately 80 hours per year, which generates an industry-wide annual burden of 37,120 hours (464 times 80 hours). This burden is of a recordkeeping nature but also includes a small amount of third party disclosure and SEC reporting burdens. At an average staff cost of $50 per hour, the industry-wide internal labor cost of compliance (a monetization of the burden hours) is approximately $1,856,000 per year (37,120 × $50). In addition, we estimate that each transfer agent will incur an annual external cost burden of $18,000 resulting from the collection of information. Therefore, the total annual external cost on the entire transfer agent industry is approximately $8,352,000 ($18,000 times 464). This cost primarily reflects ongoing computer operations and maintenance associated with generating, maintaining, and disclosing or providing certain information required by the rule.

The amount of time any particular transfer agent will devote to Rule 17Ad–10 compliance will vary according to the size and scope of the transfer agent's business activity. We note, however, that at least some of the records, processes, and communications required by Rule 17Ad–10 would likely be maintained, generated, and used for transfer agent business purposes even without the rule.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper

performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: March 25, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–07321 Filed 3–28–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15a–4. SEC File No. 270–7, OMB Control No. 3235–0010.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection provided for in Rule 15a–4 (17 CFR 240.15a–4) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 15a–4 permits a natural person member of a securities exchange who terminates his or her association with a registered broker-dealer to continue to transact business on the exchange while the Commission reviews his or her application for registration as a broker-dealer filed on Form BD if the exchange files a statement (''Statement'') indicating that there do not appear to be any grounds for disapproving the application.

The total annual burden imposed by Rule 15a–4 is approximately 8.46 hours, based on approximately 2 responses (2 Respondents × 1 Statement/Respondent), each requiring approximately 4.23 hours to complete.

The Commission uses the information disclosed by applicants in Form BD: (1) To determine whether the applicant meets the standards for registration set forth in the provisions of the Exchange Act; (2) to develop a central information resource where members of the public may obtain relevant, up-to-date information about broker-dealers, municipal securities dealers and government securities broker-dealers, and where the Commission, other regulators and SROs may obtain information for investigatory purposes in connection with securities litigation; and (3) to develop statistical information about broker-dealers, municipal securities dealers and government securities broker-dealers. Without the information disclosed in Form BD, the Commission could not effectively implement policy objectives of the Exchange Act with respect to its investor protection function. The Statement submitted by the exchange assures the Commission that the applicant, in the opinion of the exchange, is qualified to transact business on the exchange during the time that the applications are reviewed.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

The public may view background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 25, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–07319 Filed 3–28–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 605 of Regulation NMS, SEC File No. 270–488, OMB Control No. 3235–0542.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 605 (17 CFR 242.605) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 605 of Regulation NMS,[1] formerly known as, Rule 11Ac1–5, requires market centers to make available to the public monthly order execution reports in electronic form. The Commission believes that many market centers retain most, if not all, of the underlying raw data necessary to generate these reports in electronic format. Once the necessary data is collected, market centers could either program their systems to generate the statistics and reports, or transfer the data to a service provider (such as an independent company in the business of preparing such reports or a self-regulatory organization) that would generate the statistics and reports.

The collection of information obligations of Rule 605 apply to all market centers that receive covered orders in national market system securities. The Commission estimates

[1] Regulation NMS, adopted by the Commission in June 2005, redesignated the national market system rules previously adopted under Section 11A of the Exchange Act. Rule 11Ac1–5 under the Exchange Act was redesignated Rule 605 of Regulation NMS. No substantive amendments were made to Rule 605 of Regulation NMS. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

that approximately 366 market centers are subject to the collection of information obligations of Rule 605. Each of these respondents is required to respond to the collection of information on a monthly basis.

The Commission staff estimates that, on average, Rule 605 causes respondents to spend 6 hours per month to collect the data necessary to generate the reports, or 72 hours per year. With an estimated 366 market centers subject to Rule 605, the total data collection time burden to comply with the monthly reporting requirement is estimated to be 29,352 hours per year.

Based on discussions with industry sources, the Commission staff estimates that an individual market center could retain a service provider to prepare a monthly report using the data collected for approximately $2978 per month. This per-respondent estimate is based on the rate that a market center could expect to obtain if it negotiated on an individual basis. Based on the $2978 estimate, the monthly cost to the 366 market centers to retain service providers to prepare reports would be $1,089,948, or an annual cost of approximately $13,079,376 million.

The collection of information obligation imposed by Rule 605 is mandatory. The response will be available to the public and will not be kept confidential.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

The public may view background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312, or send an email to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 25, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–07322 Filed 3–28–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rules 6a-1 and 6a-2, Form 1, SEC File No. 270–0017, OMB Control No. 3235–0017.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 6a-1 (17 CFR 240.6a-1), Rule 6a-2 (17 CFR 240.6a-2), and Form 1 (17 CFR 249.1) under The Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'' or Act'').

The Exchange Act sets forth a regulatory scheme for national securities exchanges. Rule 6a-1 under the Act generally requires an applicant for initial registration as a national securities exchange to file an application with the Commission on Form 1. An exchange that seeks an exemption from registration based on limited trading volume also must apply for such exemption on Form 1. Rule 6a-2 under the Act requires registered and exempt exchanges: (1) to amend the Form 1 if there are any material changes to the information provided in the initial Form 1; and (2) to submit periodic updates of certain information provided in the initial Form 1, whether such information has changed or not. The information required pursuant to Rules 6a-1 and 6a-2 is necessary to enable the Commission to maintain accurate files regarding the exchange and to exercise its statutory oversight functions. Without the information submitted pursuant to Rule 6a-1 on Form 1, the Commission would not be able to determine whether the respondent met the criteria for registration or exemption set forth in Sections 6 and 19 of the Act. Without the amendments and periodic updates of information submitted pursuant to Rule 6a-2, the Commission would have substantial difficulty determining whether a national securities exchange or exempt exchange was continuing to operate in compliance with the Act.

Initial filings on Form 1 by new exchanges are made on a one-time basis. The Commission estimates that it will receive approximately three initial Form 1 filings per year and that each respondent would incur an average burden of 47 hours to file an initial Form 1 at an average internal labor cost per response of approximately $13,105. Therefore, the Commission estimates that the annual burden for all respondents to file the initial Form 1 would be 141 hours (one response/respondent × three respondents × 47 hours/response) and an internal labor cost of $39,315 (one response/respondent × three respondents × $13,105/response).

There currently are seventeen entities registered as national securities exchanges and two exempt exchanges, for a total of 19 exchanges. The Commission estimates that each registered or exempt exchange files four amendments or periodic updates to Form 1 per year, incurring an average burden of 25 hours to comply with Rule 6a-2. The Commission estimates that the annual burden for all respondents to file amendments and periodic updates to the Form 1 pursuant to Rule 6a-2 is 1900 hours (19 respondents × 25 hours/response × four responses/respondent per year) and an internal labor cost of $510,720 (19 respondents × $6,720/response × four responses/respondent per year).

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

The public may view background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov.* Comments

must be submitted to OMB within 30 days of this notice.

Dated: March 25, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–07320 Filed 3–28–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

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 Wednesday, March 27, 2013 at 10:00 a.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), and (10) and 17 CFR 200.402(a)(3), (5), (7), and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the item listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting will be:

A matter relating to an enforcement proceeding.

At times, changes in Commission priorities require alterations in the scheduling of meeting item.

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: March 26, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–07447 Filed 3–27–13; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69229; File No. SR–Phlx–2013–15]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving a Proposed Rule Change for the Permanent Approval of a Pilot Program To Permit PSX To Accept Inbound Orders Routed by NASDAQ Execution Services LLC From the BX Equities Market

March 25, 2013.

I. Introduction

On February 6, 2013, NASDAQ OMX PHLX LLC (''Exchange'' or ''PHLX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change requesting permanent approval of the Exchange's pilot program that permits the NASDAQ OMX PSX facility of PHLX (''PSX'' or the ''System'') to accept inbound orders routed by NASDAQ Execution Services LLC (''NES'') from the NASDAQ OMX BX Equities Market of NASDAQ OMX BX, Inc. (''BX''). The proposed rule change was published for comment in the **Federal Register** on February 14, 2013.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Background

PHLX Rule 985(b) prohibits the Exchange or any entity with which it is affiliated from, directly or indirectly, acquiring or maintaining an ownership interest in, or engaging in a business venture with, an Exchange member or an affiliate of an Exchange member in the absence of an effective filing under Section 19(b) of the Act.[4] NES is a registered broker-dealer that is a member of the Exchange, and currently provides to members of the Exchange optional routing services to other markets.[5] NES is owned by NASDAQ OMX Group, Inc. (''NASDAQ OMX''), which also owns three registered securities exchanges—the Exchange, BX, and the NASDAQ Stock Market LLC (''NASDAQ'').[6] Thus, NES is an affiliate of these exchanges.[7] Absent an effective filing, PHLX Rule 985(b) would prohibit NES from being a member of the Exchange. The Commission initially approved NES's affiliation with PHLX in connection with NASDAQ OMX's acquisition of PHLX,[8] and NES currently performs certain limited activities for the Exchange.[9]

On October 6, 2011, PHLX filed a proposed rule change for the System to accept inbound orders routed from the NASDAQ OMX BX Equities Market of BX on a pilot basis subject to certain limitations and conditions.[10] On February 6, 2013, the Exchange filed the instant proposal to allow the Exchange to accept such orders routed inbound by NES from BX on a permanent basis subject to certain limitations and conditions.[11]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[13] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68889 (February 8, 2013), 78 FR 10666 (''Notice'').

[4] 15 U.S.C. 78s(b). PHLX Rule 985 also prohibits a PHLX member from being or becoming an affiliate of PHLX, or an affiliate of an entity affiliated with PHLX, in the absence of an effective filing under Section 19(b). *See* PHLX Rule 958(b)(1)(B).

[5] *See* PHLX Rule 3315. *See also* Notice, *supra* note 3, at10667.

[6] *See* Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31) (order approving NASDAQ OMX's acquisition of PHLX) (''PHLX Acquisition Order'').

[7] *See id. See also* Notice, *supra* note 3, at 10667. *See also,* Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR–Phlx–2010–79).

[8] *See* PHLX Acquisition Order, *supra* note 6, at 42887.

[9] *See, e.g.,* PHLX Rule 3315 (governing order routing by PHLX). *See also* Securities Exchange Act Release No. 65469 (October 3, 2011), 76 FR 62486 (October 7, 2011) (SR–Phlx–2011–108).

[10] *See* Securities Exchange Act Release No. 65553 (October 13, 2011), 76 FR 64987

(October 19, 2011) (SR–Phlx–2011–138) (notice of proposed rule change to allow the System to accept inbound orders from the NASDAQ OMX BX Equities Market of BX on a one-year pilot basis). *See also,* Securities Exchange Act Release No. 67996 (October 5, 2012), 77 FR 62282 (October 12, 2012) (SR–Phlx–2012–118) (extending one-year pilot for an additional six-month period).

[11] *See* Notice, *supra* note 3.

[12] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(1).

Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange of which it is a member, the Exchange previously proposed, and the Commission approved, limitations and conditions on NES's affiliation with the Exchange.[15] Also recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to NES's affiliation with the Exchange to permit the Exchange to accept inbound orders that NES routes in its capacity as a facility of BX on a pilot basis.[16] The Exchange has proposed to permit PHLX to accept inbound orders that NES routes in its capacity as a facility of BX on a permanent basis, subject to the same limitations and conditions of this pilot:

- First, the Exchange and the Financial Industry Regulatory Authority (''FINRA'') will maintain a Regulatory Contract, as well as an agreement pursuant to Rule 17d–2 under the Act (''17d–2 Agreement'').[17] Pursuant to the Regulatory Contract and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NES's compliance with certain PHLX rules.[18] Pursuant to the Regulatory Contract, however, the Exchange retains ultimate responsibility for enforcing its rules with respect to NES.
- Second, FINRA will monitor NES for compliance with PHLX's trading rules, and will collect and maintain certain related information.[19]
- Third, FINRA will provide a report to the Exchange's chief regulatory officer (''CRO''), on a quarterly basis, that: (i) quantifies all alerts (of which the Exchange or FINRA is aware) that identify NES as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NES as a participant that has potentially violated Commission or PHLX rules.
- Fourth, the Exchange has in place PHLX Rule 985, which requires NASDAQ OMX, as the holding company owning both the Exchange and NES, to establish and maintain procedures and internal controls reasonably designed to ensure that NES does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange.

The Exchange stated that it has met all the above-listed conditions. By meeting such conditions, the Exchange believes that it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, and has demonstrated that NES cannot use any information advantage it may have because of its affiliation with the Exchange.[20]

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.[21] Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit NES, in its capacity as a facility of BX, to route orders inbound to the Exchange on a permanent basis instead of a pilot basis, subject to the limitations and conditions described above.[22]

The Exchange has proposed four ongoing conditions applicable to NES's routing activities, which are enumerated above. The Commission believes that these conditions will mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of NES,[23] combined with FINRA's monitoring of NES's compliance with the Exchange's rules and quarterly reporting to the Exchange, will help to protect the independence of the Exchange's regulatory responsibilities with respect to NES. The Commission also believes that the Exchange's Rule 985(b) is designed to ensure that NES cannot use any information advantage it may have

[14] 15 U.S.C. 78f(b)(5).

[15] *See supra,* note 7, at 56637. *See also* Notice, *supra* note 3, at 10667 n.8 and accompanying text. In addition, the Exchange has authority to accept inbound orders that NES routes in its capacity as a facility of NASDAQ, subject to certain limitations and conditions. *See supra* note 7, at 56637.

[16] *See* Notice, *supra* note 3, at 10667.

[17] 17 CFR 240.17d–2.

[18] NES is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

[19] Pursuant to the Regulatory Contract, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of BX routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations. *See* Notice, *supra* note 3, at 10667 n.12.

[20] *See* Notice, *supra* note 3, at 10667.

[21] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving NASDAQ's proposal to adopt NASDAQ Rule 2140, restricting affiliations between NASDAQ and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–Amex–2008–62 and SR–NYSE–2008–60) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2009–85) (order approving the purchase by ISE Holdings of an ownership interest in Direct Edge Holdings LLC); 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order granting the exchange registration of BATS Exchange, Inc.); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order granting the exchange registration of EDGX Exchange, Inc. and EDGA Exchange, Inc.); and 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (order granting the exchange registration of BATS–Y Exchange, Inc.).

[22] The Commission notes that these limitations and conditions are consistent with those previously approved by the Commission for other exchanges. *See, e.g.,* Securities Exchange Act Release Nos. 67256 (June 26, 2012) 77 FR 39277 (July 2, 2012) (SR–BX–2012–030); and 64090 (March 17, 2011), 76 FR 16462 (March 23, 2011) (SR–BX–2011–007).

[23] This oversight will be accomplished through the 17d–2 Agreement between FINRA and the Exchange and the Regulatory Contract. *See* Notice, *supra* note 3, at 10667 n.10 and accompanying text.

because of its affiliation with the Exchange.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–Phlx–2013–15) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–07316 Filed 3–28–13; 8:45 am]

BILLING CODE 8011–01–P

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69205; File No. SR–ICC–2013–02]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Publishing of ICC Circular Related to Swap Data Repository Reporting

March 21, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 4, 2013, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by ICC. ICC filed the proposal pursuant to Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1)[4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICC proposes to publish ICC Circular 2013/005,[5] titled *Parts 45 and 43 SDR Reporting Requirements for Off-Facility CDS-Clearing Related Swaps (Firm Trades),* related to the Commodity Futures Trading Commission's (''CFTC'') Part 43 and Part 45 regulations (Swap Data Repository Reporting) (''ICC Circular 2013/005'').

On December 19, 2012, CFTC staff granted conditional No-Action Relief (12–59) for Swap Dealers and Major Swap Participants that are clearing members from reporting certain off-facility swaps (the ''No-Action Relief''). Specifically, the No-Action Relief states that, subject to certain conditions, the CFTC Division of Market Oversight will not recommend that the CFTC take enforcement action against a reporting counterparty (clearing member) for failure to comply with its obligations to report swap data arising from swaps that have been entered into pursuant to a Derivatives Clearing Organization's CDS Settlement Price Process (''CDS Clearing-Related Swaps'').

ICC's CDS settlement price process requires that clearing members enter into ''firm trades'' in order to ensure that prices submitted by clearing members are reliable and accurate. Clearing members face ICC as their counterparty with respect to firm trades and firm trades are automatically cleared. As a result, firm trades constitute CDS Clearing-Related Swaps (''ICC CDS Clearing-Related Swaps''). ICC currently reports all of its cleared swaps, including ICC CDS Clearing-Related Swaps, to ICE Trade Vault LLC (''ICE Trade Vault''), a duly registered SDR.

As a condition to the No-Action Relief, clearing members and ICC must agree, as evidenced by private agreement or pursuant to ICC's Rules, that ICC shall fulfill all of the clearing member's obligations with respect to reporting ICC CDS Clearing-Related Swaps pursuant to Part 45. To satisfy this condition, ICC plans to issue ICC Circular 2013/005 establishing that ICC will continue to report ICC CDS Clearing-Related Swaps to ICE Trade Vault thereby satisfying any related reporting obligation of its clearing members pursuant to Part 45 until the expiration of the No-Action relief on June 30, 2013.

In addition, ICC Circular 2013/005 is intended to satisfy any Part 43 reporting obligations of ICC's clearing members related to ICC CDS Clearing-Related Swaps to the extent that any such reporting obligations might exist. ICC will be responsible, in the capacity of a third-party provider, for reporting required swap transaction and pricing data in real-time to ICE Trade Vault on behalf of a clearing member that is a Swap Dealer or Major Swap Participant. In the event that any clearing member would like to ''opt out'' of this ICC Part 43 reporting service, the clearing member should notify ICC Client Services at *css@theice.com.*

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[6]

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed change is to publish ICC Circular 2013/005 in order to satisfy a condition of the No-Action Relief. ICC plans to publish ICC Circular 2013/005 establishing that ICC will continue to report ICC CDS Clearing-Related Swaps to ICE Trade Vault thereby satisfying any related reporting obligation of its clearing members pursuant to Part 45 until the expiration of the No-Action relief on June 30, 2013. In addition, ICC Circular 2013/005 is intended to satisfy any Part 43 reporting obligations of ICC's clearing members related to ICC CDS Clearing-Related Swaps to the extent that any such reporting obligations might exist. Publishing ICC Circular 2013/005 does not require any changes to the ICC risk management framework. The only change being submitted is publishing ICC Circular 2013/005.

Section 17A(b)(3)(F) of the Act[7] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular with Section 17A(b)(3)(F),[8] because facilitating clearing members' reporting obligations promotes the prompt and accurate settlement of securities transactions and the safeguarding of securities and funds.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] Circular number may change based on any other sequentially numbered ICC Circulars issued prior to the March 18, 2013 Circular date.

[6] The Commission has modified the text of the summaries prepared by ICC.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1(b)(3)(F).

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) [9] of the Act and Rule 19b–4(f)(1) [10] 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–ICC–2013–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICC–2013–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICC and on ICC's Web site (*https://www.theice.com/publicdocs/regulatory_filings/ICEClearCredit_030413.pdf*).

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2013–02 and should be submitted on or before April 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–07295 Filed 3–28–13; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69225; File No. SR–NYSE–2013–22]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting Commentary .01 to NYSE Rule 2B, Which Provides an Exception Related to the Exchange's Equity Ownership Interest in BIDS Holdings L.P.

March 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 2013, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete Commentary .01 to NYSE Rule 2B, which provides an exception related to the Exchange's equity ownership interest in BIDS Holdings L.P. (''BIDS Holdings''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to delete Commentary .01 to NYSE Rule 2B, which provides an exception related to the Exchange's equity ownership interest in BIDS Holdings.

On January 22, 2009, the Securities and Exchange Commission (the ''Commission'') approved on a pilot basis the governance structure proposed by the Exchange with respect to the New York Block Exchange (''NYBX''), an electronic trading facility of the Exchange for NYSE-listed securities that was established by means of a joint venture between the Exchange and BIDS Holdings.[3] The governance structure that was approved is reflected in the Limited Liability Company Agreement (the ''LLC Agreement'') of New York Block Exchange LLC (the ''Company''), the entity that owns and operates

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (the ''Approval Order'').

NYBX. Under the governance structure approved by the Commission, the Exchange and BIDS Holdings each own a 50% economic interest in the Company. In addition, the Exchange, through its wholly-owned subsidiary NYSE Market, Inc., owns less than 10% of the aggregate limited partnership interest in BIDS Holdings. BIDS Holdings is the parent company of BIDS Trading, L.P. (''BIDS Trading''), which became a member organization of the Exchange in connection with the establishment of NYBX.

The foregoing ownership arrangements would violate NYSE Rule 2B without an exception from the Commission.[4] First, the Exchange's indirect ownership interest in BIDS Trading would violate the prohibition in Rule 2B against the Exchange maintaining an ownership interest in a member organization. Second, BIDS Trading is an affiliate of an affiliate of the Exchange,[5] which would violate the prohibition in Rule 2B against a member of the Exchange having such status. Consequently, in approving NYBX, the Commission imposed certain limitations and conditions, one of which was set forth in Commentary .01 of Rule 2B. That commentary provides that the Exchange and BIDS Holdings must establish and maintain procedures and internal controls reasonably designed to ensure that BIDS Holdings and its affiliates do not have access to certain non-public information relating to the Exchange.

In the Approval Order, the Commission permitted an exception to these two potential violations of NYSE Rule 2B, subject to a number of limitations and conditions as follows:[6]

- First, that NYSE and the Financial Industry Regulatory Authority (''FINRA'') enter into an agreement pursuant to Rule 17d–2 under the Act,[7] under which FINRA is allocated regulatory responsibilities to review BIDS Trading's compliance with certain NYSE rules.
- Second, that NYSE Regulation monitor BIDS Trading for compliance with NYSE's trading rules and collect and maintain certain related information.[8]
- Third, that NYSE Regulation provide a report to NYSE's Chief Regulatory Officer, on a quarterly basis, that (i) quantifies all alerts (of which NYSE Regulation is aware) that identify BIDS Trading as a participant that has potentially violated NYSE or Commission rules, and (ii) quantifies the number of all investigations that identify BIDS Trading as a participant that has potentially violated NYSE or Commission rules.
- Fourth, that NYSE and BIDS Holdings establish and maintain procedures and internal controls reasonably designed to ensure that BIDS Holdings and its affiliates do not have access to non-public information relating to the Exchange, obtained as a result of BID Holdings' affiliation with NYSE, until such information is available generally to similarly situated members of NYSE.[9] Under this rule, BIDS Holdings and its affiliates may have access to non-public information relating to the parties' obligations under the LLC Agreement, and such non-public information must be kept confidential in accordance with Section 14.1 of the LLC Agreement.
- Fifth, that if, during at least four of the preceding six calendar months, the average daily trading volume in NYBX exceeds 10% of the aggregate daily trading volume of NYSE, then, within 180 days, either an independent third party self-regulatory organization engaged by the Company must begin to conduct surveillance of BIDS Trading with respect to BIDS Trading's trading activity on both NYBX and NYSE, or BIDS Holdings must reduce its interest in the Company such that it does not exceed the ''Concentration Limitation.''[10]
- Sixth, that NYSE, or any of its affiliates, may not directly or indirectly increase its equity interest in BIDS Holdings above 10% without prior Commission approval.[11]
- Finally, that the exceptions from NYSE Rule 2B would be for a pilot period of 12 months.

The original 12-month pilot period expired on January 22, 2010 and has been extended for four additional 12-month periods to January 22, 2014.[12]

The Exchange ceased operating NYBX on February 28, 2013 because, after years of operations, the facility did not garner enough volume to achieve critical mass and did not have strong customer support.[13] Accordingly, on March 1, 2013, BIDS Trading terminated its membership with the Exchange and its affiliate, NYSE MKT LLC (''NYSE MKT''). Because BIDS Trading is no longer a member organization of the Exchange or any of the Exchange's affiliates, the Exchange proposes to delete Commentary .01 to NYSE Rule 2B and notes that the conditions and limitations described in the Approval Order no longer apply.[14]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, because it promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, helps to protect investors and the public interest. The Exchange believes that the proposal removes impediments to and perfects the mechanism of a free and open market by reducing potential confusion that may result from having unnecessary rule commentary in the Exchange's rulebook. Specifically, because BIDS Trading is no longer a member organization of the Exchange or any of its affiliates, the relationship between the Exchange and BIDS Holdings no longer violates Rule 2B and therefore no longer requires an exception to that rule.

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

[4] NYSE Rule 2B provides, in relevant part, that ''[w]ithout prior SEC approval, the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization. In addition, a member organization shall not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange. * * * The term affiliate shall have the meaning specified in Rule 12b–2 under the Act.''

[5] Specifically, the Company is an affiliate of the Exchange, and BIDS Trading is an affiliate of the Company based on their common control by BIDS Holdings. The affiliation in each case is the result of the 50% ownership interest in the Company by each of the Exchange and BIDS Holdings.

[6] *See* Approval Order at 5018. At the time of the Approval Order, BIDS Trading had not yet become a member of the Exchange. *Ibid.* (stating that BIDS ''will become a member of NYSE in connection with the establishment of NYBX'') (citing Securities Exchange Act Release No. 58970 (November 17, 2008), 73 FR 71062 (November 24, 2008) (SR–NYSE–2008–120) (the ''Notice'') at 71062). Accordingly, the limitations and conditions set out in the Approval Order only referenced BIDS Holdings. The Exchange has updated the limitations and conditions from the Approval Order to reference BIDS Trading, where appropriate.

[7] 17 CFR 240.17d–2.

[8] *See* Approval Order at n.75 (stating that ''NYSE Regulation 'will collect and maintain the following information of which NYSE Regulation staff becomes aware—namely, all alerts, complaints, investigations and enforcement actions where BIDS [Trading] (in its capacity as an NYSE member) is identified as a participant that has potentially violated NYSE or applicable SEC rules—in an easily accessible manner so as to facilitate any review conducted by the SEC's Office of Compliance Inspections and Examination'''') (citing the Notice at 71068).

[9] *See* NYSE Rule 2B, Commentary .01.

[10] *See* Section 9.9 of the LLC Agreement.

[11] *See supra* note 4.

[12] *See* Securities Exchange Act Release Nos. 61409 (January 22, 2010), 75 FR 4889 (January 29, 2010) (SR–NYSE–2010–04); 63545 (December 14, 2010), 75 FR 80088 (December 21, 2010) (SR–NYSE–2010–82); 66059 (December 27, 2011), 77 FR 145 (January 3, 2012) (SR–NYSE–2011–67); and 68658 (January 15, 2013), 78 FR 4524 (January 22, 2013) (SR–NYSE–2013–01).

[13] *See* Securities Exchange Act Release No. 68861 (February 7, 2013), 78 FR 10226 (February 13, 2013) (SR–NYSE–2013–12).

[14] The Exchange notes that the conditions and limitations were applicable through March 1, 2013, when BIDS Trading ceased to be an Exchange member organization. As such, the report to the Exchange's Chief Regulatory Officer, enumerated in the third condition, should include BIDS Trading activity through to March 1, 2013.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather would delete unnecessary rule commentary in the Exchange's rulebook, thereby reducing confusion and making the Exchange's rules easier to understand and navigate.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[19]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to delete unnecessary and obsolete rule text and therefore make the Exchange's rules easier to understand and navigate. Therefore, the Commission designates the proposed rule change as operative upon filing.[20]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtm*l); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2013–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2013–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549. Copies of the filing will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–NYSE–2013–22 and should be submitted on or before April 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–07314 Filed 3–28–13; 8:45 am]

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[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6).

[19] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] For the 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).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69232; File No. SR–BX–2013–013]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving a Proposed Rule Change for the Permanent Approval of a Pilot Program To Receive Inbound Orders Routed by NASDAQ Execution Services LLC From PSX

March 25, 2013.

I. Introduction

On February 6, 2013, NASDAQ OMX BX, Inc. (''Exchange'' or ''BX'') 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 requesting permanent approval of the Exchange's pilot program that permits the BX Equities Market (the ''System'') to accept inbound orders routed by NASDAQ Execution Services LLC (''NES'') from the NASDAQ OMX PSX facility (''PSX'') of NASDAQ OMX PHLX LLC (''PHLX''). The proposed rule change was published for comment in the **Federal Register** on February 14, 2013.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Background

BX Rule 2140(a) prohibits the Exchange or any entity with which it is affiliated from, directly or indirectly, acquiring or maintaining an ownership interest in, or engaging in a business venture with, an Exchange member or an affiliate of an Exchange member in the absence of an effective filing under Section 19(b) of the Act.[4] NES is a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68890 (February 8, 2013), 78 FR 10674 (''Notice'').

[4] 15 U.S.C. 78s(b). BX Rule 2140(a) also prohibits a BX member from being or becoming an affiliate of BX, or an affiliate of an entity affiliated with BX, in the absence of an effective filing under Section 19(b). *See* BX Rule 2140(a)(2).

registered broker-dealer that is a member of the Exchange, and currently provides to members of the Exchange optional routing services to other markets.[5] NES is owned by NASDAQ OMX Group, Inc. (''NASDAQ OMX''), which also owns three registered securities exchanges—the Exchange, the NASDAQ Stock Market LLC (''NASDAQ'') and PHLX.[6] Thus, NES is an affiliate of these exchanges.[7] Absent an effective filing, BX Rule 2140(a) would prohibit NES from being a member of the Exchange. The Commission initially approved NES's affiliation with BX in connection with BX OMX's acquisition of BX,[8] and NES currently performs certain limited activities for the Exchange.[9]

On September 30, 2011, BX filed a proposed rule change for the System to accept inbound orders routed from PSX on a pilot basis subject to certain limitations and conditions.[10] On February 6, 2013, the Exchange filed the instant proposal to allow the Exchange to accept such orders routed inbound by NES from PSX on a permanent basis subject to certain limitations and conditions.[11]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[13] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange of which it is a member, the Exchange previously proposed, and the Commission approved, limitations and conditions on NES's affiliation with the Exchange.[15] Also recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to NES's affiliation with the Exchange to permit the Exchange to accept inbound orders that NES routes in its capacity as a facility of PSX on a pilot basis.[16] The Exchange has proposed to permit BX to accept inbound orders that NES routes in its capacity as a facility of PSX on a permanent basis, subject to the same limitations and conditions of this pilot:

- First, the Exchange and the Financial Industry Regulatory Authority (''FINRA'') will maintain a Regulatory Contract, as well as an agreement pursuant to Rule 17d–2 under the Act (''17d–2 Agreement'').[17] Pursuant to the Regulatory Contract and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NES's compliance with certain BX rules.[18] Pursuant to the Regulatory Contract, however, the Exchange retains ultimate responsibility for enforcing its rules with respect to NES.
- Second, FINRA will monitor NES for compliance with BX's trading rules, and will collect and maintain certain related information.[19]
- Third, FINRA will provide a report to the Exchange's chief regulatory officer (''CRO''), on a quarterly basis, that: (i) Quantifies all alerts (of which the Exchange or FINRA is aware) that identify NES as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NES as a participant that has potentially violated Commission or BX rules.
- Fourth, the Exchange has in place BX Rule 2140(c), which requires NASDAQ OMX, as the holding company owning both the Exchange and NES, to establish and maintain procedures and internal controls reasonably designed to ensure that NES does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange.

The Exchange stated that it has met all the above-listed conditions. By meeting such conditions, the Exchange believes that it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, and has

[5] *See* BX Rule 4758. *See also* Notice, *supra* note 3, at10674.

[6] *See* Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01) (order approving NASDAQ OMX's acquisition of BX) (''BX Acquisition Order'');

[7] *See id. See also* Notice, *supra* note 3, at 10674. *See also,* Securities Exchange Act Release No. 65514 (October 7, 2011), 76 FR 63969 (October 14, 2011) (SR–BX–2011–066).

[8] *See* BX Acquisition Order, *supra* note 6, at 46944.

[9] *See, e.g.,* BX Rule 4758 (governing order routing by BX). *See also* Securities Exchange Act Release Nos. 65470 (October 3, 2011), 76 FR 62489 (October 7, 2011) (SR–BX–2011–048).

[10] *See* Securities Exchange Act Release No. 65514 (October 7, 2011), 76 FR 63969 (October 14, 2011) (SR–BX–2011–066) (notice of proposed rule change to allow the System to accept inbound orders from the NASDAQ OMX BX Equities Market of BX on a one-year pilot basis). *See also,* Securities Exchange Act Release No. 67995 (October 5, 2012), 77 FR 62292 (October 12, 2012) (extending one-year pilot for an additional six-month period).

[11] *See* Notice, *supra* note 3.

[12] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(1).

[14] 15 U.S.C. 78f(b)(5).

[15] *See supra,* note 6, 73 FR at 46944. *See also,* Notice, *supra* note 3, at 10675 n.8 and accompanying text. In addition, the Exchange has authority to accept inbound orders that NES routes in its capacity as a facility of NASDAQ, subject to certain limitations and conditions. *See supra* note 6, 73 FR at 46944.

[16] *See* Notice, *supra* note 3, at 10675.

[17] 17 CFR 240.17d–2.

[18] NES is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

[19] Pursuant to the Regulatory Contract, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of PSX routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations. *See* Notice, *supra* note 3, at 10675 n.12.

demonstrated that NES cannot use any information advantage it may have because of its affiliation with the Exchange.[20]

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.[21] Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit NES, in its capacity as a facility of PSX, to route orders inbound to the Exchange on a permanent basis instead of a pilot basis, subject to the limitations and conditions described above.[22]

The Exchange has proposed four ongoing conditions applicable to NES's routing activities, which are enumerated above. The Commission believes that these conditions will mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of NES,[23] combined with FINRA's monitoring of NES's compliance with the Exchange's rules and quarterly reporting to the Exchange, will help to protect the independence of the Exchange's regulatory responsibilities with respect to NES. The Commission also believes that the Exchange's Rule 2140(a) is designed to ensure that NES cannot use any information advantage it may have because of its affiliation with the Exchange.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–BX–2013–013) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–07317 Filed 3–28–13; 8:45 am]

BILLING CODE 8011–01–P

[20] *See* Notice, *supra* note 3, at 10675.

[21] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving NASDAQ's proposal to adopt NASDAQ Rule 2140, restricting affiliations between NASDAQ and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–Amex–2008–62 and SR–NYSE–2008–60) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2009–85) (order approving the purchase by ISE Holdings of an ownership interest in Direct Edge Holdings LLC); 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order granting the exchange registration of BATS Exchange, Inc.); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order granting the exchange registration of EDGX Exchange, Inc. and EDGA Exchange, Inc.); and 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (order granting the exchange registration of BATS–Y Exchange, Inc.).

[22] The Commission notes that these limitations and conditions are consistent with those previously approved by the Commission for the Exchange. *See, e.g.,* Securities Exchange Act Release Nos. 67256 (June 26, 2012) 77 FR 39277 (July 2, 2012) (SR–BX–2012–030); and 64090 (March 17, 2011), 76 FR 16462 (March 23, 2011) (SR–BX–2011–007).

[23] This oversight will be accomplished through the 17d–2 Agreement between FINRA and the Exchange and the Regulatory Contract. *See* Notice, *supra* note 3, at 10675 n.10 and accompanying text.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69234; File No. SR–MIAX–2013–15]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Limit Up Limit Down Functionality

March 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on March 25, 2013, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, 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 is filing a proposal to amend Exchange Rule 530, Limit Up-Limit Down (''LULD''), to provide for how the Exchange proposes to treat option orders, market-making quoting obligations, openings, priority quotes (as defined below), systemic changes, Trading Pauses and openings following a Trading Pause in response to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, as it may be amended from time to time (the ''Plan''). The proposed rules establish procedures to address extraordinary volatility in NMS Stocks and outlines MIAX's LULD processing for options overlying such NMS Stocks. Rule 530, as proposed to be amended, will be effective on a one year pilot basis beginning on the date of implementation of the Plan.

The text of the proposed rule change is provided in *Exhibit 5.*[3] The text of the proposed rule change is also available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend MIAX Rule 530 to provide for how the Exchange proposes to treat options orders, market-making quoting obligations, openings, priority quotes (as defined below), systemic changes, Trading Pauses, and openings following a Trading Pause in response to the Plan.

Background

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, i.e., the ''flash crash,'' the equities exchanges and The Financial Industry Regulatory Authority (''FINRA'') have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that Exhibit 5 is attached to the filing, not to this notice.

Among the measures adopted include pilot plans for stock-by-stock trading pauses, related changes to the equities market clearly erroneous execution rules, and more stringent equities market maker quoting requirements. On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis. In addition, the Commission approved changes to the equities market-wide circuit breaker rules on a pilot basis to coincide with the pilot period for the Plan. The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands.[4] The instant proposed rule change is intended to adopt MIAX rules that address the trading of options overlying NMS Stocks that are the subject of the Plan and its provisions during times of unusual volatility in the markets.

The requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). All trading centers in NMS stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan.

Limit State and Straddle State

As set forth in more detail in the Plan, Price Bands consisting of a Lower Price Band and an Upper Price Band for each NMS Stock are calculated by the Processors. When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors shall disseminate such National Best Bid (Offer) with an appropriate flag identifying it as unexecutable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors shall distribute such National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation. All trading centers in NMS stocks must maintain written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for NMS stocks. Notwithstanding this requirement, the Processor shall display an offer below the Lower Price Band or a bid above the Upper Price Band, but with a flag indicating that it is non-executable. Such bids or offers shall not be included in the National Best Bid or National Best Offer calculations. Trading in an NMS stock immediately enters a Limit State if the National Best Offer (Bid) equals but does not cross the Lower (Upper) Price Band. Trading for an NMS stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause pursuant to Section VII of the Plan, which would be applicable to all markets trading the security.

In addition, the Plan defines a Straddle State as when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS stock is not in a Limit State. For example, assume the Lower Price Band for an NMS Stock is $9.50 and the Upper Price Band is $10.50, such NMS stock would be in a Straddle State if the National Best Bid were below $9.50, and therefore non-executable, and the National Best Offer were above $9.50 (including a National Best Offer that could be above $10.50). If an NMS stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a trading pause for that NMS stock if such Trading Pause would support the Plan's goal to address extraordinary market volatility.

Relief From Market Maker Quoting Obligations

The Exchange proposes to adopt Rule 530(f) to address Market Maker quoting obligations during Straddle States and Limit States. Specifically, the Exchange proposes to adopt proposed Rules 530(f)(1)(i)–(iv) to state that during such periods Market Makers will be relieved of the following obligations (collectively, ''the quoting obligations''): (i) The bid/ask differential requirements set forth in Exchange Rule 603(b)(4); (ii) the minimum quote size requirement set forth in Exchange Rule 604(b)(2); (iii) the two-sided quote requirement set forth in Exchange Rule 604(c); and (iv) the continuous quote requirement set forth in Exchange Rule 604(e).

The Exchange acknowledges the effect of limited price discovery in the underlying stock on the direct relationship between an options price and the price of the underlying security. During a Limit State or Straddle State, the bid price or offer price of the underlying security will be unexecutable and the ability to hedge the purchase or sale of an option will be jeopardized. Recognizing that it may be impossible to hedge to offset the risk created by trading options, the Exchange expects that Market Makers will, as a result, modify their quoting behavior. The Exchange therefore believes it is reasonable and appropriate to relieve Market Makers from their quoting obligations as proposed during a Limit or Straddle State.

Given the uncertain effect on liquidity for affected option contracts during a Limit or Straddle State, the Exchange believes it is reasonable to relieve Market Makers from the complete suite of quoting obligations as proposed and not just the continuous quote requirements of Exchange Rule 604(e). Offering relief from Exchange Rule 604(e) provides needed flexibility to Market Makers during the affected periods of uncertain price discovery. The Exchange believes that if it does not afford relief from the remaining Market Maker quoting obligations, such as the bid-ask differential of Rule 603(b)(4), the minimum size requirement set forth in Exchange Rule 604(b)(2), the requirement to submit two-sided quotes set forth in Exchange Rule 604(c), and the continuous quoting obligations set forth in Exchange Rule 604(e), such flexibility would be compromised. If for example, the National Best Bid or Offer (''NBBO'') has a bid/ask differential that is greater than $5.00, a Market Maker would be compelled to improve one or both sides of the NBBO to stay within the $5.00 bid-ask differential requirement of Rule 603(b)(4). Given the option, the Exchange believes that Market Makers would likely choose not to quote at all over assuming unwanted risk by being compelled to quote at one or both sides of the NBBO. In the interest of promoting liquidity during these periods, the Exchange believes it best to relieve Market Makers of all quoting obligations.

The Exchange will exclude the amount of time an NMS stock underlying a MIAX option is in a Limit State or Straddle State from the total amount of time in the trading day when calculating the percentage of the trading day MIAX Market Makers are required to quote. The Exchange believes that this is appropriate for the same reasons discussed above, in light of the limited price discovery in the underlying stock and the direct relationship between an options price and the price of the underlying security. During a Limit State or Straddle State, the bid price or offer price of the underlying security will be unexecutable and the ability to hedge the purchase or sale of an option will be jeopardized.

Proposed Rule 530(f)(2) states that the relief described in sub-paragraphs (f)(1)(i)-(iv) shall terminate when the

[4] Unless otherwise specified, capitalized terms used in this filing are based on the defined terms of the Plan.

Limit or Straddle State no longer exists in the affected NMS Stock.

Market Maker Participation Guarantees

Proposed Rule 530(f)(3) states that the provisions of Exchange Rule 514 concerning priority of quotes and orders shall remain unchanged during periods of relief from quoting obligations pursuant to proposed Rule 530(f).

Exchange Rule 514 describes, among other things, priority of quotes and orders on the Exchange, allocation methods used on the Exchange, and participation guarantees granted to certain Market Makers. Rule 514(g) details the Primary Lead Market Maker (''PLMM'') participation guarantee and Rule 514(h) describes the Directed Lead Market Maker (''DLMM'') participation guarantee. The participation guarantees set forth in Exchange Rule 514 only apply if the affected PLMM or DLMM has submitted a priority quote at the NBBO.

The PLMM and DLMM each have a more stringent quoting obligation during normal trading conditions than other Market Makers, and the participation guarantee rewards them for these elevated quoting obligations. Although proposed Rule 530 would relieve PLMMs and DLMMs of their quoting obligations, the Exchange believes that they should continue to be entitled to receive the participation guarantee for executions in which they participate during a Limit or Straddle State.

As previously noted, the Exchange expects a Limit State and a Straddle State to have a negative impact on liquidity in the options markets, and that some Market Makers may elect not to quote at all during such times of extreme volatility. Market Makers who quote at the NBBO during these times may face greater risk in doing so given the pricing uncertainty in the underlying NMS Stock, and the Exchange believes that affording them the participation guarantees set forth in Exchange Rule 514 should serve as a reward to Market Makers who assume a higher than normal risk in quoting at the NBBO.

Moreover, the Exchange believes that the use of participation guarantees, which can be found on other options exchanges,[5] provides incentives for Market Makers to provide liquidity at the NBBO during Limit States and Straddle States. Accordingly, proposed Rule 530(f)(3) preserves the operation of Rule 514 by continuing to grant participation entitlements for options when the underlying NMS Stock has entered either a Straddle or Limit State. The Exchange believes that rewarding Market Makers for their assumption of higher than normal risk during times of extreme market volatility and promoting and fostering liquidity through the participation guarantee will help in the maintenance of a fair and orderly market. The Exchange further believes that removing the participation guarantees from the operation of Rule 514 would have the adverse effect of motivating Market Makers to remove liquidity and further destabilize the marketplace at a time when stability and liquidity is most needed. Lastly, the Exchange notes that the participation guarantee only applies if the qualifying Market Maker participates in the execution at the NBBO.

Opening Process

Proposed Rule 530(g) sets forth changes in the manner in which the Exchange's System will function during Limit and Straddle States.

Proposed Rule 530(g)(1) describes the functionality of the Exchange's Opening Process[6] when a Straddle State or Limit State occurs before and during the Opening Process.

Proposed Rule 530(g)(1)(i) provides that Opening Process shall be delayed for options overlying an NMS Stock that is in a Straddle State or a Limit State prior to the opening of trading such overlying options and that the Opening Process shall begin when such Straddle or Limit State has ended and there is not a halt or Trading Pause in effect. The Exchange therefore will not open an option overlying an NMS Stock that is in a Limit State or Straddle State.

Proposed Rule 530(g)(1)(ii) addresses scenarios where the Exchange's Opening Process has started but not yet completed when the underlying NMS Stock enters a Straddle or Limit State. When the affected option is in the Opening Process but trading has not begun, the Opening Process will be terminated when the underlying NMS Stock is in a Limit or Straddle State. The Opening Process will begin anew in the affected overlying options when such Limit or Straddle State has ended and there is not a halt or Trading Pause in effect. Thus, if an Opening Process is occurring, it will cease and then start the Opening Process from the beginning once the Limit or Straddle State is no longer present.

Priority Quotes

The Exchange is proposing to adopt rules that would qualify all quotes as priority quotes[7] when LULD Functionality is in effect. Proposed Rule 530(g)(2)(i) states that, notwithstanding the provisions of Exchange Rule 517(b),[8] all quotes that result in an execution during a period in which LULD Functionality is engaged shall be deemed to be priority quotes for allocation purposes.

The purpose of the proposed rule is to provide incentive for Market Makers to submit quotations during Limit and Straddle states by affording their quotes priority quote status, ensuring them of priority executions over professional interest when they assume the risk of quoting at or near the NBBO during times of extreme volatility.

The Exchange believes that deeming all quotes to be priority quotes should be strictly limited to the time period in which the affected underlying NMS Stock is in either a Limit or Straddle State (and LULD Functionality is thus engaged). Accordingly, proposed rule 530(g)(2)(ii) would state clearly in the Exchange's rules that, for executions occurring when LULD Functionality is not engaged, the priority status of a quote for allocation purposes shall be determined by the provisions of Rule 517(b).

[5] *See* Phlx Rule 1014(b)(vii), CBOE Rule 6.45A(a)(ii)(2), C2 Rule 8.19, NYSE Amex Rule 964.2NY, and ISE Rule 713(e) for entitlements comparable to MIAX's Primary Lead Market Maker participation entitlement. *See* Phlx Rules 1014(b)(viii) and 1080(1), CBOE Rules 8.13 and 6.45A(a)(ii)(2), C2 Rules 6.12(a)(3)(B) and 8.13, NYSE Amex Rule 964.1NY, and ISE Rules 713 and 811 for entitlements comparable to MIAX's Directed Lead Market Maker participation entitlement.

[6] For a complete description of the Exchange's Opening Process, *see* Exchange Rule 503.

[7] For trade allocation purposes, quotes will be considered either priority quotes (*i.e.,* trade allocation will be in accordance with Rule 514(e), which provides priority quotes with precedence over all Professional Interest) or non-priority quotes (i.e., trade allocation will be in accordance with Rule 514(e), which also provides non-priority quotes are considered together with all other Professional Interest) based upon a Market Maker's quote width at certain times as described in the rule. *See* Exchange Rule 517(b).

[8] The Exchange is proposing to deem all quotes as priority quotes that result in an execution during a period in which LULD Functionality is engaged, notwithstanding the requirement under normal circumstances that, to be considered a priority quote at the time of execution, each of the following standards must be met: (A) the bid/ask differential of a Market Maker's two-sided quote pair must be valid width (no wider than the bid/ask differentials outlined in Rule 603(b)(4)); (B) the initial size of both of the Market Maker's bid and the offer must be in compliance with the requirements of Rule 604(b)(2); (C) the bid/ask differential of a Market Maker's two-sided quote pair must meet the priority quote width requirements defined below in subparagraph (ii) for each option; and (D) either of the following are true: (1) At the time a locking or crossing quote or order enters the System, the Market Maker's two-sided quote pair must be valid width for that option and must have been resting on the Book; or (2) Immediately prior to the time the Market Maker enters a new quote that locks or crosses the MBBO, the Market Maker must have had a valid width quote already existing (i.e., exclusive of the Market Maker's new marketable quote or update) among his two-sided quotes for that option. *See* Exchange Rule 517(b)(i).

As with participation guarantees as discussed above, the Exchange believes that rewarding Market Makers for their assumption of higher than normal risk during times of extreme market volatility by deeming all quotes submitted during a Limit or Straddle State to be priority quotes will help in the maintenance of a fair and orderly market. Such rewards are intended to promote and foster liquidity in the options marketplace. The Exchange further believes that, absent this and the other incentives proposed herein, Market Makers could be motivated to remove liquidity and further destabilize the marketplace at a time when stability and liquidity is most needed. The Exchange notes that the priority quote status only applies if the qualifying Market Maker participates in the execution at the NBBO.

The Exchange believes that the incentive for Market Makers to quote at the NBBO during periods of extreme volatility and the concomitant extraordinary risk assumed by Market Makers in submitting quotes at the NBBO under such conditions is consistent with the fundamental principle of customer protection incorporated in the Act. The Exchange expects that liquidity and stability in the options markets will be compromised during a Limit or Straddle State. The participation guarantees and priority quote status described in the instant proposed rule change, taken as a whole, are intended to mitigate the anticipated diminished liquidity and stability in the options markets brought about by a Limit or Straddle State. These incentives for Market Makers to quote and to assume extraordinary risk are intended to enhance liquidity and stability during times of unusual volatility in the options marketplace, which should promote customer protection and foster stability in the marketplace as a whole.

Trading Pauses and Opening After a Trading Pause

Proposed Rule 530(h) provides that the Exchange will halt trading in options overlying an NMS Stock that is subject to a Trading Pause. During a Trading Pause, the Exchange System will purge all quotes in the affected option, yet maintain orders existing in the Exchange System prior to the Trading Pause. Additionally, the Exchange System will accept incoming orders and quotes, including market orders.

Proposed Rule 530(i) provides that the Exchange will open trading following a Trading Pause pursuant to the Exchange's opening procedures contained in Rule 503. Proposed Rule 530(i) further adds that, consistent with provisions of the Plan,[9] the Exchange may resume trading in options contracts overlying an affected NMS Stock if trading on the Primary Listing Exchange has not resumed within ten minutes of receipt of a Trading Pause and at least one exchange has resumed trading in such NMS Stock.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(5) of the Act [11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

The Exchange believes that excluding the Limit and Straddle State from a Market Maker's quoting obligation calculation should promote just and equitable principles of trade by recognizing the particular risk that arises for liquidity providers who cannot hedge. Whenever an NMS stock is in a Limit or Straddle State, trading continues; however, there will not be a reliable price for a security to serve as a benchmark for the price of the option. Accordingly, the Exchange seeks to expressly remove these periods from consideration in order to enable MIAX Market Makers to provide the necessary liquidity and facilitate transactions on the Exchange.

The Exchange also believes that the proposed rules concerning MIAX LULD Functionality described herein during a Limit or Straddle State will minimize undue risk to MIAX Market Makers, and thus will lead them to continue to act as Market Makers, rather than potentially causing Market Makers to de-register. The Exchange also believes that these changes will help to protect all investors from executions in options at prices that are not based on a reliable benchmark for the price of an option during times of significant volatility.

[9] *See* Section VII(B)(3) of the Plan.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange believes the proposed changes will not impose any burden on intra-market competition because it applies to all MIAX participants equally. The Exchange does not believe the proposed rules will impose any burden on inter-market competition as the proposed rules are intended to protect investors with the implementation of the Plan. In addition, the proposed changes will provide certainty of treatment and execution of options orders during periods of extraordinary market volatility.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–MIAX–2013–15 on the subject line.

[12] The Commission notes that the Exchange requested accelerated approval of the filing.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–MIAX–2013–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–MIAX–2013–15 and should be submitted on or before April 8, 2013.[13]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–07318 Filed 3–28–13; 8:45 am]

BILLING CODE 8011–01–P

[13] The Commission believes that a 10-day comment period is reasonable, given the urgency of the matter. It will provide adequate time for comment.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69227; File No. SR–CBOE–2013–035]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Exchange Trading Days and Hours of Business and Trading Halts

March 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 11, 2013, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange rules to clarify Rules 6.1, ''Days and Hours of Business,'' and 6.3, ''Trading Halts.'' 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 Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to change its rules to clarify when it will be open for trading along with when trading halts on underlying securities will inhibit trading on the Exchange. The Exchange is proposing to amend its rules to clarify that it will not be solely dependent upon the ''primary market'' when determining when to open and/or halt securities. Instead, the Exchange is proposing to clarify in its rules that it will be open if there is ample liquidity in the underlying market for the security. Generally, the national equity exchanges have the same core business hours.[3] With this proposal, the Exchange is attempting to clarify in its rules that it can remain open to trade options during such business hours even if the ''primary market'' of the underlying securities is not open for business. The Exchange believes that the proposed changes will allow the markets to continue to function in an instance where all exchanges may not be open. In addition, the Exchange believes the proposed changes will bring greater clarity to its Trading Permit Holders (''TPHs'') regarding when the Exchange will be open for trading.

Currently, Exchange Rule 6.1 provides that no TPH ''shall make any bid, offer, or transaction on the Exchange before or after'' business hours.[4] As an administrative clean-up change, the Exchange is proposing to eliminate this language as it is no longer relevant. Executions may only happen during business hours, however, TPHs now have the ability to submit information in the electronic system outside of business hours. The Exchange believes deleting this language would bring greater clarity to Exchange rules while updating the rule text to the current trading environment.

Next, the Exchange is proposing to add language to Rule 6.1.01 to specify that the Exchange will not solely rely on the ''primary market'' of an underlying security to determine whether the Exchange may trade the option for such security. The Exchange believes that the proposed rule change will specify that if there is an ample market in the underlying security, the Exchange has the authority to trade the option even if

[3] *See,* e.g., New York Stock Exchange Rule 51(a) and Bats Exchange Rule 1.5(w) which describes regular trading hours as 9:30 a.m. through 4:00 p.m. Eastern.

[4] *See* Exchange Rule 6.1.

the primary market is not open. The Exchange believes that allowing such discretion will create a lesser market disruption if the primary exchange is unable to open for trading.

Exchange Rule 6.3 specifies when the Exchange will halt trading.[5] Specifically, Rule 6.3(a) lists factors that may be considered in making that determination. Currently, Rule 6.3(a)(i) lists, as a factor in the decision with respect to options, ''trading in the underlying security has been halted or suspended in the primary market.'' The Exchange is proposing to add language to state, instead of the ''primary market,'' that the Exchange may factor in if ''trading in the underlying security has been halted or suspended in one or more of the markets trading the underlying security.'' The Exchange is proposing to make similar changes in 6.3(a)(iii) which lists factors in making the determination in securities other than options. The Exchange believes the proposed changes will grant discretion for the Exchange to be open for trading when there is a robust market in the underlying security rather than limit it to only when the ''primary'' exchange is open.

Next, the Exchange is proposing to add language to Rule 6.3.01 to expand the authority of a Post Director or Order Book Official to suspend trading in an option not only if the ''primary market'' of the security has halted or suspended trading but if the security has been halted in ''one or more of the markets trading the underlying security.'' The Exchange believes this change will give the authority to a Post Director or Order Book Official to halt trading in an option if the primary market for an underlying security is not open for business however that security is being traded elsewhere. For example, if the primary market is unable to open due to a natural disaster, or other circumstance, but other stock exchanges are trading the underlying security, the proposed change will allow the Exchange to continue trading the overlaying options.

Finally, the Exchange is proposing to amend language in Rule 6.3.05. Rule 6.3.05 currently allows the Exchange to turn off the Retail Automation Execution System (''RAES'') with respect to a stock-option order if credible information has been communicated that trading in the underlying stock has been halted for that stock-option order.[6] The Exchange is proposing to add language to specifically state that the information communicated may be that ''one or more of the markets trading the underlying security'' have suspended trading in the underlying security. Again, the Exchange believes this language would allow the Exchange to continue trading stock-option orders even if the primary market has not opened for business.

The Exchange believes the proposed changes will allow the Exchange to trade options for underlying stocks even if that underlying listing market shall be unable to trade due to an emergency or other circumstance unique to that stock exchange. Making these proposed changes will allow the Exchange to trade options when an underlying security is trading on any national securities exchange regardless of where that security is formally listed. The proposed discretion attempts to create a lessor market disruption if a listing or primary market is unable to trade due to some circumstance. Because of the connectivity of the national securities exchanges today, the Exchange believes limiting its ability to trade options to when the primary market of the underlying security is open might hurt investors if some circumstance should render the primary exchange inoperable. In addition, the Exchange believes that the reference to ''primary market'' is ambiguous and has the potential to cause confusion. Thus, the Exchange believes by further clarifying the language, it is clearer when the Exchange will be open for trading.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change protects investors by allowing trading in options as long as the underlying security is trading on another exchange. Instead of only relying on the ''primary market,'' the proposed rule change attempts to clarify when options will trade on the Exchange to allow greater continuity in the marketplace. By allowing the Exchange to trade options whenever the underlying securities are trading, the proposed changes seek to create less of a disconnect if the ''primary'' market should be experiencing technical difficulties, an emergency, or other situation that may inhibit it to be connected to the marketplace.

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. The Exchange does not believe the proposed rule change imposes any burden on intramarket competition because it is applied to all TPHs. In addition, the Exchange does not believe the proposed rule change will impose any burden on intermarket competition as it will merely give the Exchange discretion to trade options when there is an ample market for the underlying security of those options. Thus, the Exchange believes the proposed rule change will promote competition by giving the Exchange the ability to trade options when the underlying security is trading anywhere, and, thus, helping the Exchange to better participate in the marketplace.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which

[5] *See* Exchange Rule 6.3.

[6] *See* Exchange Rule 6.3.05.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–035 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–2013–035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–035, and should be submitted on or before April 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Deputy Secretary.

[FR Doc. 2013–07299 Filed 3–28–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69226; File No. SR–BATS–2013–018]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

March 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 13, 2013, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members [5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to modify the monthly fee for 1G physical ports to access the Exchange at the primary data center where the Exchange's servers are located.

The Exchange currently maintains a presence in two third-party data centers: (i) the primary data center where the Exchange's business is primarily conducted on a daily basis, and (ii) a secondary data center, which is predominantly maintained for business continuity purposes. The Exchange currently provides Members and non-Members four 1G physical ports free of charge at the primary data center and charges $2,500 per month for each additional single physical port at such data center. Separately, the Exchange charges $1,000 for each 1G physical port at the secondary data center. The Exchange proposes to normalize its 1G physical port fee at $1,000 for any such connection at either data center. Accordingly, the Exchange proposes to modify its fee for physical ports to access the Exchange at the Exchange's primary data center to a fee of $1,000 per 1G physical port. The Exchange is not proposing to modify its port fees for 1G physical ports at the secondary data center or for 10G physical ports at either data center.

The proposal is intended to account for increased infrastructure costs associated with providing physical ports. Based on the proposal, the change applies to all Exchange constituents with 1G physical connections, including Members that obtain ports for direct access to the Exchange, non-member service bureaus that act as a conduit for

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

orders entered by Exchange Members that are their customers, Sponsored Participants, and market data recipients.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[6] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls.

The Exchange operates in a highly competitive market in which exchanges offer connectivity services as a means to facilitate the trading activities of members and other participants. Accordingly, fees charged for connectivity are constrained by the active competition for the order flow of such participants as well as demand for market data from the Exchange. If a particular exchange charges excessive fees for connectivity, affected members will opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, the exchange charging excessive fees would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it by affected members, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.

The Exchange believes that the proposal to increase physical port fees for 1G connections at its primary data center is equitably allocated, reasonable, and not unfairly discriminatory in that the proposal will help the Exchange to cover increasing infrastructure costs associated with maintaining the primary and secondary data centers. Although the Exchange has historically provided 1G physical ports free of charge unless a participant maintains more than four ports, the Exchange notes that most of its primary competitors charge for each physical connection.[8] To that end, the Exchange believes that the proposed fee for 1G physical ports is reasonable in that it is in the same range as analogous fees charged by other such exchanges, which range from $500 to $2,150 per physical port for 1G connectivity to data centers in the general proximity to the Exchange's primary data center.[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, the Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, including port fee access, would serve to impair an exchange's ability to compete for order flow rather than burdening competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and paragraph (f) of Rule 19b–4 thereunder.[11] 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–BATS–2013–018 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.

All submissions should refer to File Number SR–BATS–2013–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2013–018 and should be submitted on or before April 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–07315 Filed 3–28–13; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] *See, e.g.,* Nasdaq Rule 7034(b); EDGX Fee Schedule.

[9] *See id.*

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69233; File No. SR–NASDAQ–2013–028]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change for the Permanent Approval of a Pilot Program To Permit NASDAQ To Accept Inbound Orders Routed by NASDAQ Execution Services LLC From the BX Equities Market and PSX

March 25, 2013.

I. Introduction

On February 6, 2013, The NASDAQ Stock Market LLC (''Exchange'' or ''NASDAQ'') 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 requesting permanent approval of the Exchange's pilot program that permits the Exchange to accept inbound orders routed by NASDAQ Execution Services LLC (''NES'') from the NASDAQ OMX BX Equities Market of NASDAQ OMX BX, Inc. (''BX'') and the NASDAQ OMX PSX facility (''PSX'') of NASDAQ OMX PHLX LLC (''PHLX''). The proposed rule change was published for comment in the **Federal Register** on February 14, 2013.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Background

NASDAQ Rule 2160(a) prohibits the Exchange or any entity with which it is affiliated from, directly or indirectly, acquiring or maintaining an ownership interest in, or engaging in a business venture with, an Exchange member or an affiliate of an Exchange member in the absence of an effective filing under Section 19(b) of the Act.[4] NES is a registered broker-dealer that is a member of the Exchange, and currently provides to members of the Exchange optional routing services to other markets.[5] NES is owned by NASDAQ OMX Group, Inc. (''NASDAQ OMX''), which also owns three registered securities exchanges—the Exchange, BX, and PHLX.[6] Thus, NES is an affiliate of these exchanges.[7] Absent an effective filing, NASDAQ Rule 2160(a) would prohibit NES from being a member of the Exchange.

On October 6, 2011, the Exchange filed a proposed rule change for NASDAQ to accept inbound orders routed from the NASDAQ OMX BX Equities Market of BX and PSX on a pilot basis subject to certain limitations and conditions.[8] On February 6, 2013, the Exchange filed the instant proposal to allow the Exchange to accept such orders routed inbound by NES from BX and PSX on a permanent basis subject to certain limitations and conditions.[9]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[11] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange of which it is a member, the Exchange previously proposed, and the Commission approved, limitations and conditions on NES's affiliation with the Exchange.[13] Also recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to NES's affiliation with the Exchange to permit the Exchange to accept inbound orders that NES routes in its capacity as a facility of BX and PHLX on a pilot basis.[14] The Exchange has proposed to permit NASDAQ to accept inbound orders that NES routes in its capacity as a facility of BX and PHLX on a permanent basis, subject to the same limitations and conditions of this pilot:

- First, the Exchange and the Financial Industry Regulatory Authority (''FINRA'') will maintain a Regulatory Contract, as well as an agreement pursuant to Rule 17d–2 under the Act (''17d–2 Agreement'').[15] Pursuant to the Regulatory Contract and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NES's compliance with certain NASDAQ rules.[16] Pursuant to the Regulatory Contract, however, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68891 (February 8, 2013), 78 FR 10670 (''Notice'').

[4] 15 U.S.C. 78s(b). NASDAQ Rule 2160 also prohibits a NASDAQ member from being or becoming an affiliate of NASDAQ, or an affiliate of an entity affiliated with NASDAQ, in the absence of an effective filing under Section 19(b). *See* NASDAQ Rule 2160(a)(2).

[5] *See* NASDAQ Rule 4758. *See also* Notice, *supra* note 3, 10670.

[6] *See* Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01) (order approving NASDAQ OMX's acquisition of BX) (''BX Acquisition Order''); Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31) (order approving NASDAQ OMX's acquisition of PHLX) (''PHLX Acquisition Order'').

[7] *See id. See also* Notice, *supra* note 3, at 10670; and Securities Exchange Act No. 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008) (SR–NASDAQ–2008–098). On September 7, 2007, NASDAQ filed a proposed rule change codifying the function of NES. *See* Securities Exchange Release No. 56708 (October 26, 2007), 72 FR 61925 (November 1, 2011) (SR–NASDAQ–2007–078).

[8] *See* Securities Exchange Act Release No. 65554 (October 13, 2011), 76 FR 65311 (October 20, 2011) (SR–NASDAQ–2011–142) (notice of proposed rule change to allow NASDAQ to accept inbound orders from the NASDAQ OMX BX Equities Market of BX and PSX on a one-year pilot basis). *See also,* Securities Exchange Act Release No. 67997 (October 5, 2012), 77 FR 62293 (October 12, 2012) (extending one-year pilot for an additional six-month period).

[9] *See* Notice, *supra* note 3.

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(1).

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra,* note 7, 73 FR at 80486. *See also* Notice, *supra* note 3, at 10670 n.8 and accompanying text.

[14] *See* Notice, *supra* note 3, at 10670.

[15] 17 CFR 240.17d–2.

[16] NES is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

Exchange retains ultimate responsibility for enforcing its rules with respect to NES.

• Second, FINRA will monitor NES for compliance with NASDAQ's trading rules, and will collect and maintain certain related information.[17]

• Third, FINRA will provide a report to the Exchange's chief regulatory officer (''CRO''), on a quarterly basis, that: (i) Quantifies all alerts (of which the Exchange or FINRA is aware) that identify NES as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NES as a participant that has potentially violated Commission or NASDAQ rules.

• Fourth, the Exchange has in place NASDAQ Rule 2160(c), which requires NASDAQ OMX, as the holding company owning both the Exchange and NES, to establish and maintain procedures and internal controls reasonably designed to ensure that NES does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange.

The Exchange stated that it has met all the above-listed conditions. By meeting such conditions, the Exchange believes that it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, and has demonstrated that NES cannot use any information advantage it may have because of its affiliation with the Exchange.[18] In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.[19] Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit NES, in its capacity as a facility of BX and PHLX, to route orders inbound to the Exchange on a permanent basis instead of a pilot basis, subject to the limitations and conditions described above.[20]

The Exchange has proposed four ongoing conditions applicable to NES's routing activities, which are enumerated above. The Commission believes that these conditions will mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of NES,[21] combined with FINRA's monitoring of NES's compliance with the Exchange's rules and quarterly reporting to the Exchange, will help to protect the independence of the Exchange's regulatory responsibilities with respect to NES. The Commission also believes that the Exchange's Rule 2160 is designed to ensure that NES cannot use any information advantage it may have because of its affiliation with the Exchange.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NASDAQ–2013–028) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–07298 Filed 3–28–13; 8:45 am]

BILLING CODE 8011–01–P

[17] Pursuant to the Regulatory Contract, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of BX and PHLX routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations. *See* Notice, *supra* note 3, at 10670 n.11.

[18] *See* Notice, *supra* note 3, at 10671.

[19] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving NASDAQ's proposal to adopt NASDAQ Rule 2140, restricting affiliations between NASDAQ and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–Amex–2008–62 and SR–NYSE–2008–60) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2009–85) (order approving the purchase by ISE Holdings of an ownership interest in Direct Edge Holdings LLC); 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order granting the exchange registration of BATS Exchange, Inc.); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order granting the exchange registration of EDGX Exchange, Inc. and EDGA Exchange, Inc.); and 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (order granting the exchange registration of BATS–Y Exchange, Inc.).

[20] The Commission notes that these limitations and conditions are consistent with those previously approved by the Commission for other exchanges. *See, e.g.,* Securities Exchange Act Release Nos. 67256 (June 26, 2012) 77 FR 39277 (July 2, 2012) (SR–BX–2012–030); and 64090 (March 17, 2011), 76 FR 16462 (March 23, 2011) (SR–BX–2011–007).

[21] This oversight will be accomplished through the 17d–2 Agreement between FINRA and the Exchange and the Regulatory Contract. *See* Notice, *supra* note 3, at 10670 n.10 and accompanying text.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8262]

Biodiversity Beyond National Jurisdiction; Notice of Public Meeting

ACTION: Notice of public meeting.

SUMMARY: The Department of State will hold an information session regarding issues related to marine biodiversity in areas beyond national jurisdiction.

DATES: The public meeting will be held on April 23, 2013, 10:30am–12:00pm in Main State, Room 1105, Washington, DC. For the agenda, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Harry S. Truman Main State Building, Room 1105, 2201 C Street NW., Washington, DC 20520.

For Further Information & To Participate In The Meeting, Contact: If you would like to participate in this meeting, please send your (1) name, (2) organization/affiliation, and (3) email address and phone number, as well as any requests for reasonable accommodation, to *BBNJ-Information-Session@state.gov.*

SUPPLEMENTARY INFORMATION: In May 2013, the United States will participate in two workshops of the United Nations General Assembly Working Group on conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. The first workshop will focus on marine genetic resources; the second will focus on conservation and management tools. These workshops are intended to inform the discussion of delegates at the August meeting of the Working Group, in which the United States will also participate. Additional information on the Working Group can be found at this United Nations Web site: *http://www.un.org/Depts/los/biodiversityworkinggroup/biodiversityworkinggroup.htm*

We would like to invite interested stakeholders to share comments,

concerns, and questions about these issues. We, in turn, will provide an overview of past discussions in the Working Group and our approach to the May workshops.

The information obtained from this session and any subsequent related meetings will be used to help us prepare for U.S. participation in international meetings and negotiations on marine biodiversity beyond national jurisdiction, such as the meeting of the UN BBNJ working group August 19–23, 2013.

Reasonable Accommodation

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other reasonable accommodation should be directed to (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date. Requests received after that date will be considered, but might not be possible to fulfill.

Personal data for entry into the Harry S. Truman building are requested pursuant to Pub.L.99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *http://www.state.gov/documents/organization/103419.pdf* for additional information.

Dated: March 22, 2013.

Evan Bloom,

Office Director, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2013–07398 Filed 3–28–13; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending March 16, 2013. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2013–0049.

Date Filed: March 11, 2013.

Due Date for Answers, Conforming Applications, or Motion To Modify Scope: April 1, 2013.

Description: Application of Air China Limited d/b/a Air China requesting an amendment of its foreign air carrier permit to include Houston, Texas as a coterminal point in the United States, together with the existing coterminal points authorized in its foreign air carrier permit.

Docket Number: DOT–OST–2013–0053.

Date Filed: March 14, 2013.

Due Date for Answers, Conforming Applications, or Motion To Modify Scope: April 4, 2013.

Description: Joint application of Delta Air Lines, Inc. (''Delta'') and Pinnacle Airlines, Inc. (''Pinnacle'') requesting a disclaimer of jurisdiction or, in the alternative, approval of the de facto transfer of certain international certificate and other authorities held by Pinnacle to Delta.

Barbara J. Hairston,

Acting Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2013–07363 Filed 3–28–13; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending March 9, 2013. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2007–28233.

Date Filed: March 5, 2013.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 26, 2013.

Description: Application of AirBridgeCargo Airlines, LLC (''ABC'') requesting an amendment of its foreign air carrier permit to engage in scheduled foreign air transportation of property and mail between a point or points in the Russian Federation, on the one hand, via intermediate points, and Houston, Texas; New York, New York; Atlanta, Georgia; Chicago, Illinois; Miami, Florida; Dallas/Fort Worth, Texas; and Los Angeles, California, on the other hand, and beyond. ABC also requests an exemption to engage in scheduled foreign air transportation of property and mail between a point or points in the Russian Federation, on the one hand, via intermediate points, and Miami, Florida; Dallas/Fort Worth, Texas; and Los Angeles, California, on the other hand, and beyond.

Barbara J. Hairston,

Acting Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2013–07372 Filed 3–28–13; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending March 16, 2013

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2013–0048.

Date Filed: March 11, 2013.

Parties: Members of the International Air Transport Association.

Subject: Resolution 787.

PSC Minutes 29 through 43—34th.

PSC held in Abu Dhabi on 18–19 October 2012.

Memorandum.

PSC/RESO/154 dated 4 January 2013.

Intended Effective Date: June 1, 2013.

Barbara J. Hairston,

Acting Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2013–07369 Filed 3–28–13; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Announcement of Charter Renewal of the Radio Technical Commission for Aeronautics (RTCA), Inc.

SUMMARY: The FAA is issuing this notice to advise the public of the charter renewal of RTCA, 1110.77U, a Federal Advisory Committee that seeks resolution of issues and challenges involving air transportation concepts, requirements, operational capabilities, and the associated use of technology and related considerations to aeronautical operations that impact the future Air Traffic Management System. This charter renewal will take effect on April 1, 2013, and will expire after 2 years.

FOR FURTHER INFORMATION CONTACT: Paige Williams, Administrative Officer, Federal Aviation Administration, 950 L'Enfant Plaza SW., Mailstop 4th floor, 081, Washington, DC 20591, (202) 385–4200.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for the charter renewal of RTCA, 1110.77U. RTCA is a not-for-profit organization of government and industry representatives. RTCA benefits the public interest and supports the FAA in performing its duties and responsibilities under Subtitle VII, 49 U.S.C. 40101. The FAA and seven other government agencies use RTCA as a federal advisory committee. On January 2, 1976, the FAA, the major government user of RTCA products, assumed sponsorship on behalf of all government agencies. RTCA brings together representatives of the government and industry to form special committees and steering committees to provide advice and recommendations on key operational and technological issues that impact the Next Generation Air Transportation System (NextGen) implementation and the Air Traffic Management System. This order can be found on the FAA.GOV Web site under ''Regulations & Policies'' and select ''Orders & Notices'' or you can also find this order on the MyFAA Employee Web site. Use ''Tools & Resources'' and select ''Orders & Notices'' or directly at *http://www.faa.gov/documentLibrary/media/Order/1110.77U.pdf.*

Issued in Washington, DC, on March 26, 2013.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–07379 Filed 3–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice: Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Tucson Airport Authority for Tucson International Airport under the provisions of 49 U.S.C. 47501 *et. seq* (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Tucson International Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before September 16, 2013.

DATES: *Effective Date:* The effective date of the start of FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is March 20, 2013. The public comment period ends May 20, 2013.

FOR FURTHER INFORMATION CONTACT: Kristi Regotti, Los Angeles Airports District Office, Room 3000, 15000 Aviation Boulevard, Lawndale, CA 90261 and (310) 725–3614. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Tucson International Airport are in compliance with applicable requirements of Part 150, effective March 20, 2013. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before September 16, 2013. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C. 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

Tucson Airport Authority submitted to the FAA noise exposure maps, descriptions, and other documentation that were produced during the Part 150 Noise Exposure Map and Noise Compatibility Program Update from 2008 through 2012. It was requested that the FAA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Tucson Airport Authority. The specific documentation determined to constitute the noise exposure maps includes:

Exhibit 3–1: Existing (2012) Baseline Noise Exposure Contour, page 3–3.

Exhibit 3–2: Future (2017) Baseline Noise Exposure Contour, page 3–7.

The FAA has determined that these maps for Tucson International Airport are in compliance with applicable requirements. This determination is effective on March 20, 2013. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not

constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Tucson International Airport, also effective on March 20, 2013. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before September 16, 2013.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Western-Pacific Region Office, Airports Division, Room 3012, 15000 Aviation Boulevard, Lawndale, California 90261.

Federal Aviation Administration, Los Angeles Airports District Office, Room 3000, 15000 Aviation Boulevard, Lawndale, CA 90261.

Tucson International Airport, 7005 South Plumer Avenue, Tucson, AZ 85756.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Lawndale, California, on March 20, 2013.

Mia Paredes Ratcliff,

Acting Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 2013–07381 Filed 3–28–13; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Schedule Information Submission Deadline for O'Hare International Airport, San Francisco International Airport, John F. Kennedy International Airport, and Newark Liberty International Airport for the Winter 2013–2014 Scheduling Season

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

ACTION: Notice of submission deadline.

SUMMARY: Under this notice, the FAA announces the submission deadline of May 16, 2013, for Winter 2013–2014 flight schedules at Chicago's O'Hare International Airport (ORD), San Francisco International Airport (SFO), New York's John F. Kennedy International Airport (JFK), and Newark Liberty International Airport (EWR) in accordance with the International Air Transport Association (IATA) Worldwide Slot Guidelines. The deadline coincides with the schedule submission deadline for the IATA Slot Conference for the Winter 2013–2014 scheduling season.

SUPPLEMENTARY INFORMATION: The FAA has designated ORD as an IATA Level 2 airport, SFO as a Level 2 airport, JFK as a Level 3 airport, and EWR as a Level 3 airport. Scheduled operations at JFK and EWR are currently limited by FAA Orders until a final Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport (RIN 2120–AJ89) becomes effective but not later than October 26, 2013.[1] However, the FAA intends to extend those Orders prior to the start of the Winter 2013–2014 scheduling season.

The FAA is primarily concerned about planned passenger and cargo operations during peak hours, but carriers may submit schedule plans for the entire day. At ORD, the peak hours are 0700 to 2100 Central Time (1300 to 0300 UTC), at SFO from 0600 to 2300 Pacific Time (1400 to 0700 UTC), and at EWR and JFK from 0600 to 2300 Eastern Time (1100 to 0400 UTC). Carriers should submit schedule information in sufficient detail including, at minimum, the operating carrier, flight number, scheduled time of arrival or departure, frequency, and effective dates. IATA standard schedule information format and data elements (Standard Schedules Information Manual or SSIM) may be used.

The U.S. winter scheduling season for these airports is from October 27, 2013, through March 29, 2014, in recognition of the IATA northern winter period. The FAA understands there may be differences in schedule times due to different U.S. daylight saving time dates, and the FAA will accommodate these differences to the extent possible.

DATES: Schedules must be submitted no later than May 16, 2013.

ADDRESSES: Schedules may be submitted by mail to the Slot Administration Office, AGC–200, Office of the Chief Counsel, 800 Independence Ave. SW., Washington, DC 20591; by facsimile to: 202–267–7277; or by email to: *7-AWA-slotadmin@faa.gov*.

FOR FURTHER INFORMATION CONTACT: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone number: 202–267–7143; fax number: 202–267–7971; email: r*ob.hawks@faa.gov.*

[1] Operating Limitations at John F. Kennedy International Airport, 73 FR 3510 (Jan. 18, 2008) as amended 76 FR 18620 (Apr. 4, 2011); Operating Limitations at Newark Liberty International Airport, 73 FR 29550 (May 21, 2008) as amended 76 FR 18618 (Apr. 4, 2011).

Issued in Washington, DC, on March 25, 2013.

Mark W. Bury,

Acting Assistant Chief Counsel for International Law, Legislation, and Regulations.

[FR Doc. 2013–07400 Filed 3–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Allocation of Public Transportation Emergency Relief Funds in Response to Hurricane Sandy

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of allocation of Emergency Relief funds.

SUMMARY: The Federal Transit Administration (FTA) announces the allocation of $2,000,000,000 under the Public Transportation Emergency Relief Program (Emergency Relief Program, Catalogue of Federal Domestic Assistance #20.527) for FTA recipients affected by Hurricane Sandy, which impacted the northeastern seaboard in October 2012 and had a particularly devastating impact on transit systems in New York and New Jersey. FTA is allocating funds as outlined in a Notice of Availability of Emergency Relief Funds published in the **Federal Register** on February 6, 2013 (78 FR 8691), and consistent with the requirements of the Disaster Relief Appropriations Act of 2013 (Appropriations Act, Pub. L. 113–2).

Concurrently with this notice of allocations, FTA is publishing in today's **Federal Register** an interim final rule (IFR) for the Emergency Relief Program (49 CFR Part 602). This rule outlines general program requirements that will apply to all funds allocated in this notice and to subsequent grant awards under this program. The rule takes effect immediately.

FTA's Emergency Relief Program was authorized by Congress in the Moving Ahead for Progress in the 21st Century Act (MAP–21, Pub. L. 112–141) and provides FTA with primary responsibility for reimbursing emergency response and recovery costs after an emergency or major disaster that affects public transportation systems. The Appropriations Act provides $10.9 billion for FTA's Emergency Relief Program for recovery, relief and resiliency efforts for public transportation in areas affected by Hurricane Sandy. As a result of the Budget Control Act of 2011 (Pub. L. 112–25), five percent of the $10.9 billion made available under the Appropriations Act ($545,000,000) is subject to the significant spending cuts known as sequestration and is unavailable for Hurricane Sandy disaster relief.

The Appropriations Act requires that not more than $2 billion shall be made available no later than March 30, 2013. With this notice, FTA is allocating the initial $2 billion, excluding funds to be used for program implementation and oversight, to recipients affected by Hurricane Sandy (affected recipients) for eligible emergency response and recovery costs.

In the February 6, 2013, **Federal Register** notice, FTA instructed affected recipients to submit requests for reimbursement of eligible expenses incurred in advance of January 29, 2013, and for the costs of contract work advertised and force account work budgeted prior to January 29, 2013. FTA announced individual allocations on a rolling basis beginning March 6, 2013. Table 1 shows a summary of the allocations made in this notice. Table 2 shows the allocation for each affected recipient.

In addition to funds allocated for the reimbursement of costs meeting the above criteria, FTA is allocating the remainder of the initial $2 billion, based on the anticipated cost of recovery for each affected recipient. These funds are available for eligible emergency operations, emergency protective measures, and emergency and permanent repairs to and replacement of assets that suffered serious damage as a result of the storm. Recipients should develop a list of eligible projects, consistent with the Emergency Relief Program rule, at 49 CFR § 602.17, and review the list of projects with the applicable FTA Regional Office prior to submitting a grant application in FTA's Transportation Electronic Award Management (TEAM) system. FTA granted affected recipients pre-award authority for projects eligible for the initial $2 billion allocation in the February 6, 2013 **Federal Register** notice. Prior to exercising pre-award authority, recipients are encouraged to work with the appropriate Regional Office to ensure that the applicable Federal requirements are followed. All allocations, including these pro-rated allocations, are included in Table 2.

Guidance regarding project eligibility and determinations regarding applicability of certain FTA requirements issued in the February 6, 2013 notice will only apply to costs incurred prior to January 29, 2013, and to other expenses that meet the requirements specified in that notice for inclusion under Category One, Two or Three. Recipients may request waivers of FTA administrative requirements by submitting a request to FTA docket number FTA–2013–0001, as described in the February 6, 2013 **Federal Register** notice, and in the Emergency Relief Program rule at 49 CFR § 602.15, however, recipients should not proceed with a project under the expectation that waivers will be provided. Additional program requirements, considerations and grant application procedures specific to these funds are included in this notice.

FOR FURTHER INFORMATION CONTACT: Contact the appropriate FTA Regional Office found at *http://www.fta.dot.gov* for application-specific information and other assistance needed in preparing a TEAM grant application. For program-specific questions, please contact Adam Schildge, Office of Program Management, 1200 New Jersey Ave. SE., Washington, DC 20590, phone: (202) 366–0778, or email, *Adam.Schildge@dot.gov.* For legal questions, contact Bonnie Graves, Office of Chief Counsel, same address, phone: (202) 366–4011, or email, *Bonnie.Graves@dot.gov.*

SUPPLEMENTARY INFORMATION:

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I. Considerations for Recipients of Emergency Relief Funds

A. Allocation of Funds

FTA is allocating the first $2 billion to affected recipients in two steps. In the first step, FTA prioritized the reimbursement of immediate response and recovery expenses related to Hurricane Sandy. While the list of eligible activities is the same for all allocations under this notice, in order to qualify for reimbursement in this first step, costs must have met the requirements of one of the following three categories: Category One includes

costs incurred or disbursed prior to January 29, 2013. Category Two includes costs related to requests for proposals or invitations to bid that were advertised prior to January 29, 2013. Category Three includes the costs of future force account work that was budgeted prior to January 29, 2013. FTA has already allocated $576,620,159 for expenses under Categories One, Two and Three. The specific grant requirements listed in section II.D. in the February 6, 2013, **Federal Register** notice apply to these three categories of projects.

In the second step, FTA is allocating additional funding for pending validated costs requested under Categories One, Two, and Three and for additional eligible recovery and rebuilding costs. For this second step, which involves a pro-rated allocation, FTA is allocating funds based on detailed damage assessments submitted by affected agencies and prepared in cooperation with FTA and FEMA staff and firms contracted by FTA to provide assistance in compiling and reviewing these assessments. FTA, in coordination with FEMA, performed preliminary assessments of the damage caused by Sandy to assets owned by those transit providers in the states of New York and New Jersey most affected by the storm. These transit providers included the following major transit agencies:

- The Metropolitan Transportation Authority, doing business as:
  - MTA New York City Transit (NYCT)
  - MTA Bus Company (MTA Bus)
  - MTA Metro-North Railroad (MNR)
  - MTA Long Island Railroad (LIRR)
  - MTA Capital Construction Division (MTACC)
- The New York City Department of Transportation (NYCDOT)
- The Port Authority of New York and New Jersey (PANYNJ) which operates Port Authority Trans Hudson (PATH) service and the rebuilding of the World Trade Center Transportation Hub and site
- New Jersey Transit

Affected recipients have had the opportunity to review and provide comments on these damage assessments. The damage assessments include an initial overall cost of recovery and rebuilding for the affected agencies, excluding projects to improve the resiliency of the affected systems to future disasters, is approximately $5.83 billion. Using these initial costs estimates based on these damage assessments, FTA is allocating the remaining $1,402,424,841, less pending validation of Category One, Two, and Three expenses, on a pro-rated basis to the agencies listed above and setting aside two percent of this amount for agencies other than these four that suffered damage. From FTA's earlier damage assessment efforts, it knows that New York State Department of Transportation and many smaller transit agencies such as the City of Long Beach and Nassau County Intercounty Express (NICE); and the counties of Putnam, Rockland and Westchester suffered serious damage. Two percent, or $28,048,497, is available for affected recipients, such as these, that may have eligible expenses not yet reimbursed to date. Affected recipients should contact their regional office to discuss outstanding response and recovery expenses.

As of the date of publication of the Emergency Relief Program rule, FTA is authorized to allocate additional funding beyond the initial $2 billion allocated in this notice. FTA intends to issue a second Notice of Availability of Emergency Relief Funding in the near future for this additional Hurricane Sandy disaster relief funding, over and above the $2 billion allocated in this notice.

B. Use of Funds

Consistent with the February 6, 2013, **Federal Register** notice, funds allocated in this notice are available to reimburse eligible emergency operations, emergency protective measures, and emergency and permanent repairs to and replacement of assets that suffered serious damage as a result of the storm.

FTA has determined that the operating costs of re-establishing regular transit service in the immediate aftermath of the storm are eligible emergency operating expenses and are eligible under this program, subject to the determination by FTA of the appropriate time period and extent of operations as warranted by the condition of the transit system in the immediate aftermath of the storm.

C. Pre-award Authority

In the February 6, 2013, **Federal Register** notice, FTA granted pre-award authority to affected recipients for expenses incurred in preparation for Hurricane Sandy (*e.g.,* evacuation, relocation, protecting and safeguarding assets) and for response and recovery expenses incurred as a result of Hurricane Sandy. Pre-award authority allows affected recipients to incur certain project costs before grant approval and retain the eligibility of those costs for subsequent reimbursement after grant approval.

If a recipient intends to use pre-award authority for the funds allocated in this notice, FTA recommends the recipient submit a proposed program of projects to FTA to verify that all pre-requisite requirements have been met, and that the proposed costs are all eligible under the Emergency Relief program, in advance of incurring any costs. Since this program is new and interim final regulations are being published concurrently with this allocation, recipients may not be familiar with all applicable statutory and regulatory requirements for this program, including those that might be different from other FTA grant programs. If funds are expended for an ineligible project or activity, or for an eligible activity but at an inappropriate time (*e.g.,* prior to environmental review completion), FTA will be unable to reimburse the project sponsor and, in certain cases, the entire project may be rendered ineligible for FTA assistance.

Pre-award authority is described in the Emergency Relief Program rule at 49 CFR § 602.11. In considering the use of pre-award authority, recipients should be aware of the following:

(i) Pre-award authority is not a legal or implied commitment that the subject project will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or implied commitment that all activities undertaken by the applicant will be eligible for inclusion in the project.

(ii) Except as provided for Categories One, Two and Three in section II.D. of the February 6, 2013, **Federal Register** notice, all FTA statutory, procedural, and contractual requirements must be met.

(iii) The recipient must take no action that prejudices the legal and administrative findings that the FTA Regional Administrator must make in order to approve a project.

(iv) The Federal amount of any future FTA assistance awarded to the recipient for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/non-Federal match ratio at the time the funds are obligated.

(v) When FTA subsequently awards a grant for the project, the Federal Financial Report in TEAM-Web must indicate the use of pre-award authority.

D. Application Process

Amounts allocated for costs in Categories One, Two and Three are based on a recipient's demonstration of expenses incurred for emergency operations and capital repair,

reconstruction and replacement expenses in response to Hurricane Sandy. FTA has reviewed each recipient's justification for reimbursement, and has validated specific costs as eligible for reimbursement. Recipients are permitted to submit grant applications in TEAM upon the announcement of an allocation for these expenses. FTA's Regional Offices will review these grant applications for consistency with each agency's request for reimbursement.

Amounts allocated for costs outside these three categories are based on damage assessments prepared by FTA staff, FEMA staff, and contractors. Prior to submitting a grant application or modification for new recovery and rebuilding projects, recipients should submit a proposed list of projects and expenses to FTA's Regional Office for review, consistent with 49 CFR § 602.17. Upon verification by FTA that such projects are eligible, recipients may submit grant applications in TEAM. This review will ensure that all proposed projects and costs are eligible under the Emergency Relief Program.

Recipients are required to maintain records, including but not limited to all invoices, contracts, time sheets, and other evidence of expenses to assist FTA in periodically validating the eligibility and completeness of a recipient's reimbursement requests.

E. 24 Month Expenditure Requirement

Projects funded through the Disaster Relief Appropriations Act of 2013 are subject to section 904(c) of that Act, which requires expenditure of funds within 24 months of grant obligation, unless this requirement is subsequently waived for this program in accordance with guidance to be issued by the Office of Management and Budget. In all cases, oversight procedures will be put in place to ensure that projects are implemented in accordance with the project schedule.

F. Waiver of Remaining Useful Life Requirement

FTA is implementing a blanket waiver to relieve FTA recipients from its useful life requirement with respect to assets that were destroyed or seriously damaged as a result of the storm and taken out of service before the end of their useful life. Due to the damage inflicted by Hurricane Sandy, facilities and equipment that have suffered serious damage and hence qualify for replacement under the Emergency Relief Program are presumed to have no remaining useful life. As a result of this waiver, recipients may apply for funds to replace assets at a 90% Federal share without regard to the Federal share remaining in the destroyed asset.

G. Disposition of Damaged or Destroyed Assets

Although FTA has determined that federally-funded assets seriously damaged or destroyed by Hurricane Sandy have no remaining useful life, recipients may have a financial obligation to FTA for assets that have a fair market value (FMV) in excess of $5,000 at the time of disposition.

Each recipient must notify FTA of how it is disposing of any federally-funded assets that have reached the end of their useful life (or those for which FTA has waived remaining useful life) that have a FMV greater than $5,000 and calculate the pro-rata share of the FMV if FTA funded the asset.

Consistent with the common grant rule at 49 CFR § 18.32(e), FTA Circular 5010.1D, ''Grant Management Requirements,'' October 1, 2008, Chapter IV, subsection 3, *http://www.fta.dot.gov/documents/C_5010_1D_Finalpub.pdf*, discusses disposition of equipment that has reached the end of its service life. If the unit has a FMV of $5,000 or more, then the recipient must reimburse FTA's share of the fair market value of the FTA assisted equipment. Reimbursements and documentation should be documented in the Sandy grant in TEAM.

H. Treatment of Insurance Proceeds

As stated in the February 6, 2013, Notice of Availability of Emergency Relief Funding, recipients that have received insurance payments for damaged equipment and facilities prior to the receipt of FTA Emergency Relief funding must reduce their reimbursement request by the amount of insurance proceeds allocated for the repair or replacement of a given asset. FTA will participate at a 90 percent Federal share of the net project cost after application of insurance proceeds. If a recipient receives or allocates insurance proceeds to a project after receiving FTA Emergency Relief funds, the recipient must repay to FTA either 90 percent or 100 percent of the insurance proceeds received, depending on the Federal share for that project. Remaining insurance proceeds after repayment may be used as local match. In the event a recipient receives insurance proceeds for an asset and decides not to replace that asset, the waiver of useful life described in section F does not apply, and the recipient must reimburse FTA the remaining Federal interest in that asset in accordance with FTA Circular 5010.1D.

I. Executive Order 11988, Floodplain Management

Executive Order 11988, Floodplain Management, requires Federal agencies to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. In accordance with the Executive Order, recipients shall not use grant funds for any activity in an area delineated as a 'special flood hazard area' or equivalent, as labeled in the Federal Emergency Management Administration's (FEMA) most recent and current data source, unless, prior to seeking FTA funding for such action, the recipient designs or modifies its actions in order to minimize potential harm to or within the floodplain. To guide decision making, recipients shall use the ''best available information'' as identified by FEMA, which includes advisory data (such as Advisory Base Flood Elevations), preliminary and final Flood Insurance Rate Maps (FIRMs), and Flood Insurance Studies (FISs). If FEMA data is mutually determined by FTA and the recipient to be unavailable or insufficiently detailed, other Federal, State, or local data may be used as the ''best available information'' in accordance with Executive Order 11988.

For Hurricane Sandy, the Secretary of Transportation has determined that if a Federally-funded project or activity is located in a floodplain, that the ''best available information'' requires a minimum baseline standard for elevation no less than that found in FEMA's Advisory Base Flood Elevations, where available, plus one foot (ABFE+1). This determination recognizes that the existing Flood Insurance Rate Maps (FIRMs) for the New Jersey and New York coastlines were developed more than 25 years ago. Updated FIRMs are yet to be finalized and will not be available in time to provide updated information to support vital and immediate reconstruction efforts. This determination is based on FEMA's assessment that, following recent storm events including Hurricane Sandy, the base flood elevations shown on some existing FIRMs do not adequately reflect the current coastal flood hazard risk. FEMA recognizes that the ABFEs are based on sound science and engineering, and are derived from more recent data and improved study methodologies compared to existing FIRMs. To reduce the likelihood of future damage from such risks as storm surge, coastal hazards, and projections of sea level rise, the application of an

ABFE+1 standard provides a limited safeguard against the natural recurrence of flood hazards.

Thus, for projects in floodplains, when considering alternatives to avoid adverse effects and determining how to design or modify its actions in order to minimize potential harm to or within the floodplain consistent with Executive Order 11988, recipients should consider that the ''best available information'' for baseline elevation is ABFE, or, if that is not available, FIRM+1. This standard does not mean that transit agencies will be required to move existing facilities to a higher elevation; however, in order to minimize potential harm within the floodplain in accordance with Executive Order 11988, recipients must consider the best available information (ABFE or FIRMs), including sea level rise consistent with the addition of at least one foot over the most up to date elevations. Particularly with respect to existing facilities where relocating them may not be feasible, examples of actions to minimize potential harm to or within the floodplain and reduce the risk of damage from future disasters include but are not limited to updated design features or added protective features (resiliency projects). Consistent with FTA's interim final rule, if State or locally adopted code or standards require higher elevations, those higher standards would apply.

II. Award Administration

A. Grant Application

Once FTA allocates Emergency Relief funds to a recipient, the recipient will be required to submit a grant application electronically via FTA's TEAM system. Recipients should work with their FTA Regional Office to develop and submit their application in TEAM so that funds can be obligated expeditiously. Grant applications in TEAM may only include eligible activities under the Emergency Relief program.

A discretionary project identification number has been assigned to each recipient's allocation for tracking purposes and must be used in the TEAM application.

B. Payment

Upon award, payments to recipients will be made by electronic transfer to the recipient's financial institution through FTA's Electronic Clearing House Operation (ECHO) system.

C. Grant Requirements

Emergency Relief funds may only be used for eligible purposes as defined under 49 U.S.C. 5324 and as described in the Emergency Relief Program Rule (49 CFR Part 602) and the February 6, 2013, Notice of Availability of Emergency Relief Funds.

Recipients of section 5324 funds must comply with all applicable Federal requirements, including FTA's Master Agreement. Each grant for section 5324 funds will include special grant conditions, including but not limited to, application of insurance proceeds, application of any FEMA funds received, section 904(c) of the Disaster Relief Appropriations Act of 2013, Federal share, and enhanced oversight.

D. Reporting Requirements

Post-award reporting requirements include a monthly submission of the Federal Financial Report and Milestone reports in TEAM consistent with FTA's grants management Circular 5010.1D, as well as any other reporting requirements FTA determines are necessary.

E. Oversight and Audits

Recipients are advised that FTA will implement an enhanced oversight process for funds awarded under the Emergency Relief Program in response to Hurricane Sandy. FTA will issue separate guidance on the applicable oversight procedures for grants awarded in response to Hurricane Sandy. In addition, recipients should anticipate a high likelihood of additional scrutiny by the Government Accountability Office (GAO) and the Department of Transportation's Office of the Inspector General (OIG).

Issued in Washington, DC, this 25th day of March, 2013.

Peter Rogoff,

Administrator.

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FEDERAL TRANSIT ADMINISTRATION

Table 1

FTA Section 5324 Emergency Relief Program

Allocation of $2 Billion for Hurricane Sandy Disaster Relief

FY 2013 Disaster Relief Appropriations Available	**$**	**2,000,000,000**
Less Transfer to DOT Office of the Inspector General (OIG)	**$**	**(6,000,000)**
Actual amount available for DOT OIG[1]	*$*	*(5,700,000)*
Less Program Administration and Oversight	**$**	**(14,955,000)**
Less Allocations to Date (Categories One, Two, Three)[2]	**$**	**(576,620,159)**
Total Available for Pro-Rated Allocation	**$**	**1,402,424,841**

[1] The actual amount reflects a five percent reduction as a result of the Budget Control Act of 2011 (Pub. L. 112-25) and the March 1, 2013, OMB Report to the Congress on the Joint Committee Sequestration for Fiscal Year 2013. The reduction is applied to the total appropriation for Hurricane Sandy (less the transfer to the OIG) and for purposes of this allocation was applied to the amount transferred to the OIG.

[2] FTA has allocated funds to date for eligible expenses in three categories. The three categories represent eligible disaster response and recovery expenses incurred, advertised or budgeted prior to January 29, 2013, as described in the February 6, 2013 Notice of Availability of Emergency Relief Funding.

FEDERAL TRANSIT ADMINISTRATION

Table 2

FTA Section 5324 Emergency Relief Program

Allocations for Hurricane Sandy, by Agency

State(s)	Agency	Discretionary Funding ID	Allocated to Date	Pro-Rated Allocations	Total Allocations
CT	Greater Bridgeport Transit District	D2013-SAND-009	$ 21,783	$ -	$ 21,783
CT	Milford Transit District	D2013-SAND-007	$ 5,352	$ -	$ 5,352
CT	Connecticut Department of Transportation	D2013-SAND-010	$ 55,622	$ -	$ 55,622
MA	Massachusetts Bay Transportation Authority	D2013-SAND-011	$ 344,311	$ -	$ 344,311
NY	New York Metropolitan Transportation Authority	D2013-SAND-001	$ 193,893,898	$ 1,000,415,662	$ 1,194,309,560
NY	New York City Department of Transportation[1]	D2013-SAND-012	$ 21,889,326	$ 12,029,487	$ 33,918,813
NY, NJ	Port Authority of New York and New Jersey[2]	D2013-SAND-002; D2013-SAND-008	$ 213,963,997	$ 275,156,637	$ 489,120,634
NJ	New Jersey Transit Corporation	D2013-SAND-004	$ 144,416,559	$ 86,774,558	$ 231,191,117
NY	City of Long Beach	D2013-SAND-006	$ 518,364	$ -	$ 518,364
NY	Westchester County Department of Transportation	D2013-SAND-005	$ 317,200	$ -	$ 317,200
PA	Southeastern Pennsylvania Transportation Authority	D2013-SAND-003	$ 1,192,568	$ -	$ 1,192,568
RI	Rhode Island Public Transit Authority	D2013-SAND-013	$ 1,179	$ -	$ 1,179
N/A	Other (2% of pro-rated allocation)[3]		$ -	$ 28,048,497	$ 28,048,497
	Grand Total		**$ 576,620,159**	**$ 1,402,424,841**	**$ 1,979,045,000**

[1] New York City Department of Transportation's pro-rated allocation includes an allocation of $11,700,000 for an expense that is pending validation.

[2] Includes two project-specific allocations. A total of $159,720,171 has been allocated for the Port Authority Trans Hudson Rail Service and $54,243,826 has been allocated for the World Trade Center Hub Project

[3] Pro-rated allocation for "other" is reserved for agencies that have additional costs that were not allocated under the Category One, Two, Three allocation and have not received an allocation based on their currently estimated cost of recovery.

[FR Doc. 2013–07268 Filed 3–28–13; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0026]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel W.L. STEWART III; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 29, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0026. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel W.L. STEWART III is:

Intended Commercial Use of Vessel: ''Yacht Club Regatta and Sailing Instruction Support''

Geographic Region: ''California''

The complete application is given in DOT docket MARAD–2013–0026 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in

accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

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.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.
Dated: March 12, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–07235 Filed 3–28–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Honda

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the American Honda Motor Co., Inc.'s (Honda) petition for exemption of the Honda Civic vehicle line in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard, 49 CFR part 541, *Federal Motor Vehicle Theft Prevention Standard.*

DATES: The exemption granted by this notice is effective beginning with the 2014 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, W43–439, 1200 New Jersey Avenue SE., Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated December 21, 2012, Honda requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541) for the new MY 2014 Civic vehicle line. The petition requested an exemption from the parts-marking requirement pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Honda provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for its Civic vehicle line. Honda will install a transponder-based electronic engine immobilizer antitheft device as standard equipment on its Civic vehicle line beginning with MY 2014. Key components of the antitheft device will include a passive immobilizer, transponder ignition key, powertrain control module (PCM) and an Immobilizer Entry System (IMOES). Honda stated that the Civic vehicle line will also come equipped with a steering lock, cabin access, a hood release, counterfeit resistant VIN plates and secondary VINs as standard equipment.

Honda stated that activation of its immobilizer device occurs automatically when the vehicle is started without any further action by the driver. Honda also stated that the device will automatically check for start and validation from the PCM and the IMOES when a valid key having a correctly matching code is inserted into the ignition switch. Honda further stated that if the ignition key does not have a correctly matching code, the PCM will prevent fueling of the engine by allowing the vehicle to start and run for a few seconds before becoming completely inoperable and causing the ignition immobilizer telltale on the meter panel to flash. Honda also stated that the device can be activated by using the key fob to unlock the vehicle doors or by unlocking the driver's door with the ignition key. Deactivation of the immobilizer device occurs when a valid key and matching electronic code are verified allowing the engine to continue normal operations.

In order to attract attention to an unauthorized person attempting to enter its vehicles without the use of a key, Honda stated that it will equip 99.9% of its Civic vehicle line with an audible and visible security system that will sound the vehicle's horn and flash the lights when the doors, hood or trunk is open when a key or key fob is not used to disarm the system. The security system is armed when all of the doors are locked and the hood and trunk are closed and locked.

Honda stated that its Civic vehicle line will also incorporate additional features to prevent unauthorized entry of its vehicles without the use of a key. Specifically, the key and key cylinders are designed with special styling features that help to prohibit theft. Honda also stated that as an additional security measure, key duplication of its keys is controlled by its authorized dealers. Honda further stated that its key cylinders are resistant to tampering and that its key fob remotes utilize rolling codes for the lock and unlock functions of its vehicles. Honda's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In addressing the specific content requirements of 543.6, Honda provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Honda conducted tests based on its own specified standards. Honda provided a detailed list of the tests and stated that it follows a rigorous development process ensuring that its antitheft device is reliable and robust for the life of the vehicle. Honda also stated that its antitheft device has no moving parts and does not require the presence of a key fob battery to function.

Honda noted that its immobilizer device was first installed as standard equipment on the MY 2001 Honda Civic. Honda submitted a report by the Highway Loss Data Institute showing an overall reduction in theft rates for the Honda Civic after introduction of the device. Specifically, the Highway Loss Data Institute's report showed a significant theft rate reduction from 92 (years 1998–2000) to 59 (years 2001–2003), with the theft rate described as relative to an overall theft average of 100. Honda also stated that the data shows an immediate decrease in thefts in 2001 with the immobilizer and also a sustained lower theft rate in following years.

In support of its belief that its antitheft device will be as or more effective in reducing and deterring vehicle theft than the parts-marking requirement, Honda referenced data showing the effectiveness of its immobilizer device. Specifically, Honda referenced NHTSA's theft rate data which showed a decrease in thefts since the installation of its device. NHTSA's theft rates for the Honda Civic for MYs 2008, 2009 and 2010 are 1.0353, 0.7830 and 0.8349, respectively. Using an average of 3 MYs' theft data (2008–2010), the theft rate for the Civic vehicle line is well below the median at 0.8844.

Based on supporting evidence submitted by Honda on the device, the agency believes that the antitheft device for the Civic vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device. Honda stated that it will equip its Honda Civic vehicle line with a security system that will attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key on all models within the Civic line except for its DX trim level vehicles.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of Part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that Honda has provided adequate reasons for its belief that the antitheft device for the Honda Civic vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Honda provided about its device.

For the foregoing reasons, the agency hereby grants in full Honda's petition for exemption for the Honda Civic vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with the 2014 model year vehicles. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Honda decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Honda wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: March 26, 2013.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2013–07354 Filed 3–28–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0016; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1992–1994 BMW 3-Series Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that nonconforming 1992–1994 BMW 3-Series passenger cars that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the same 1992–1994 BMW 3-Series passenger cars) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 29, 2013.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments

received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: 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.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC. of Baltimore, Maryland (Registered Importer 90–006) has petitioned NHTSA to decide whether nonconforming 1992–1994 BMW 3-Series passenger cars are eligible for importation into the United States. The vehicles which J.K. Technologies believes are substantially similar are 1992–1994 BMW 3-Series passenger cars that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified 1992–1994 BMW 3-Series passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

J.K. Technologies submitted information with its petition intended to demonstrate that non-U.S. certified 1992–1994 BMW 3-Series passenger cars, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that non-U.S. certified 1992–1994 BMW 3-Series passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic and Electric Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 118 *Power-Operated Window, Partition, and Roof Panel Systems,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheels Disks, and Hub Caps,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* replacement of the instrument cluster with the U.S.-model component and reprogramming the vehicle computer.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* replacement of the headlamps, side marker lamps, and tail lamps with U.S.-model components.

Standard No. 110 *Tire Selection and Rims for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less:* installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection and Rollaway Prevention:* reprogramming the vehicle computer to activate the key warning and belt warning systems.

Standard No. 118 *Power-operated Window, Partition, And Roof Panel Systems:* reprogramming the vehicle computer to conform to the standard.

Standard No. 208 *Occupant Crash Protection:* reprogramming the seat belt warning lamp to activate in the proper manner. The petitioner states that the automatic restraint system in the non-U.S. certified vehicle complies with the standard and is identical to that found on its U.S.-certified counterpart, but that the lap and shoulder belts at the front and rear outboard seating positions must be replaced to conform to the standard.

The petitioner states that the bumper shocks must be replaced with U.S.-model components in order to comply with the Bumper Standard at 49 CFR Part 581.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a certification label must be added in the left front door post area to meet the requirements of 49 CFR Part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Issued on: March 22, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–07267 Filed 3–28–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Ohio Security Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 6 to the Treasury Department Circular 570, 2012 Revision, published July 2, 2012, at 77 FR 39322.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company: Ohio Security Insurance Company (NAIC # 24082). BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH, 03431. PHONE: (617) 357–9500. UNDERWRITING LIMITATION b/: $1,453,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2012 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (see 31 CFR part 223). A list of qualified companies is published annually as of July 1st in the Circular, which outlines details as to the underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: March 12, 2013.

Kevin McIntyre,

Acting Director, Financial Accounting and Services Division.

[FR Doc. 2013–06858 Filed 3–28–13; 8:45 am]

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 50; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130219149–3288–01]

RIN 0648–BC97

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 50

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

ACTION: Proposed rule; emergency action; request for comments.

SUMMARY: NMFS proposes approval of, and regulations to implement, measures in Framework Adjustment 50 (Framework 50) to the Northeast (NE) Multispecies Fishery Management Plan (FMP). Framework 50 would set specifications for fishing years (FYs) 2013–2015, including 2013 total allowable catches (TACs) for the three U.S./Canada stocks, modify the rebuilding program for Southern New England/Mid-Atlantic (SNE/MA) winter flounder, and revise management measures for this stock consistent with the proposed rebuilding strategy. This action also proposes recreational management measures for FY 2013, as well as revisions to the sector carryover program. An emergency action to implement a 2013 catch limit for Georges Bank (GB) yellowtail flounder is also proposed in this action. The proposed regulations are intended to prevent overfishing, rebuild overfished stocks, achieve optimum yield, and ensure that management measures are based on the best available scientific information.

DATES: Comments must be received by April 15, 2013.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2013–0053, by any of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA–NMFS–2013–0053*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Paper, disk, or CD–ROM comments should be sent to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the Proposed Rule for NE Multispecies Framework Adjustment 50.''
- *Fax:* (978) 281–9135, Attn: Sarah Heil.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of Framework 50, its Regulatory Impact Review (RIR), a draft of the environmental assessment (EA) prepared for this action, and the Initial Regulatory Flexibility Analysis (IRFA) prepared by the New England Fishery Management Council are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The IRFA assessing the impacts of the proposed measures on small entities and describing steps taken to minimize any significant economic impact on such entities is summarized in the Classification section of this proposed rule. The Framework 50 EA, RIR, and IRFA are also accessible via the Internet at *http://www.nefmc.org/nemulti/index.html or http://www.nero.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Sarah Heil, Fishery Policy Analyst, phone: 978–281–9257, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The FMP specifies management measures for 16 species in Federal waters off the New England and Mid-Atlantic coasts, including both large-mesh and small-mesh species. Small-mesh species include silver hake (whiting), red hake, offshore hake, and ocean pout; and large-mesh species include Atlantic cod, haddock, yellowtail flounder, pollock, American plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, Acadian redfish, and Atlantic wolffish. Large-mesh species, which are referred to as ''regulated species,'' are divided into 19 fish stocks, and along with ocean pout, make up the groundfish complex.

Amendment 16 to the FMP (Amendment 16) established a process for setting acceptable biological catches (ABCs) and annual catch limits (ACLs) for regulated species and ocean pout, as well as distributing the available catch among the various components of the groundfish fishery. Amendment 16 also established accountability measures (AMs) for the 20 groundfish stocks in order to prevent overfishing of these stocks and correct or mitigate any overages of the ACLs. Framework 44 to the FMP (Framework 44) set the ABCs and ACLs for FYs 2010–2012. In 2011, Framework 45 to the FMP (Framework 45) revised the ABCs and ACLs for five stocks for FYs 2011–2012. Framework 47 to the FMP updated specifications for most groundfish stocks for FYs 2012–2014 and modified management measures to make improvements in the fishery after more than 1 year under ACLs and AMs.

The New England Fishery Management Council (Council) developed and adopted Framework 50, in conjunction with Framework 48 to the FMP (Framework 48), based on the biennial review process established in the FMP to ACLs and revise management measures necessary to rebuild overfished groundfish stocks and achieve the goals and objectives of the FMP. The Council initially intended to set the specifications for FYs 2013–2015, including adoption of FY 2013 TACs for U.S./Canada stocks, through Framework 48 to the FMP (Framework 48). Framework 48 also includes measures to establish allocations of SNE/MA windowpane flounder and GB yellowtail flounder for some non-groundfish fisheries, modify sector management and groundfish fishery AMs, and help mitigate anticipated impacts of the FY 2013 catch limits. At its December 2012 meeting, the Council voted to remove the specifications from Framework 48 and initiate a separate specifications package (Framework 50) for final action at its January 2013 meeting. Due to the drastic cuts in catch limits being proposed for some stocks in FY 2013, the Council decided that it needed additional time to explore any flexibility that may be available for setting specifications and to complete the necessary analyses for the proposed measures. The Council also needed additional time to develop new management measures for SNE/MA winter flounder that are expected to

help mitigate the anticipated impacts of the proposed FY 2013 catch limits. In addition, the Council wanted to wait for the results of the December 2012 benchmark assessments for Gulf of Maine (GOM) and GB cod that were not yet available when the Council took final action on Framework 48.

Proposed Measures

The measures proposed by Framework 50 are described below. The proposed regulations to implement measures in Framework 50 were deemed by the Council to be consistent with Framework 50, and necessary to implement the proposed measures as specified in section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Some of the measures included in this action are being proposed by NMFS under the authority of section 305(d) of the Magnuson-Stevens Act, which says that the Secretary of Commerce (Secretary) may promulgate regulations necessary to ensure that fishery management plans or amendments are implemented in accordance with the Magnuson-Stevens Act. These measures, which are identified and described in this preamble, are necessary to reconcile conflicts between the sector carryover program and the conservation objectives of the FMP in a manner consistent with the National Standards of the Magnuson-Stevens Act. This proposed rule also includes management measures for the common pool and recreational fisheries for FY 2013 that are not included in Framework 50, but that may be considered by the Regional Administrator (RA) under authority provided by the FMP.

1. Southern New England/Mid-Atlantic Winter Flounder Rebuilding Program

The current rebuilding strategy for SNE/MA winter flounder was implemented in 2004 with a targeted rebuilding end date of 2014 with a median probability of success. In 2008, data showed that the stock would not rebuild by 2014, even in the absence of all fishing mortality, but would likely rebuild between 2015 and 2016. As a result, Amendment 16 adopted management measures that would result in fishing mortality rates as close to zero as practicable. The stock is not currently allocated to sectors, and possession is prohibited by commercial and recreational vessels.

A benchmark assessment was completed in June 2011 for SNE/MA winter flounder and concluded that there was less than a 1-percent chance that SNE/MA winter flounder would rebuild by 2014, even if no fishing mortality were allowed from 2012 to 2014. Based on the assessment results, NMFS determined that SNE/MA winter flounder was not making adequate rebuilding progress. Section 304(e)(7) of the Magnuson-Stevens Act says that if the Secretary finds that an FMP has not resulted in adequate progress toward ending overfishing and rebuilding, the Secretary must immediately notify the Council and recommend conservation and management measures that would achieve adequate progress. Therefore, on behalf of the Secretary, NMFS notified the Council in May 2012 that the SNE/MA winter flounder rebuilding program was not making adequate progress. As a result, NMFS also notified the Council that it must implement a revised rebuilding plan for the stock within 2 years, or by May 1, 2014, consistent with the rebuilding requirements of the Magnuson-Stevens Act. In December 2012, the Council developed a proposal to re-specify the ABC for SNE/MA winter flounder to achieve an ACL of at least 1,400 mt while continuing to prevent overfishing. The Council also proposed to allocate this stock to sectors beginning in FY 2013. To allow the Council's proposed revisions to the management approach for SNE/MA winter flounder (see Item 2 of this preamble for more information), NMFS notified the Council that it must revise the rebuilding program for this stock.

Therefore, Framework 50 proposes to revise the rebuilding strategy for SNE/MA winter flounder to rebuild the stock by 2023 with a median probability of success. During the rebuilding program, catch limits would be set based on the fishing mortality rate (F) that would rebuild the stock within its rebuilding timeframe ($F_{rebuild}$). However, groundfish stock projections have recently demonstrated a tendency to overestimate stock growth. Therefore, short-term catch advice for SNE/MA winter flounder could reduce catches from $F_{rebuild}$ in order to account for the scientific uncertainty in the projections. If SNE/MA winter flounder stock size increases more rapidly than originally projected, $F_{rebuild}$ would be recalculated, which could allow increased catch limits in the future.

The minimum rebuilding time (T_{min}) is the amount of time a stock is expected to take to rebuild to its maximum sustainable yield (MSY) biomass level in the absence of any fishing mortality. For SNE/MA winter flounder, T_{min} is 6 yr (from 2013), or 2019. Because the stock can rebuild in less than 10 yr in the absence of all fishing mortality, the maximum rebuilding period for SNE/MA winter flounder is 10 yr. A rebuilding end date of 2023 rebuilds the stock as quickly as possible taking into account the needs of fishing communities. The proposed rebuilding strategy would return greater net benefits than a rebuilding strategy that targets an end date between 2019 and 2023.

2. Southern New England/Mid-Atlantic Winter Flounder Management Measures

Landing Restrictions

As described in Item 1 of this preamble, the prohibition on retention for SNE/MA winter flounder was adopted by Amendment 16 to keep fishing mortality rates as close to zero as practicable in order to rebuild this stock. This measure has effectively reduced fishing mortality and overfishing is not occurring for this stock. At its December 2012 meeting, the Council developed measures that would modify the management program for SNE/MA winter flounder as one way to help mitigate the anticipated impacts of the proposed reductions in the FY 2013 catch limits.

Framework 50 proposes to allocate SNE/MA winter flounder to sectors. As adopted by Amendment 16, each vessel's potential sector contribution (PSC) for SNE/MA winter flounder would be calculated using dealer landings during FYs 1996 through 2006. In addition, Framework 50 proposes to allow landings of SNE/MA winter flounder by commercial and recreational vessels. Sector vessels would be required to land all legal-sized SNE/MA winter flounder, and common pool vessels would be allowed to land legal-sized fish within the trip limit, or any other inseason restrictions, specified by the RA. The current minimum fish size for SNE/MA winter flounder is 12 in (30.5 cm). Common pool management measures for FY 2013 are proposed in Item 8 of this preamble.

These measures are proposed in conjunction with the revised rebuilding plan for the stock (see Item 1 of this preamble). Allowing landings of SNE/MA winter flounder is expected to provide additional fishing opportunities for groundfish vessels in FY 2013 to offset low quotas for some groundfish stocks and promote achieving optimum yield in the fishery. Landings of the stock would also provide the opportunity to collect biological samples from landed fish after 4 years of a prohibition on possession.

Commercial Fishery Accountability Measures

Currently, the AM for SNE/MA winter flounder is zero possession. There is no reactive AM for the stock. In December 2011, a Court order in *Oceana* v. *Locke* required that reactive AMs be developed for all of the stocks not currently allocated to sectors. As a result, Framework 48 proposes an area-based AM for commercial groundfish vessels that would implement gear restrictions for common pool and sector vessels in certain areas if the total ACL for SNE/MA winter flounder is exceeded. Framework 50 proposes to replace this area-based AM for SNE/MA winter flounder for sector vessels with the standard sector AM. All catch (landings and discards) of SNE/MA winter flounder would be attributed to a sector's annual catch entitlement (ACE). Sector vessels would be required to stop fishing in season in the SNE/MA winter flounder stock area once the entire sector's ACE is caught, unless the sector leases additional ACE. A sector may also propose a program to fish on a sector trip in fisheries that are known to have bycatch of NE multispecies, when it does not have ACE for certain stocks, if the sector can show that the limiting stock(s) would be avoided. The proposed rule for the FY 2013 Sector Operations Plans and Contracts and Allocation of the NE Multispecies ACE provides additional detail on this provision (78 FR 16220, March 14, 2013). If a sector exceeds its ACE for the fishing year, the sector's ACE would be reduced by the amount of the overage in the following fishing year. This proposed revision to the AM for sector vessels is made in conjunction with the proposed measure to allocate the stock to sectors and allow landings.

Framework 50 proposes to retain the area-based AM that was proposed in Framework 48 for common pool vessels. However, the AM proposed in this action would be triggered if the common pool sub-ACL is exceeded (not the total ACL as proposed in Framework 48) by more than the management uncertainty buffer. Currently, the management uncertainty buffer for the common pool fishery is 5 percent for SNE/MA winter flounder. The management uncertainty buffers can be revised each time the specifications are set, so the buffer used for the common pool fishery could change in future actions. The AM for common pool vessels would require trawl vessels fishing on a NE multispecies day-at-sea (DAS) to use approved selective trawl gear in certain areas. Approved gears include the separator trawl, the Ruhle trawl, the mini-Ruhle trawl, rope trawl, and any other gear authorized by the Council in a management action, or approved for use consistent with the process defined in § 648.85(b)(6). This area-based AM would not restrict common pool vessels fishing with longline or gillnet gear. The AM would be implemented in the fishing year following the overage, and would be effective for the entire fishing year. The proposed AM would account for an overage of the common pool sub-ACL of up to 20 percent. If the common pool fishery exceeds its sub-ACL by 20 percent or more, the AM would be implemented, and this measure would be reviewed in a future action.

As adopted by Amendment 16, if the total ACL is exceeded, and the overage is caused by a sub-component of the fishery that is not allocated a sub-ACL, and does not have an AM, the overage would be distributed among the components of the fishery that do have a sub-ACL, and if necessary, the pertinent AM would be triggered. If sub-ACLs are allocated to additional fisheries in the future, and AMs developed for those fisheries, the AM for any fishery would only be implemented if it exceeds its sub-ACL, or if the total ACL for the stock is exceeded. If only one fishery exceeds it sub-ACL, only the AM for that fishery would be implemented.

3. U.S./Canada Total Allowable Catches

Eastern GB cod, eastern GB haddock, and GB yellowtail flounder are managed jointly with Canada through the U.S./Canada Resource Sharing Understanding (Understanding). Each year the Transboundary Management Guidance Committee (TMGC), a government-industry committee made up of representatives from the U.S. and Canada, recommends a shared TAC for each stock based on the most recent stock information and the TMGC harvest strategy. The TMGC's harvest strategy for setting catch levels is to maintain a low to neutral risk (less than 50 percent) of exceeding the fishing mortality limit reference for each stock (F_{ref} = 0.18, 0.26, and 0.25 for cod, haddock, and yellowtail flounder, respectively). The TMGC's harvest strategy also specifies that when stock conditions are poor, fishing mortality should be further reduced to promote rebuilding. The shared TACs are allocated between the U.S. and Canada based on a formula that considers historical catch percentages (10-percent weighting) and the current resource distribution based on trawl surveys (90-percent weighting). The U.S./Canada Management Area comprises the entire stock area for GB yellowtail flounder; therefore, the U.S. TAC for this stock is also the U.S. ABC. Eastern GB cod and haddock are sub-units of the total GB cod and haddock stocks. The U.S./Canada TACs for these stocks are a portion of the total ABC.

Assessments for the three transboundary stocks were completed in June 2012 by the Transboundary Resources Assessment Committee (TRAC). A detailed summary of the 2012 TRAC assessment can be found at: *http://www2.mar.dfo-mpo.gc.ca/science/trac/tsr.html.* The TMGC met in September 2012 to recommend shared TACs for FY 2013. Based on the results of the 2012 TRAC assessment, the TMGC recommended a shared TAC of 600 mt for eastern GB cod, 10,400 mt for eastern GB haddock, and 500 mt for GB yellowtail flounder. At its November 14, 2012, meeting, the Council recommended the TMGC's guidance for eastern GB cod and haddock for FY 2013, but it did not recommend the TMGC's guidance for GB yellowtail flounder. The Council selected a preferred-alternative for GB yellowtail flounder of 1,150 mt for FY 2013, which is more than double the TMGC's recommendation of 500 mt. The regulations specify that the Council can refer any or all of the recommended TACs back to the TMGC and request changes to the TACs. Although the Council selected a preferred alternative for GB yellowtail flounder that differed from the TMGC's recommendation, the Council did not request that the TMGC convene to reconsider its recommendation for 2013. The Council's recommendation for GB yellowtail flounder was based on its Scientific and Statistical Committee's (SSC's) recommendation that 1,150 mt could be a backstop ABC if measures were adopted to ensure there is no directed fishery, and bycatch is reduced as much as possible. NMFS raised serious concerns with the Council's recommendation for GB yellowtail flounder during the development of this action, and these concerns are outlined in further detail in Item 4 of this preamble. Due to concerns about the approvability of the Council's preferred ABC alternative of 1,150 mt, NMFS is also proposing an ABC of 500 mt, consistent with the TMGC's recommendation. If the Council's preferred ABC is disapproved in the final rule for Framework 50, NMFS would implement the TMGC-recommendation of 500 mt through a Secretarial emergency action under authority at section 305(c) of the Magnuson-Stevens Act.

The proposed 2013 U.S./Canada TACs and the percentage share for each

country are listed in Table 1. Any overages of the eastern GB cod, eastern GB haddock, or GB yellowtail flounder U.S. TACs would be deducted from the U.S. TAC in the following fishing year. If FY 2012 catch information indicates that the U.S. fishery exceeded its TAC for any of the shared stocks, NMFS would reduce the FY 2013 U.S. TAC for that stock in a future management action, as close to May 1, 2013, as possible. As proposed in Framework 48, if any fishery that is allocated a portion of the U.S. TAC exceeds its allocation, which causes an overage of the U.S. TAC, the overage reduction would be applied to this fishery's sub-ACL in the following fishing year.

TABLE 1—PROPOSED 2013 U.S./CANADA TACS (MT, LIVE WEIGHT) AND PERCENTAGE SHARES

TAC	Eastern GB cod	Eastern GB haddock	GB Yellowtail Flounder *	
			Council-preferred	Proposed emergency
Total Shared TAC	600	10,400	1,150	500
U.S. TAC	96 (16%)	3,952 (38%)	495 (43%)	215 (43%)
Canada TAC	504 (84%)	6,448 (62%)	656 (57%)	285 (57%)

* The GB yellowtail flounder TACs proposed by the Council and NMFS are described in more detail in Item 4 of this preamble.

4. Overfishing Levels and Acceptable Biological Catches

The overfishing level (OFL) for each stock in the FMP is calculated using the estimated stock size and F_{MSY} (i.e., the fishing mortality rate that, if applied over the long term, would result in maximum sustainable yield). The SSC recommends ABCs for each stock that are lower than the OFLs to account for scientific uncertainty. In most cases, the ABCs are calculated using the estimated stock size for a particular year and are based on the catch associated with 75 percent of F_{MSY}, or $F_{rebuild}$, whichever is lower. However, in recent years, catch projections for groundfish stocks have been overly optimistic. Catch projections often overestimate stock growth and underestimate fishing mortality. As a result, even catches that were substantially lower than the projected catch resulted in overfishing for some stocks. So, in many cases, the SSC has recommended ABCs that are lower than the catch associated with 75 percent of F_{MSY} or $F_{rebuild}$, or constant catches for FYs 2013–2015, in order to account for scientific uncertainty. Appendix III to the Framework 50 EA provides additional detail on the proposed OFLs and ABCs for each stock (see **ADDRESSES** for information on how to get this document).

As part of the biennial review process for the FMP, the Council adopts OFLs and ABCs for 3 years at a time. Although it is expected that the Council will adopt new catch limits every 2 years, specifying catch levels for a third year ensures there are default catch limits in place in the event that a management action is delayed. This action proposes the OFLs and ABCs for FYs 2013–2015 for most groundfish stocks, which are presented in Table 2, with a few exceptions that are described below. For GB cod, haddock, and yellowtail flounder, the Canadian share of the ABC, or the expected Canadian catch, is deducted from the total ABC. See Table 1 for the Canadian share of these stocks. The U.S. ABC is the amount available to the U.S. fishery after accounting for Canadian catch.

Catch limits for GB and GOM winter flounder and pollock were adopted in a previous action and are restated here. Also, as mentioned above, GB yellowtail flounder is managed jointly with Canada, and catch limits are set annually for this stock. As a result, Framework 50 only proposes catch limits for GB yellowtail flounder for FY 2013. In addition, the last stock assessment for white hake was completed in 2008. A benchmark assessment for this stock was completed in February 2013; however, the results of this assessment are not yet available at the time of this proposed rule, and were not available when the Council was developing this action. As a result, the SSC recommended that the FY 2013 OFL and ABC for white hake be kept constant to the FY 2012 OFL and ABC. Consistent with established policy, NMFS believes that the best scientific information available will be determined based on the information that is available to the Council during the development of an action. Thus, NMFS considers the FY 2013 specifications for white hake proposed in Framework 50 to be based on the best scientific information available. Should additional information become available that may indicate a change to the FY 2013 catch limit for white hake, the Council or NMFS could consider a separate action to change the white hake catch limits for FY 2013.

Many of the proposed FY 2013 ABCs are substantially lower than the FY 2012 ABCs. Most notably, the proposed GB cod catch level would be approximately 61 percent lower when compared to FY 2012, and the GOM cod catch level would be approximately 78 percent lower compared to FY 2012. Although the Council's recommended ABC for GB yellowtail flounder would be approximately the same as FY 2012, the proposed emergency rulemaking would result in a quota that is approximately 62 percent lower than the FY 2012 catch limit. Some proposed ABCs are status quo to FY 2012 (GB and GOM winter flounder and white hake), and some proposed ABCs are higher than FY 2012. The proposed FY 2013 SNE/MA winter flounder ABC is over 150 percent greater than FY 2012 as a result of the revised management measures for this stock, which are expected to mitigate some of the economic impacts of this proposed action.

Table 2—Proposed FYs 2013-2015 OFLs and U.S. ABCs (live weight, mt)

Stock	2013		2014		2015	
	OFL	U.S. ABC	OFL	U.S. ABC	OFL	U.S. ABC
GB Cod	3,279	2,002	3,570	2,002	4,191	2,002
GOM Cod	1,635	1,550	1,917	1,550	2,639	1,550
GB Haddock	46,185	29,335	46,268	35,699	56,293	43,606
GOM Haddock	371	290	440	341	561	435
GB Yellowtail Flounder Proposed Emergency	882	215				
GB Yellowtail Flounder Council-preferred	unknown	495				
SNE/MA Yellowtail Flounder	1,021	700	1,042	700	1,056	700
Cape Cod (CC)/GOM Yellowtail Flounder	713	548	936	548	1,194	548
American Plaice	2,035	1,557	1,981	1,515	2,021	1,544
Witch Flounder	1,196	783	1,512	783	1,846	783
GB Winter Flounder	4,819	3,750	4,626	3,598		
GOM Winter Flounder	1,458	1,078	1,458	1,078		
SNE/MA Winter Flounder	2,732	1,676	3,372	1,676	4,439	1,676
Redfish	15,468	10,995	16,130	11,465	16,845	11,974
White Hake	5,306	3,638				
Pollock	20,060	15,600	20,554	16,000		
Northern Windowpane Flounder	202	151	202	151	202	151
Southern Windowpane Flounder	730	548	730	548	730	548
Ocean Pout	313	235	313	235	313	235
Atlantic Halibut	164	99	180	109	198	119
Atlantic Wolffish	94	70	94	70	94	70

*Shaded cells indicate that no catch limit is proposed. These catch limits will be specified in a future action.

Proposed FY 2013 Georges Bank Yellowtail Catch Limit

NMFS has serious concerns with the Council's preferred-alternative for the FY 2013 GB yellowtail flounder ABC. The 2012 TRAC assessment noted that, in recent years, catches based on the approved assessment model (Split Series model) have not reduced fishing mortality below the fishing mortality limit reference (F_{ref}), or increased spawning stock biomass as expected. As a result, the 2012 TRAC assessment concluded that 2013 catches should not be based on the unadjusted model results because these catches would likely fail to achieve management objectives for this stock. Catches in 2013 based on the unadjusted model would be approximately 882 mt.

The 2012 TRAC assessment showed that the retrospective pattern in the assessment has increased in magnitude. Retrospective patterns in an assessment could be caused by a number of factors, such as changes in the level of catch that is assumed in the assessment, changes in the natural mortality rate (M), and changes in the survey catchability for a stock. However, fixing a retrospective pattern is difficult because it is often hard to determine the exact cause. Due to the increased magnitude of the retrospective pattern, five sensitivity analyses were performed at the 2012 TRAC to attempt to characterize the uncertainty and risk in the 2013 catch advice. The sensitivity analyses show that a 2013 quota in the range of 200 mt to 500 mt would minimize the retrospective bias. The 2012 TRAC results indicate that the lower end of the 2013 quota range would have a greater probability that F would be less than F_{ref}, and that the adult biomass would increase, than the higher end of the range.

Based on the 2012 TRAC, the TMGC recommended a shared quota of 500 mt (U.S. share 215 mt) for 2013. This recommendation considers the increasing retrospective bias in the GB yellowtail flounder assessment. The TMGC noted that a quota of 500 mt is lower than the catch level that would have less than a 50-percent chance of exceeding F_{ref} based on the unadjusted projection results (882 mt). The TMGC also noted that a quota of 500 mt would be expected to result in an increase in the stock size and falls within the range

of sensitivity analyses provided by the 2012 TRAC assessment.

The SSC met in August 2012 to recommend a FY 2013 OFL and ABC for GB yellowtail flounder. The SSC recommended a range of FY 2013 ABCs for GB yellowtail flounder from 200 mt up to 1,150 mt. The SSC noted that a 2013 catch limit of 200 mt would have a low probability of overfishing and would be expected to allow the stock to increase, and that a 2013 catch limit of 400–500 mt may have a greater probability of overfishing than 200 mt, but would allow some rebuilding. The SSC also noted that the basis for a FY 2013 ABC of 400–500 mt was similar to the basis of its ABC recommendation for FY 2012. The SSC recommended an ABC of 1,150 mt as a backstop measure only, and noted that unintentional bycatch may exceed 500 mt, but total removals should be less than the FY 2012 ABC of 1,150 mt. Under this ABC alternative, the SSC recommended that there should be no directed fishery for GB yellowtail flounder, and that measures should be taken to reduce bycatch as much as possible. Thus, the SSC concluded that an FY 2013 ABC of 1,150 mt is status quo to the FY 2012 ABC, and would only be appropriate when management measures have a high probability of resulting in low fishing mortality rates. At a subsequent meeting in November 2012, the SSC was unable to determine a single OFL value, given the uncertainty in the assessment, and noted that its ABC recommendation of 1,150 mt is not based on the 2012 TRAC assessment. The SSC determined that the OFL for GB yellowtail flounder is unknown.

The SSC's recommendation of 1,150 mt for FY 2013 included a number of conditions that NMFS does not believe the Council satisfied. The Council did not adopt any management measures that would prevent targeting of GB yellowtail flounder or that would result in a high probability of low fishing mortality rates under this ABC alternative. The SSC did not endorse an FY 2013 ABC of 1,150 mt as an appropriate catch level for a directed fishery, and therefore, as currently crafted, the Council's preferred ABC alternative for 2013 appears to be at odds with the SSC recommendation.

NMFS believes that the 2012 TRAC assessment for GB yellowtail flounder represents the best scientific information available. The recommendation for a FY 2013 ABC of 1,150 mt is higher than the catch levels suggested by the unadjusted model results (882 mt). The TRAC indicated that 2013 catches based on the unadjusted model would likely fail to achieve management objectives, and would not appropriately account for the retrospective bias in the assessment. Therefore, based on the 2012 TRAC assessment, a FY 2013 ABC of 1,150 mt would also likely fail to prevent overfishing. Also, the SSC did not reject the 2012 TRAC assessment. Even if the Council had adopted management measures to prevent a directed fishery, as recommended by the SSC, an ABC of 1,150 mt does not appear to be consistent with the 2012 TRAC assessment. As a result, NMFS does not believe that a 2013 catch of 1,150 mt is consistent with the best scientific information available. *NMFS is requesting specific* comments on the basis of this determination, and other specific factors that should be considered in setting the FY 2013 ABC for GB yellowtail flounder at this particular level.

In the event that NMFS disapproves the FY 2013 ABC of 1,150 mt proposed in Framework 50, NMFS is proposing an emergency action to implement FY 2013 catch limits for GB yellowtail flounder under Secretarial authority provided in section 305(c) of the Magnuson-Stevens Act. The FMP does not have any rollover provisions for the FY 2012 quotas if the FY 2013 catch limits are not specified for GB yellowtail flounder. Thus, if the Council's preferred alternative is disapproved, there would be no specifications set for the stock until further action was taken. If no catch limit is specified for GB yellowtail flounder, there would be a potential to cause harm to the resource and severely disrupt the fishery. Sector vessels would be unable to fish beginning on May 1, 2013, in the GB stock area without ACE for GB yellowtail flounder. In addition, other components of the fishery would not be constrained by an ACL that, if exceeded, would trigger an AM (e.g., the scallop fishery, the small-mesh fisheries). This would undermine the joint management of this stock with Canada under the Understanding and increase the likelihood of overfishing. As a result, NMFS, on behalf of the Secretary, finds that a fishery-related emergency exists, and has determined that this situation meets the emergency criteria set forth by NMFS for emergency rulemaking (62 FR 44421, August 21, 1997).

NMFS proposes an OFL of 882 mt and a FY 2013 ABC of 500 mt. This would result in a U.S. quota for GB yellowtail flounder of 215 mt after deducting the Canadian share of the ABC. This ABC is consistent with both the TMGC and SSC's recommendations, and is within the range of 2013 catch levels suggested by the sensitivity analyses conducted at the 2012 TRAC assessment. A 2013 catch level of 500 mt would allow some stock rebuilding, and is less than the 2013 catch level based on the unadjusted model results (882 mt) that the TRAC recommended should not be used as the basis for 2013 catch advice. The lower quota of 200 mt included in the 2012 TRAC results has a higher probability of not exceeding F_{ref}. But, in the sensitivity analyses performed by the TRAC, a 2013 catch of 500 mt would have only a 4-percent chance of exceeding F_{ref} (0.25) in one of the sensitivity analyses. This catch level would also result in some stock rebuilding in all of the sensitivity analyses. The 2012 TRAC assessment did not calculate an average output for the models presented and did not recommend averaging the sensitivity analyses as a basis for catch advice. Thus, NMFS does not believe it is appropriate to average the five sensitivity analyses, and therefore, all of the analyses should be considered in setting the 2013 ABC. A catch limit of 500 mt would balance the need to account for the retrospective bias in the assessment and allow some stock rebuilding, and would be substantially below the proposed OFL for the stock.

Proposed FYs 2013–2015 Catch Limits for GOM Cod

A benchmark assessment was completed for GOM cod in December 2012, and the Stock Assessment Review Committee (SARC) approved two different assessment models. One assessment model (base case model) assumes the natural mortality rate (M) is 0.2. The second assessment model (M_{ramp} model) assumes that M has increased from 0.2 to 0.4 in recent years, though the SARC did not conclude that M would remain 0.4 indefinitely. As a result, fishing mortality targets used in the catch projections from both models are based on reference points that assume M=0.2. A detailed summary of the benchmark assessment is available from the Northeast Fisheries Science Center at: *http://www.nefsc.noaa.gov/saw/saw55/crd1301.pdf.*

The SSC recommended two constant catch ABC alternatives for FYs 2013–2015: 1,249 mt and 1,550 mt. The SSC preferred an ABC of 1,249 mt. Their rationale for this preferred lower level was to help conserve the stock and increase the likelihood of rebuilding. Based on these two recommendations from the SSC, the Council selected a preferred alternative for a constant catch of 1,550 mt for FYs 2013–2015. Under the base case model, a constant ABC of 1,550 mt would end overfishing in FY 2013 and would have at least a

50-percent probability of avoiding overfishing. An ABC of 1,550 mt would be higher than 75% F_{MSY} until FY 2015, which is the Council's ABC control rule. Under the M_{ramp} model, the proposed ABC would be the F_{MSY} catch level in FY 2015, and would be above F_{MSY} in FY 2013 and FY 2014. An ABC of 1,550 mt would be expected to result in a dramatic reduction from current fishing mortality estimates and would also allow stock growth, but is a departure from the ABC control rule adopted by the Council in Amendment 16.

Amendment 16 specified that the ABC control rule should be used in the absence of information that allows a more explicit determination of scientific uncertainty for a stock. Amendment 16 also stated that, if information was available to more accurately characterize scientific uncertainty, it could be used by the SSC to set the ABC. Furthermore, National Standard 1 gives deference to SSCs to recommend ABCs to Fishery Management Councils that are departures from established control rules. In such situations, SSCs are expected to make use of the best scientific information available, and to provide ample justification on why the control rule is not the best approach for the particular circumstances.

The SSC determined that having two assessment models allowed for a better understanding of the nature and extent of the scientific uncertainty. As a result, the SSC concluded that both ABC alternatives appropriately use the assessment outcomes and account for scientific uncertainty. In addition, although multiple catch projections are available for GOM cod, the assessment did not evaluate an averaged output and did not recommend using an average of the two assessment models. Thus, in this case, NMFS does not believe it is appropriate to average the catch projections for GOM cod, and that all of the information must be considered. Lower catch limits will always increase the likelihood that stock growth will occur, and under this rationale, an ABC of 1,249 mt would have greater, and more immediate, increases in biomass than an ABC of 1,550 mt. However, in considering the assessment results and catch projections for both ABC alternatives, a constant catch ABC of 1,550 mt for FYs 2013–2015 would likely end overfishing and result in stock rebuilding. This constant catch scenario also accounts for the uncertainty in the assessment and the SARC's conclusion that although M may have increased in recent years, it will likely return to 0.2 in the future.

5. Annual Catch Limits

Unless otherwise noted below, the U.S. ABC for each stock (for each fishing year) is divided into the following fishery components to account for all sources of fishing mortality: State waters (portion of ABC expected to be caught from state waters by vessels that are not subject to the FMP); other sub-components (expected catch by non-groundfish fisheries); Atlantic sea scallop fishery; mid-water trawl fishery; small-mesh fisheries; commercial groundfish fishery; and recreational groundfish fishery. Expected catch from state waters and other sub-components is deducted from the ABC first, and the remaining portion of the ABC is the amount available to the fishery components that receive an allocation for the stock and that are subject to AMs. Currently, the scallop fishery receives an allocation for GB and SNE/MA yellowtail flounder, the mid-water trawl fishery receives an allocation for GB and GOM haddock, and the recreational groundfish fishery receives an allocation for GOM cod and haddock. Framework 48 proposes to allocate a portion of the SNE/MA windowpane flounder ABC to the scallop fishery and a portion of the GB yellowtail flounder ABC to the small-mesh fisheries. This proposed rule assumes these measures would be approved in Framework 48; however, if either of these measures is disapproved, the final ACLs for these stocks may change.

Once the ABC is divided, sub-annual catch limits (sub-ACLs) are set by reducing the amount of the ABC distributed to each component of the fishery to account for management uncertainty. Management uncertainty is the likelihood that management measures will result in a level of catch greater than expected. For each stock, management uncertainty is estimated using the following criteria: Enforceability, monitoring adequacy, precision of management tools, latent effort, and catch of groundfish in non-groundfish fisheries. Appendix III of the Framework 50 EA provides a detailed description of the process used to estimate management uncertainty and calculate ACLs for this action (see **ADDRESSES** for information on how to get this document).

The total ACL is the sum of all of the sub-ACLs and ACL sub-components, and is the catch limit for a particular year after accounting for both scientific and management uncertainty. Landings and discards from all fisheries (commercial and recreational groundfish fishery, state waters, and non-groundfish fisheries) are counted against the catch limit for each stock. Components of the fishery that are allocated a sub-ACL for a particular stock are subject to AMs if the catch limit is exceeded. The state waters and other sub-components are not considered ACLs, and represent the expected catch by components of the fishery outside of the FMP that are not subject to AMs.

Framework 50 proposes ACLs for each groundfish stock based on the ABCs proposed in Item 4 of this preamble. The proposed ACLs for FYs 2013–2015 are listed in Tables 3 through 5. For stocks allocated to sectors, the commercial groundfish sub-ACL is further divided into the non-sector (common pool) sub-ACL and the sector sub-ACL, based on the total vessel enrollment in all sectors and the cumulative PSCs associated with those sectors. The proposed distribution of the groundfish sub-ACL between the common pool and sectors shown in Tables 3 through 5 are based on FY 2013 PSCs and FY 2012 sector rosters. FY 2013 sector rosters will not be finalized until May 1, 2013, because owners of individual permits signed up to participate in sectors have until the end of FY 2012, or April 30, 2013, to drop out of a sector and fish in the common pool for FY 2013. Therefore, it is possible that the sector and common pool sub-ACLs listed in the tables below may change due to changes in the sector rosters. Updated sub-ACLs will be published in early May, if necessary, to reflect the final FY 2013 sector rosters as of May 1, 2013.

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Table 3 — Proposed FY 2013 Total ACLs, sub-ACLs, and ACL sub-components (mt, live weight)

Stock	Total ACL	Groundfish sub-ACL	Preliminary Sector sub-ACL	Common Pool sub-ACL	Recreational Fishery sub-ACL	Midwater Trawl Fishery sub-ACL	Scallop Fishery sub-ACL	Small-Mesh Fisheries sub-ACL	State Waters sub-component	Other sub-component
	A to H	A+B+C	A	B	C	D	E	F	G	H
GB Cod	1,907	1,807	1,777	30					20	80
GOM Cod	1,470	1,316	814	16	486				103	51
GB Haddock	27,936	26,196	26,124	72		273			293	1,173
GOM Haddock	274	261	186	1	74	3			4	6
GB Yellowtail Flounder--Proposed Emergency	208.5	116.8	115.4	1.3			83.4	4.0		4.3
GB Yellowtail Flounder--Council-preferred	480.1	268.9	265.8	3.1			192.1	9.2		9.9
SNE/MA Yellowtail Flounder	665	570	456	114			61		7	28
CC/GOM Yellowtail Flounder	523	479	467	12					33	11
American Plaice	1,482	1,420	1,396	24					31	31
Witch Flounder	751	610	601	9					23	117
GB Winter Flounder	3,641	3,528	3,508	20						113
GOM Winter Flounder	1,040	715	690	24					272	54
SNE/MA Winter Flounder	1,612	1,210	1,068	142					235	168
Redfish	10,462	10,132	10,091	41					110	220
White Hake	3,462	3,352	3,326	27					36	73
Pollock	14,921	12,893	12,810	83					936	1,092
Northern Windowpane Flounder	144	98		98					2	44
Southern Windowpane Flounder	527	102		102			183		55	186
Ocean Pout	220	197		197					2	21
Atlantic Halibut	96	52		52					40	5
Atlantic Wolffish	65	62		62					1	3

Table 4 — Proposed FY 2014 Total ACLs, sub-ACLs, and ACL sub-components (mt, live weight)

Stock	Total ACL	Groundfish sub-ACL	Preliminary Sector sub-ACL	Preliminary Common Pool sub-ACL	Recreational sub-ACL	Midwater Trawl Fishery sub-ACL	Scallop Fishery sub-ACL	Small-Mesh Fisheries sub-ACL	State Waters sub-component	Other sub-component
	A to H	A+B+C	A	B	C	D	E	F	G	H
GB Cod	1,907	1,807	1,777	30					20	80
GOM Cod	1,470	1,316	814	16	486				103	51
GB Haddock	33,996	31,879	31,792	87		332			357	1,428
GOM Haddock	323	307	218	2	87	3			5	7
GB Yellowtail Flounder										
SNE/MA Yellowtail Flounder	665	564	451	113			66		7	28
CC/GOM Yellowtail Flounder	523	479	467	12					33	11
American Plaice	1,442	1,382	1,359	23					30	30
Witch Flounder	751	610	601	9					23	117
GB Winter Flounder	3,493	3,385	3,366	20						108
GOM Winter Flounder	1,040	715	690	24					272	54
SNE/MA Winter Flounder	1,612	1,210	1,068	142					235	168
Redfish	10,909	10,565	10,522	43					115	229
White Hake										
Pollock	15,304	13,224	13,139	85					960	1,120
Northern Windowpane Flounder	144	98		98					2	44
Southern Windowpane Flounder	527	102		102			183		55	186
Ocean Pout	220	197		197					2	21
Atlantic Halibut	106	57		57					44	5
Atlantic Wolffish	65	62		62					1	3

Table 5 — Proposed FY 2015 Total ACLs, sub-ACLs, and ACL sub-components (mt, live weight)

Stock	Total ACL	Groundfish sub-ACL	Preliminary Sector sub-ACL	Preliminary Common Pool sub-ACL	Recreational sub-ACL	Midwater Trawl Fishery sub-ACL	Scallop Fishery sub-ACL	Small-Mesh Fisheries sub-ACL	State Waters sub-component	Other sub-component
	A to H	A+B+C	A	B	C	D	E	F	G	H
GB Cod	1,907	1,807	1,777	30					20	80
GOM Cod	1,470	1,316	814	16	486				103	51
GB Haddock	41,526	38,940	38,833	107		406			436	1,744
GOM Haddock	412	392	279	2	111	4			6	9
GB Yellowtail Flounder										
SNE/MA Yellowtail Flounder	665	566	453	113			64		7	28
CC/GOM Yellowtail Flounder	523	479	467	12					33	11
American Plaice	1,470	1,408	1,385	24					31	31
Witch Flounder	751	610	601	9					23	117
GB Winter Flounder										
GOM Winter Flounder										
SNE/MA Winter Flounder	1,612	1,210	1,068	142					235	168
Redfish	11,393	11,034	10,989	45					120	239
White Hake										
Pollock										
Northern Windowpane Flounder	144	98		98					2	44
Southern Windowpane Flounder	527	102		102			183		55	186
Ocean Pout	220	197		197					2	21
Atlantic Halibut	116	62		62					48	6
Atlantic Wolffish	65	62		62					1	3

6. Incidental Catch Total Allowable Catches and Allocations to Special Management Programs

Incidental catch TACs are specified for certain stocks of concern (i.e., stocks that are overfished or subject to overfishing) for common pool vessels fishing in the special management programs (i.e., special access programs (SAPs) and the Regular B DAS Program), in order to limit the catch of these stocks under each program. Table 6 shows the percentage of the common pool sub-ACL allocated to the special management programs and the proposed FYs 2013–2015 Incidental Catch TACs for each stock. Beginning in FY 2013, NMFS proposes to remove GB winter flounder and SNE/MA yellowtail flounder from the list of species of concern because the stocks are no longer overfished, and overfishing is not occurring. GB winter flounder is projected to be rebuilt by 2014, and SNE/MA yellowtail flounder was declared rebuilt in November 2012. Any catch on a trip that ends on a Category B DAS (either Regular or Reserve B DAS) is attributed to the Incidental Catch TAC for the pertinent stock. Catch on a trip that starts under a Category B DAS and then flips to a Category A DAS is not counted against the Incidental Catch TACs. Any catch from these trips would be counted against the common pool sub-ACL.

The Incidental Catch TAC is further divided among each special management program based on the percentages listed in Table 7. The proposed FYs 2013–2015 Incidental Catch TACs for each special management program are listed in Table 8. The FY 2013 sector rosters will not be finalized until May 1, 2013, for the reasons mentioned earlier in this preamble. Therefore, the common pool sub-ACL may change due to changes to the FY 2013 sector rosters. Updated incidental catch TACs would be published in a future adjustment rule, if necessary, based on the final sector rosters as of May 1, 2013.

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Table 6—Proposed Common Pool Incidental Catch TACs for FYs 2013-2015 (mt, live weight)

Stock	Percentage of Common Pool sub-ACL	2013	2014	2015
GB Cod	2	0.6	0.6	0.6
GOM Cod	1	0.2	0.2	0.2
GB Yellowtail Flounder--Proposed Emergency	2	0.03		
GB Yellowtail Flounder--Council-preferred		0.1		
CC/GOM Yellowtail Flounder	1	0.1	0.1	0.1
American Plaice	5	1.2	1.2	1.2
Witch Flounder	5	0.5	0.5	0.5
SNE/MA Winter Flounder	1	1.4	1.4	1.4
White Hake	2	0.5		

Table 7—Percentage of Incidental Catch TACs Distributed to Each Special Management Program

Stock	Regular B DAS Program	Closed Area I Hook Gear Haddock SAP	Eastern US/CA Haddock SAP
GB Cod	50%	16%	34%
GOM Cod	100%		
GB Yellowtail Flounder	50%		50%
CC/GOM Yellowtail Flounder	100%		
American Plaice	100%		
Witch Flounder	100%		
SNE/MA Winter Flounder	100%		
White Hake	100%		

Table 8—Proposed FYs 2013-2015 Incidental Catch TACs for Each Special Management Program (mt, live weight)

Stock	Regular B DAS Program			Closed Area I Hook Gear Haddock SAP			Eastern U.S./Canada Haddock SAP		
	2013	2014	2015	2013	2014	2015	2013	2014	2015
GB Cod	0.3	0.3	0.3	0.1	0.1	0.1	0.2	0.2	0.2
GOM Cod	0.2	0.2	0.2						
GB Yellowtail Flounder--Proposed Emergency	0.01						0.01		
GB Yellowtail Flounder--Council-preferred	0.03						0.03		
CC/GOM Yellowtail Flounder	0.1	0.1	0.1						
American Plaice	1.2	1.2	1.2						
Witch Flounder	0.5	0.5	0.5						
SNE/MA Winter Flounder	1.4	1.4	1.4						
White Hake	0.5								

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7. Common Pool Trimester Total Allowable Catches

The common pool sub-ACL for each stock (except for SNE/MA winter flounder, windowpane flounder, ocean pout, Atlantic wolffish, and Atlantic halibut) is divided into trimester TACs. Table 9 shows the percentage of the common pool sub-ACL that is allocated to each trimester for each stock. The distribution of the common pool sub-ACLs into trimesters was adopted by Amendment 16 and is based on recent landing patterns. Once NMFS projects that 90 percent of the trimester TAC is caught for a stock, the trimester TAC area for that stock is closed for the remainder of the trimester. The area closure applies to all common pool vessels fishing with gear capable of catching the pertinent stock. The trimester TAC areas for each stock, as well as the applicable gear types, are defined at § 648.82(n)(2). Any uncaught portion of the trimester TAC in Trimester 1 or Trimester 2 will be carried forward to the next trimester (e.g., any remaining portion of the Trimester 1 TAC will be added to the Trimester 2 TAC). Overages of the trimester TAC in Trimester 1 or Trimester 2 will be deducted from the Trimester 3 TAC. Any overages of the total sub-ACL will be deducted from the following fishing year's common pool sub-ACL for that stock. Uncaught portions of the Trimester 3 TAC will not be carried over into the following fishing year.

The proposed FYs 2013–2015 common pool trimester TACs are listed in Table 10 based on the ACLs and sub-ACLs proposed in this action (see Item 5 of this preamble). As described earlier, vessels have until April 30, 2013, to drop out of a sector, and common pool vessels may join a sector through April 30, 2013. If the proposed sub-ACLs included in this rule change as a result of changes to FY 2013 sector rosters, the trimester TACs would also change. Based on the final sector rosters, NMFS would publish a rule in early May 2013, if necessary, to update the common pool trimester TACs, and notify the public of these changes.

TABLE 9—PERCENTAGE OF COMMON POOL SUB-ACL DISTRIBUTED TO EACH TRIMESTER

Stock	Percentage of common pool sub-ACL		
	Trimester 1	Trimester 2	Trimester 3
GB Cod	25	37	38
GOM Cod	27	36	37
GB Haddock	27	33	40
GOM Haddock	27	26	47
GB Yellowtail Flounder	19	30	52
SNE/MA Yellowtail Flounder	21	37	42
CC/GOM Yellowtail Flounder	35	35	30
American Plaice	24	36	40
Witch Flounder	27	31	42
GB Winter Flounder	8	24	69
GOM Winter Flounder	37	38	25
Redfish	25	31	44
White Hake	38	31	31
Pollock	28	35	37

Table 10—Proposed FYs 2013-2015 Common Pool Trimester TACs (mt, live weight)

Stock	2013			2014			2015		
	Trimester 1	Trimester 2	Trimester 3	Trimester 1	Trimester 2	Trimester 3	Trimester 1	Trimester 2	Trimester 3
GB Cod	7.4	10.9	11.2	7.4	10.9	11.2	7.4	10.9	11.2
GOM Cod	4.21	5.62	5.77	4.2	5.6	5.8	4.2	5.6	5.8
GB Haddock	19.4	23.7	28.7	23.6	28.9	35.0	28.8	35.2	42.7
GOM Haddock	0.4	0.3	0.6	0.4	0.4	0.7	0.5	0.5	0.9
GB Yellowtail Flounder Proposed Emergency	0.3	0.4	0.7						
GB Yellowtail Flounder Council-preferred	0.6	0.9	1.6						
SNE/MA Yellowtail Flounder	23.9	42.2	47.9	23.7	41.8	47.4	23.8	41.9	47.6
CC/GOM Yellowtail Flounder	4.1	4.1	3.5	4.1	4.1	3.5	4.1	4.1	3.5
American Plaice	5.7	8.5	9.5	5.5	8.3	9.2	5.6	8.5	9.4
Witch Flounder	2.5	2.9	3.9	2.5	2.9	3.9	2.5	2.9	3.9
GB Winter Flounder	1.6	4.9	14.1	1.6	4.7	13.6			
GOM Winter Flounder	9.0	9.3	6.1	9.0	9.3	6.1			
Redfish	10.3	12.7	18.1	10.7	13.3	18.8	11.2	13.9	19.7
White Hake	10.2	8.3	8.3						
Pollock	23.3	29.1	30.8	23.9	29.9	31.6			

8. Annual Measures for FY 2013 Under Regional Administrator Authority

The FMP provides authority for the RA to implement certain types of management measures for the common pool fishery, the U.S./Canada Management Area, and Special Management Programs on an annual basis, or as needed. This proposed rule includes a description of the management measures being considered by the RA for FY 2013 in order to provide an opportunity for the public to comment on whether the proposed measures are appropriate. These measures are not part of Framework 50, and were not specifically proposed by the Council, but are proposed in conjunction with Framework 50 for expediency purposes and because they relate to the proposed specifications in Framework 50. The RA may implement measures differing from those proposed in this action based on public comments received, and if information indicates such measures are necessary to meet the requirements of the FMP. The measures implemented through RA authority for FY 2013 will be implemented through the Framework 50 final rule, or, if necessary, through a separate final rule.

The RA has the authority to modify common pool trip limits in order to prevent exceeding the common pool sub-ACLs and facilitate harvest so total catch approaches the common pool sub-ACLs. Table 11 provides a summary of the default trip limits that would take effect in FY 2013 if the RA takes no action, the current common pool trip limits for FY 2012, and the proposed trip limits that would be in effect for the start of FY 2013. Table 12 provides a summary of the proposed FY 2013 cod trip limits for vessels fishing with a Handgear A, Handgear B, or Small Vessel Category permit.

Proposed trip limits for FY 2013 were developed after considering changes to the FY 2013 common pool sub-ACLs and sector rosters, trimester TACs for FY 2013, catch rates of each stock during FY 2012, bycatch, and other available information. For stocks that include a range of potential trip limits in Table 11 and 12, a final trip limit would be specified in the final rule implementing these measures based upon public comment. NMFS is requesting public input on common pool trip limits for FY 2013, particularly on the proposed trip limit for SNE/MA winter flounder since possession has been prohibited for this stock since FY 2009.

The default cod trip limit is 300 lb (136.1 kg) per trip for Handgear A vessels, unless either the GOM or GB cod trip limit applicable to vessels fishing under a NE multispecies DAS is adjusted below 300 lb (136.1 kg). If the trip limit for NE multispecies DAS vessels drops below 300 lb (136.1 kg), the Handgear A trip limit must be adjusted to be the same. The regulations also require that the Handgear B vessel trip limit for GOM and GB cod be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)) to the default cod trip limits applicable to NE multispecies DAS vessels. The default cod trip limit for NE multispecies common pool vessels fishing under a Category A DAS is 800 lb (362.9 kg) per DAS for GOM cod and 2,000 lb (907.2 kg) per DAS for GB cod. For FY 2013, NMFS is proposing a range of GOM cod trip limits for vessels fishing under a Category A DAS that are between 38 and 88 percent lower than the default limit specified in the regulations. Therefore, the proposed FY 2013 GOM cod trip limits for Handgear A and B vessels are adjusted downwards, as required, from the default cod trip limit for these vessels. NMFS is proposing the default cod trip limits for GB cod for Handgear A and B vessels in FY 2013.

Vessels with a Small Vessel category permit can possess up to 300 lb (136.1 kg) of cod, haddock, and yellowtail combined per trip. For FY 2013, NMFS is proposing that the maximum amount of cod and haddock (within the 300-lb (136.1-kg) trip limit) be adjusted proportionally to the trip limits applicable to NE multispecies DAS vessels (see Table 12).

TABLE 11—PROPOSED FY 2013 COMMON POOL TRIP LIMITS

Stock	Default Limit in regulations	Current FY 2012 trip limit	Proposed FY 2013 trip limit
GOM cod	800 lb (362.9 kg) per DAS, up to 4,000 lb (1,814.3 kg) per trip.	2,000 lb (907.2 kg) per DAS, up to 6,000 lb (2,721.6 kg) per trip.	100 lb (45.4 kg)–500 lb (226.8 kg) per DAS, up to 500 lb (226.8 kg)–1,500 lb (680.4 kg) per trip.
GB cod	2,000 lb (907.2 kg) per DAS, up to 20,000 lb (9,072 kg) per trip.	3,000 lb (1,360.8 kg) per DAS, up to 30,000 lb (13,607.8 kg) per trip.	2,000 lb (907.2 kg) per DAS, up to 20,000 lb (9,072 kg) per trip.
GOM haddock	unrestricted	1,000 lb (453.6 kg) per trip	50 lb (22.7 kg)–100 lb (45.4 kg) per trip.
GB haddock	unrestricted	10,000 lb (4,535.9 kg) per trip	10,000 lb (4,535.9 kg) per trip.
GOM winter flounder	unrestricted	250 lb (113.4 kg) per trip	500 lb (226.8 kg) per trip.
SNE/MA winter flounder	unrestricted	n/a	5,000 lb (2,268 kg) per DAS up to 15,000 lb (6,803.9 kg) per trip.
GB winter flounder	unrestricted	1,000 lb (453.6 kg) per trip	1,000 lb (453.6 kg) per trip.
CC/GOM yellowtail flounder.	250 lb (113.4 kg) per DAS, up to 1,500 (680.4 kg) per trip.	500 lb (226.8 kg) per DAS, up to 2,000 (907.2 kg) per trip.	500 lb (226.8 kg) per DAS, up to 2,000 lb (907.2 kg) per trip.
GB yellowtail flounder	unrestricted	500 lb (226.8 kg) per trip	100 lb (45.4 kg)–200 lb (90.7 kg) per trip.
SNE/MA yellowtail flounder.	250 lb (113.4 kg) per DAS, up to 1,500 (680.4 kg) per trip.	5,000 lb (2268 kg), up to 15,000 lb (6,803.9 kg) per trip.	2,000 lb (907.2 kg), up to 6,000 lb (2,721.6 kg) per trip.
American plaice	unrestricted	unrestricted	unrestricted.
Pollock	1,000 lb (453.6 kg) per DAS; up to 10,000 lb (4,535.9 kg) per trip.	10,000 lb (4,535.9 kg) per trip	10,000 lb (4,535.9 kg) per trip.
Witch flounder	unrestricted	250 lb (113.4 kg) per trip	500 lb (226.8 kg) per trip.
White hake	500 lb (226.8 kg) per DAS; up to 2,000 lb (907.2 kg) per trip.	500 lb (226.8 kg) per trip	500 lb (226.8 kg) per trip.
Redfish	unrestricted	unrestricted	unrestricted.

TABLE 12—PROPOSED FY 2013 COD TRIPS LIMITS FOR HANDGEAR A, HANDGEAR B, AND SMALL VESSEL CATEGORY PERMITS

Permit	Default cod trip limit	Proposed FY 2013 GOM cod trip limit	Proposed FY 2013 GB cod trip limit
Handgear A	300 lb (136.1 kg) per trip	100 lb (45.4 kg) up to 300 lb (136.1 kg) per trip.	300 lb (136.1 kg) per trip.
Handgear B	75 lb (34.0 kg) per trip	25 lb (11.3 kg) up to 50 lb (22.7 kg) per trip.	75 lb (34.0 kg) per trip.
Small Vessel Category	300 lb (136.1 kg) of cod, haddock, and yellowtail flounder combined; Maximum of 25 lb (11.3 kg)–175 lb (79.4 kg) of GOM cod and 25 lb (11.3 kg) of GOM haddock within the 300-lb combined trip limit.		

The RA has the authority to determine the allocation of the total number of trips into the Closed Area II Yellowtail Flounder/Haddock SAP based on several criteria, including the GB yellowtail flounder TAC and the amount of GB yellowtail flounder caught outside of the SAP. In 2005, Framework 40B (70 FR 31323; June 1, 2005) implemented a provision that no trips should be allocated to the Closed Area II Yellowtail Flounder/Haddock SAP if the available GB yellowtail flounder catch is insufficient to support at least 150 trips with a 15,000-lb (6,804-kg) trip limit (i.e., 150 trips of 15,000 lb (6,804 kg)/trip, or 2,250,000 lb (1,020,600 kg). This calculation accounts for the projected catch from the area outside the SAP. Based on the proposed GB yellowtail sub-ACLs of 592,823 lb (268,900 kg) and 248,241 lb (112,600 kg), derived from the proposed catch limits of 1,150 mt and 500 mt, respectively, there is insufficient GB yellowtail flounder to allocate any trips to the SAP, even if the projected catch from outside the SAP area is zero. Therefore, this action proposes to allocate zero trips to the Closed Area II Yellowtail Flounder/Haddock SAP for FY 2013. Vessels could still fish in this SAP in FY 2013 using a haddock separator trawl, a Ruhle trawl, or hook gear. Vessels would not be allowed to fish in this SAP using flounder nets.

9. Recreational Fishing Measures

Framework 48 proposes to modify the recreational fishery AM and give the RA authority to adjust recreational management measures for the upcoming fishing year to ensure the recreational fishery catches, but does not exceed, its sub-ACL. Although this measure has not been approved yet, due to the timing of Framework 48, and the drastic reductions proposed for some FY 2013 catch limits, NMFS has begun developing recreational management measures for FY 2013. The Council convened its Recreational Advisory Panel (RAP) on February 15, 2013, in order to provide NMFS guidance on FY 2013 management measures. For GOM cod, the RAP recommended a 9-fish possession limit and a minimum fish size of 19 in (48.3 cm). These are status quo management measures from FY 2012. For GOM haddock, the RAP recommended an unlimited possession limit (status quo from FY 2012) and an increase to the minimum fish size from 18 in (45.7 cm) to 21 in (53.3 cm).

Consistent with the RAP's recommendation, NMFS proposes a 9-fish possession limit and a minimum fish size of 19 in (48.3 cm) for GOM cod in FY 2013. For GOM haddock, NMFS proposes an unlimited possession limit and a minimum fish size of 21 in (53.3 cm) for FY 2013. The proposed recreational management measures for FY 2013, and the current FY 2012 measures, are presented in Table 13. The proposed measures were developed using the Bio-economic Length-Structured Angler Simulation Tool, which was developed by the Northeast Fisheries Science Center. This model was peer-reviewed by a panel that consisted of members of the New England Fishery Management Council and Mid-Atlantic Fishery Management Council's SSCs, as well as an outside expert in recreational fisheries economics.

Analysis shows that recreational removals would likely decline in FY 2013, primarily due to changing stock conditions. As a result, FY 2013 recreational measures are not drastically different than the FY 2012 measures, even though the proposed reductions in the FY 2013 catch limits are relatively large. NMFS proposes to raise the minimum fish size from 18 in (45.7 cm) to 21 in (53.3 cm), for GOM haddock, with no bag limit. The bag limit for GOM haddock does not affect recreational haddock mortality very much because analysis shows that there would be fewer trips encountering legal-sized haddock in FY 2013. This translates into lower expected fishing effort and landings. The minimum fish size for GOM haddock has a greater impact on recreational haddock and cod catch, as well as the total number of recreational trips. Initial analysis shows that the proposed FY 2013 recreational measures would have less than a 50-percent probability of exceeding the recreational sub-ACLs for GOM cod and haddock. Implementation of these measures under RA authority is contingent upon the approval of the proposed recreational fishery AM in Framework 48.

TABLE 13—CURRENT FY 2012 AND PROPOSED FY 2013 RECREATIONAL MANAGEMENT MEASURES FOR GOM COD AND HADDOCK

Stock	Current FY 2012 measures		Proposed FY 2013 measures	
	Bag limit	Minimum size	Bag Limit	Minimum Size
GOM Cod	9	19 in (48.3 cm)	9	19 in (48.3 cm).
GOM Haddock	Unlimited	18 in (45.7 cm)	Unlimited	21 in (53.3 cm).

10. Carryover of Unused Sector Annual Catch Entitlement

Background

The FMP authorizes up to 10 percent of unused sector ACE for all allocated regulated stocks, with the exception of GB yellowtail flounder, to be brought forward for use in the following fishing year. Termed ''carryover,'' this concept was part of the overall design of sectors in Amendment 16, and was intended to leave it up to individual fishermen and sector managers to determine when and where they will fish throughout the year. Among other things, the sector system, which includes carryover, was intended to provide flexibility to vessels as to when and how they fish which, among other benefits, promotes greater safety at sea, as prescribed by National Standard 10. For example, the ability to carry over unused catch further advances safety benefits by removing the incentive to fish for remaining allocations of groundfish stocks at the end of a fishing year even under unsafe conditions.

The carryover provision implementing regulations found at § 648.87(b)(1)(i)(C) and the Final Environmental Impact Statement (FEIS) for Amendment 16, however, did not specify how carryover should be accounted for under the concurrently implemented ACL system. In the 2 fishing years since the implementation of Amendment 16, NMFS has allowed up to the full 10-percent carryover of unused sector ACE. To date, NMFS has accounted for carryover by first attributing catch against any available carryover, without deducting it from the sector's ACE for that year. After the amount carried over has been fully caught, the sector's remaining catch for the year has been attributed to, and deducted from, the sector's ACE for that year.

For multiple reasons, this method of accounting has thus far functioned without causing the overall ACLs to be exceeded. Generally, sectors have seldom fully harvested available stock ACE, often electing to under-harvest to provide carryover to the following fishing year. In addition, the ability for sectors to fully utilize all species' ACE is often constrained by stocks with lower ACE availability. Catch by other fishery components has routinely been below their respective sub-ACLs. These factors have, to date, helped ensure that fishery-level ACLs have not been exceeded by the accounting system that NMFS has used. Even if sectors had routinely exceeded their sub-ACL, other fishery components could under-harvest their sub-ACL such that the overall ACL was not exceeded. This has been true despite the reduction in catch limits for some stocks from one fishing year to the next.

As ACL-based management programs have been implemented around the country and their first years of use evaluated, the issue of unused catch carryover has been discussed nationwide. Amendment 16, although it did not reconcile the problem, acknowledged the potential for carryover to either increase the risk of or cause overfishing in a given year, particularly in the event that year-to-year catch limits declined steeply and available allocations and carryover were fully harvested (Amendment 16 FEIS, pp. 505–6). Based on these evaluations and the dynamics of significant proposed reductions in some of the groundfish ACLs for FY 2013, NMFS now believes that a carryover from one fishing year to another must be fully accounted for in the second year ACLs to be consistent with the catch limit requirements in the Magnuson-Stevens Act and National Standard 1 guidelines. The current carryover accounting practice of the Northeast Region may be inconsistent with this conclusion to the extent it results in an ACL in one year to be exceeded due to additional carried over catch from the preceding year. This accounting practice would also be inconsistent with conservation objectives of Amendment 16. On the other hand, to completely eliminate the carryover provision because of these concerns would potentially conflict with safety and management flexibility benefits that are consistent with the National Standard 10 provision of promoting safety at sea and national standards to promote efficiency and mitigate negative impacts on the fishing industry. As a result, there is a fundamental conflict between the conservation and management objectives of Amendment 16 between the need to ensure adherence to the catch limits for conservation purposes and the benefits of promoting safety at sea and management flexibility.

FY 2013 Unused ACE Carryover Issues

If NMFS continues its past practice, sectors would receive up to 10 percent of unused FY 2012 ACE for all groundfish stocks subject to the carryover provision for use in FY 2013, without attribution to the 2013 sector sub-ACLs. Because of the magnitude of the reductions in catch limits for some stocks for FY 2013, it is likely that FY 2013 allocated catch combined with FY 2012 carryover could cause fishery-level ACLs and ABCs to be exceeded. For GOM cod, this potential total catch level would exceed the overfishing limit.

Despite discussions between NMFS and the Council regarding these issues, no clarification as to how to account for carryover was included in either Framework 48 or 50 for May 1, 2013, leaving ambiguity in the regulations on how to address the fundamental conflict previously described in this section. In the absence of clarification by the Council, NMFS' authority to address this conflict consists of a 1-year emergency action under Secretary authority provided in section 305(c) of the Magnuson-Stevens Act and/or a clarification of the existing program under section 305(d) of the Act.

In this rule, NMFS proposes to modify the existing carryover program for FY 2013 through section 305(c) emergency authority in order to limit carryover of GOM cod and to clarify the need to continue the current accounting practice for carryovers for FY 2013, as a transitional measure only, as it pertains to all other carryover eligible stocks. *NMFS also seeks public comment on a proposal to clarify, under section 305(d) of the Magnuson-Stevens Act, how to account for carryover in FY 2014 and beyond.*

Proposed FY 2012 to FY 2013 Carryover Measures

NMFS does not propose to change the amount of carryover allowed for stocks in FY 2013 except for GOM cod. NMFS has determined that the carryover amount for GOM cod, which is based on an allocation in FY 2012 that allowed for overfishing, must be reduced to ensure that the total potential catch (i.e., fishery level ACL + carryover) remains below the overfishing limit for FY 2013. NMFS proposes to use emergency authority provided by section 305(c) of the Magnuson-Stevens Act to reduce GOM cod from the 10 percent specified in current regulations to 1.85 percent of unused FY 2012 GOM cod ACE in FY 2013. NMFS does not propose to change its recent practice of not counting carryover against a sector's ACE. The intent not to change the carryover amounts, except for GOM cod, nor the current accounting practice for these carryover amounts, was announced to the public on February 14, 2013, to allow the industry to plan its activities for the remainder of FY 2012.

Use of 305(c) emergency rulemaking authority to reduce the amount of GOM cod available as carryover meets the required rationale set forth by NMFS for 305(c) emergency rulemaking (62 FR 44421, August 21, 1997). The Council has not taken action to address the potential for FY 2012 to FY 2013

carryover of up to 10 percent to result in overfishing the GOM cod stock. The failure of the Council to take appropriate action was not foreseeable because the final revised assessment of GOM cod upon which the Council would have relied to address carryover problems was not available until January 2013. Therefore, NMFS, on behalf of the Secretary, finds that a fishery-related emergency exists. Specifically, the currently provided maximum 10-percent carryover authorized by the FMP would permit a total potential catch that exceeds the GOM cod overfishing limit. As a result, reduction in the maximum carryover amount is necessary to ensure that the total potential catch, if attained in FY 2013, will not result in overfishing. Failing to take this emergency action would present a serious conservation problem because the GOM cod stock is overfished, subject to overfishing, and was determined last year by NMFS to have not made adequate rebuilding progress.

Given the timing of Frameworks 48 and 50, continuing the accounting practice for the other groundfish stocks, as a 1-year transitional practice, is necessary to balance the conservation objectives of Amendment 16 with the National Standard 10 safety benefits and management flexibility provided by a carryover. NMFS has determined that continuing to account for these carryover levels for 1 more year only can be done without increasing the risk of overfishing in FY 2013 and without jeopardizing the long-term health of these stocks. Moreover, these carryover amounts represent the maximum available under existing regulations. The actual amount carried forward would depend on each sector's utilization of ACE in FY 2012. For example, if a sector harvests 97 percent of a carryover eligible stock other than GOM cod, the sector would be permitted to use 3 percent of its FY 2012 ACE in FY 2013. Although accounting for carryovers in this manner may result in exceeding the Framework 50 sector sub-ACLs and could increase the risk of exceeding the overall ACLs, this approach prevents catch from exceeding the overfishing limit, given the uncertainty buffers built into the management program.

NMFS has developed an appendix to the Framework 50 EA that provides analysis and rationale supporting these carryover amounts in the short-term (see **ADDRESSES**).

Allowing the continuation of NMFS' recent practice of not counting carryover against a sector's ACE is necessary and appropriate to address problems arising from the late timing and notice to industry of our intent. An anticipated carryover of up to 10 percent, based on NMFS' past practice, has been part of the fishing industry's planning process since the inception of sector management in 2010. To substantially reduce or eliminate carryover late in the fishing year could have the undesirable consequence of incentivizing a race to fish in the final weeks of the fishing year, as fishermen attempt to fully utilize available FY 2012 catch limits, thereby negating the safety benefits carryover provides. Therefore, given these safety concerns, which NMFS is obligated to consider under National Standard 10, and the determination that continuing the current accounting practice for carryovers presents little risk of overfishing or harm to the stocks, NMFS concludes that maintaining this approach for 2013 only strikes the right balance under the law.

Summary of FY 2012 to FY 2013 Proposed Carryover Analysis

NMFS evaluated the likelihood that the total potential catch would lead to overfishing for stocks eligible for carryover. This evaluation is part of the 1-year transition period only. The evaluation showed that, for many stocks, total potential catch would be 81 percent or less of the OFL. Despite the potential to exceed the Council-recommended ACLs and SSC-recommended ABCs, NMFS believes there is a very low likelihood that overfishing could occur for these stocks if the total potential catch is realized in FY 2013. These stocks are GB cod and haddock, SNE/MA yellowtail flounder, witch flounder, GB and GOM winter flounder, Acadian redfish, white hake, and pollock. For other stocks—GOM haddock, CC/GOM yellowtail flounder, and American plaice—total potential catch ranged between 81 and 91 percent of the OFL. The total potential catch for the revised GOM cod carryover amount, 1.85 percent of the FY 2012 ACE, is 94 percent of the OFL.

Carryover from FY 2013 to FY 2014 and Beyond

Although the current accounting practice for carryovers for FY 2013 can be justified, such practice is not appropriate for FY 2014 and thereafter because there is sufficient time to alert the fishing industry of how NMFS intends to account for carryover in the future in a way that is consistent with the Magnuson-Stevens Act, the National Standard Guidelines, and other provisions. This is necessary to reconcile the fundamental conflict between ensuring long-term compliance with catch limits and the need to provide, at some level, the safety and management benefits of carryovers. Because the Council did not specify in Amendment 16, or clarify how to account for carryover in light of this conflict in proposed Frameworks 48 or 50, NMFS has determined it has the responsibility under section 305(d) to propose regulations ensuring that the measures of Amendment 16 and Frameworks 48 and 50 can be carried out in a manner consistent with the Magnuson-Stevens Act. NMFS has concluded it has the authority to propose such regulations because they are fundamentally administrative in nature that clarify the carryover accounting process. These regulations are justified by this unusual circumstance in which previously approved Council-recommended measures conflict with each other and must be reconciled in order to be carried out consistent with the Magnuson-Stevens Act and the National Standard Guidelines.

NMFS proposes to clarify the carryover provision in terms of how much carried over catch is accounted for against a sector's ACE, for the purposes of determining which AMs are triggered by exceeding the ACE. Under the proposed clarifying regulatory text, NMFS proposes to count carryover, except for a nominal *de minimus* amount, against a sector's ACE only for the purpose of triggering the reactive pound-for-pound AM based on overage paybacks specified at § 648.87(b)(4)(iii).

NMFS believes that this approach is more consistent with the intent of carryover. It may not be possible to fully assess the impacts of carryover in the next fishing year until complete information is available to determining the overall catch of groundfish stocks for the preceding year. This proposed system allows for the potential that a sector may use more of its carryover amount depending on whether the stock in question is likely to exceed the overall ACL. Therefore, the amount of carryover caught by a sector would not count against its ACE for the purpose of triggering the in-season closure AM if the ACE is exceeded. This is because it would not be clear whether catching the carryover amount would result in the fishery exceeding the overall ACL until after fishing year is over and final catch is known.

This approach would allow sectors to continue fishing beyond their initially allocated ACE up to the full carryover amount for which they are eligible based on their prior year under-harvest without having to stop fishing in the stock area subject to a closure once an

ACE is exceeded. Sectors could strategize the benefits of fishing the carryover versus the possibility of triggering the pound for pound reduction in the following year's ACE if that AM is triggered. The maximum amount allowed would remain 10 percent. At the end of the fishing year, or as soon as possible after, NMFS would evaluate the total fishery catch relative to the total ACL. The amount of carryover counted against the sector ACE would depend on whether the total catch for the stock exceeds that stock's ACL. This approach would operate as follows:

- If the total ACL for the year is not exceeded, any carryover used would not be counted against a sector's ACE. No reactive AM would be required. Essentially, because the total ACL was not exceeded, most likely because sectors or other fishery components did not fully utilize their respective allocations for the year, there would be no consequence associated with the use of carryover. This would result in accounting that is similar to the current carryover accounting practice wherein carryover use is not directly attributed to the sector's ACE for the fishing year in which the carryover is taken.
- If the total ACL for the year *has* been exceeded and carryover was used, NMFS would only count the amount of carryover used above the total ACL against sector ACE. Individual sectors responsible for the ACL overage as a result of carryover use would be subject to pound-for-pound overage repayment specified by the FMP AMs. It is possible that some portion of carryover use may not be attributed to sector ACE, even if the total ACL is exceeded. If other fishery components contribute to the ACL overage, sectors would only be charged for the carryover ACE used.
- In the event that a situation similar to FY 2013 occurs, wherein substantial catch reductions are required, NMFS would reserve the right to modify the allowable carryover amount in excess of the *de minimus* level so that the total potential catch did not exceed the OFL. For FY 2013, NMFS is making this type of modification using section 305(c) authority in large part due to the timing considerations and lack of adequate public notice and comment; however, in future similar situations, NMFS would rely on section 305(d) authority to modify the allowable carryover amounts.

The provision would not count a guaranteed *de minimus* amount of carryover against a sector's ACE and would provide some certainty that carryover would be available without any negative consequences. The industry, therefore, could count on, and factor into their decisionmaking, this guaranteed carryover late in the fishing year which helps promote, albeit on a modest scale, safety at sea. NMFS has not yet determined an appropriate *de minimus* amount. One option would be to provide an amount sufficient to cover an average trip's landing for the stock in question, with the rationale being that if a single trip is not made late in the fishing year because of safety concerns or market conditions, the foregone catch from that trip could be carried forward. Another option would be to allow a small percentage of the following year's ACE for the stock in question (e.g., 1 percent of the stock's FY 2014 ACE). This would better ensure that available *de minimus* carryover was consistent with the prevailing stock conditions and catch advice for the year in which carryover would be harvested.

Allowing for a *de minimus* carryover without negative consequences in the groundfish fishery can be justified on a couple of grounds. The amount provided, if taken, would not be expected to cause fishery-level ACLs to be exceeded. The analysis conducted for FY 2012 to FY 2013 carryover has illustrated that the fishery has not operated in a manner that fully utilizes available allocations. Even with the 10 percent routinely set aside from the sector sub-ACL to provide carryover, few stocks have utilized greater than 85 percent of the available stock level ACL. In addition, depending on how much carryover is caught, the benefit to the stock from not catching that amount in the previous year may permit stock growth sufficient to offset the effects of any *de minimus* carryover allowed in the next year. As previously stated, NMFS is continuing to develop *de minimus* carryover analyses and will provide completed results to the Council's Groundfish Plan Development Team and Groundfish Committee for their review and input. It is not expected that the *de minimus* carryover amount would be re-evaluated annually; however, if the ongoing analysis indicates this would be a critical component to ensure ACLs were not likely to be exceeded, then annual review could be contemplated.

NMFS believes this proposed approach maintains the original intent of the carryover program established by Amendment 16 in enhancing the flexibility of sectors in planning their fishing year, while still promoting safety and ensuring that there will be AMs for using carryover if overall ACLs are exceeded. This general description of the proposed accounting change does not explicitly discuss the implications of leasing ACE. Leasing, as well as other complexities of the accounting system, have not yet been closely evaluated by NMFS or discussed with the Council and public. As a result, NMFS is soliciting public comment on the conceptual approach proposed. After considering comments received, NMFS may further clarify any remaining details, either in collaboration with the Council or independently, for FY 2014 implementation. The Council may also take action to revise the carryover program for FY 2014.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that, except for those measures identified as problematic, this proposed rule is consistent with Framework 50, other provisions of the Magnuson-Stevens Act, and other applicable law. In making the final determination, NMFS will consider the data, views, and comments received during the public comment period.

This proposed rule has been determined to be significant for purposes of Executive Order (E.O.) 12866.

This proposed rule does not contain policies with Federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA includes this section of the preamble to this rule and analyses contained in Framework 50 and its accompanying EA/RIR/IRFA. The IRFA describes the economic impact that this proposed rule would have on small entities, if adopted. A description of the action, why it is being considered, and the legal basis for this action are contained in Framework 50, the beginning of this section (**SUPPLEMENTARY INFORMATION**) in the preamble, and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows.

Description and Estimate of the Number of Small Entities To Which the Proposed Rule Would Apply

The Small Business Administration (SBA) defines a small business as one that:

(1) Is independently-owned and operated;

(2) Is not dominant in its field of operation; and

(3) Has annual gross revenues that do not exceed—

- $4.0 million in the case of commercial harvesting entities, or
- $7.0 million in the case of for-hire fishing entities; or

(4) Has fewer than—

- 500 employees in the case of fish processors, or
- 100 employees in the case of fish dealers.

This action would mainly impact commercial harvesting entities engaged in the limited access groundfish fishery, as well as both the limited access general category and limited access scallop fisheries. The limited-access groundfish fishery is further classified as vessels enrolled in the sector program and those in the common pool. In general, sector-enrolled businesses rely more heavily on sales of groundfish species than common pool-enrolled vessels. At the beginning of the 2012 groundfish fishing year on May 1, 2012, there were 1,382 individual limited access permits. Each of these permits was eligible to join a sector or enroll in the common pool. Alternatively, they could allow their permit to expire by failing to renew it. There were 827 permits enrolled in the sector program and 584 enrolled in the common pool. The limited access (LA) scallop fisheries can be further classified as limited access and limited access general category (LAGC) scallop permits. At the beginning of the 2012 scallop fishing year on March 1, 2012, there were 342 active LA scallop and 603 active LGC permits.

Individually permitted vessels may hold permits for several fisheries, and may harvest species of fish that are regulated by several different fishery management plans, even beyond those impacted by this proposed action. In addition, multiple permitted-vessels, and/or permits, may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For the purposes of this analysis, ownership entities are defined by those entities with common ownership personnel as listed on permit application documentation. Only permits with identical ownership personnel are categorized as an ownership entity. For example, if five permits have the same seven personnel listed as co-owners on their application paperwork, those seven personnel form one ownership entity, covering those five permits. If one or several of the seven owners also own additional vessels, with sub-sets of the original seven personnel or with new co-owners, those ownership arrangements are deemed to be separate ownership entities for the purpose of this analysis.

Ownership data are available for the four primary sub-fisheries potentially impacted by the proposed action from 2010 onward. These are the sector and common pool segments in the groundfish fishery, and the LA and LAGC scallop fisheries. Due to data limitations, only 1 year's gross receipts are reported, and calendar year 2011 serves as the baseline year for this analysis. Calendar year 2012 data are not yet available in a fully audited form.

In 2011, there were 1,370 distinct ownership entities identified. Of these, 1,312 are categorized as small entities, and 58 are large entities, based on SBA guidelines. These totals may mask some diversity among the entities. Many, if not most, of these ownership entities maintain diversified harvest portfolios and obtain gross sales from many fisheries, and are not dependent on any one fishery. However, not all are equally diversified. The entities that depend most heavily on sales from harvesting species that are impacted by this proposed action are most likely to be affected. So, for this analysis, we identified ownership groups that are most likely to be impacted by the proposed measures. We identified these groups as those that derive greater than 50 percent of their gross sales from sales of either regulated groundfish or scallops. Using this threshold, 135 entities are groundfish-dependent, of which 131 are small entities, and four are large entities. There are 47 entities that are scallop-dependent, of which 39 are small entities, and 8 are large entities.

This action also regulates the Atlantic herring fishery. The herring fishery receives an allocation of GB and GOM haddock as a result of bycatch of these stocks that occurs in the fishery. In 2012, there were 3 large entities and 86 small entities that had limited access herring permits. There were 1,984 small entities that had an open access herring permit. Open access permits make up a very small proportion of the landings in the herring fishery, and derive little revenue from this fishery. Some entities that hold a limited access herring permit have gross revenues greater than $4 million. However, none of these entities reported any herring revenues during 2010–2012, and as a result, these entities are unlikely to be affected by this action. In addition, analysis predicts that it is unlikely that the midwater trawl herring fleet would exceed its sub-ACLs for GOM or GB haddock. As a result, the small regulated entities that derive revenues from the herring fishery are not expected to be impacted by this proposed action.

In addition to the commercial harvesting entities, this action would also impact the recreational harvesting entities that participate in the groundfish fishery. Party/charter permits for the groundfish fishery are open access. All party/charter fishing businesses that catch cod or haddock may be affected by this action. During FY 2010, 762 party/charter permits were issued. Of these 762 permits, 332 permit holders reported taking and retaining any species on at least one for-hire trip. In FY 2010, 285 of these permit holders reported catching at least one cod or haddock. Of the 285 permit holders that reported catching at least one cod or haddock in FY 2010, 148 reported fishing in the GOM stock area (the recreational fishery only has a quota for GOM cod and haddock). In 2011, 170 party/charter vessels reported landings of GOM cod or haddock. All regulated party/charter operators are small entities. The median value of gross revenues from passengers was just over $9,000, and did not exceed $500,000 in any year from 2001 to 2010.

Economic Impacts of the Proposed Measures and Alternatives and Measures Proposed To Mitigate Adverse Economic Impacts of the Proposed Action

The economic impacts of each proposed measure are summarized below and are discussed in more detail in sections 7.4 and 8.11 of the Framework 50 EA. All of the proposed alternatives would have impacts on a substantial number of small entities. The economic impacts of the proposed measures on the groundfish fishery are expected to be severe and negative. The proposed action may place small entities at a significant competitive disadvantage relative to large entities, particularly those small entities engaged in the commercial groundfish fishery. Analysis shows that smaller entities, those generating less than $500K in annual gross sales, would likely be the most impacted. Total gross sales losses for these entities are estimated to be approximately 20–25 percent. Gross sales losses from groundfish are estimated to be 50–80 percent. Profitability of many small entities would also likely be significantly reduced under the proposed groundfish catch limits.

Southern New England/Mid-Atlantic Winter Flounder Management Measures

The proposed revision to the SNE/MA winter flounder rebuilding strategy may avoid a loss of an estimated $40.2 million in net present value compared to the no action. This assumes that landings of the stock would be allowed, which is proposed in conjunction with the revised rebuilding program. Five rebuilding scenarios were analyzed in addition to the no action alternative. Two of these scenarios failed to rebuild the stock within 10 years, and thus, would violate rebuilding requirements of the Magnuson-Stevens Act. The other rebuilding strategies would meet Magnuson-Stevens Act requirements, but would rebuild in a shorter timeframe than 10 years, and as a result would have lower net economic benefits than the proposed action. If the Council did not take any action, the rebuilding strategy would be to rebuild the stock by 2014, which is unlikely even in the absence of all fishing mortality. The management objective for SNE/MA winter flounder would be to keep fishing mortality as close to zero as possible. This has the smallest net economic benefit when compared to all of the rebuilding scenarios analyzed.

This action also proposes to allocate SNE/MA winter flounder to sectors and allow landing of the stock. In FY 2013, landings of SNE/MA winter flounder are estimated to be worth $5.4 million in ex-vessel gross revenues based on the preferred ABC alternative. Approximately $4.3 million of these estimated revenues would accrue to sector vessels, and the rest to common pool vessels. Landing of this stock has been prohibited since FY 2010. As a result, it is difficult to anticipate the economic impacts of the revised ABC/ACL for this stock because there are not enough trips to help characterize future fishing activity. If the Council did not take any action, possession of SNE/MA winter flounder would continue to be prohibited, and fishing vessel revenues would be lower when compared to the Council's preferred alternative. Revenues of other groundfish stocks may also be reduced since there may be fewer groundfish trips as a result of the inability to land SNE/MA winter flounder.

This action proposes to modify the commercial fishery AM for SNE/MA winter flounder in conjunction with allocating the stock to sectors. There is a risk that sectors could catch their ACE prematurely within the fishing year and no longer be able to fish in the SNE/MA winter flounder stock area. This would have negative economic impacts due to lost revenue from the catch of other species, or increased costs as a result of having to fish outside of the area. However, analysis shows that it is unlikely that sector vessels would catch their entire allocation of SNE/MA winter flounder. As a result, this option would give sector vessels greater flexibility and would potentially result in higher revenues and lower costs.

Annual Catch Limit Specifications

This proposed action would set specifications for FYs 2013–2015 for most groundfish stocks. The new ABCs would be set based on the latest benchmark stock assessment information, which is considered the best scientific information available and consistent with the, the ABC control rules in the FMP, Magnuson-Stevens Act requirments. and other applicable law. Because NFMS can only approve or disapprove measures recommended in Framework 50, the only other possible alternatives to the catch limits proposed that would mitigate negative impacts would be higher catch limits. Alternative higher catch limits are not viable or permissible under the law because they would not be consistent with the goals, objectives, and requirements of the Magnuson-Stevens Act and the FMP, particularly the requirement to end overfishing immediately. The Magnuson-Stevens Act and case law prevent implementation of measures that conflict with conservation requirements even if it means negative impacts are not mitigated. For all stocks, except GB yellowtail flounder, the Council recommended the highest ABCs allowed given the best available science, the SSC's recommendations, and Magnuson-Stevens Act and FMP requirements to end overfishing and rebuild fish stocks. The only other legally available alternatives to these proposed catch limits would be lower limits, which would not mitigate the economic impacts of the proposed action to the fishery. The Council's recommendation for GB yellowtail flounder does not appear to be consistent with the best scientific information available, would likely fail to end overfishing, and as a result, would violate Magnuson-Stevens Act requirements. The proposed emergency action for GB yellowtail flounder is the highest ABC possible to avoid overfishing based on the best scientific information available.

If the Council took no action to revise the specifications for FY 2013–2015, no specifications would be set for most stocks in FY 2013. The FY 2012 catch limits expire on April 30, 2013, and the FMP does not specify any rollover provisions for specifications. As a result, if no catch limits are specified as proposed in this action, groundfish vessels would be unable to fish. This would be expected to have greater negative economic impacts than the proposed action, and would be predicted to have much less revenues as well. If no action is taken to specify catch limits, Magnuson-Stevens Act requirements to achieve optimum yield and consider the needs of fishing communities would be violated.

For the reasons mentioned above, the proposed alternative is the only reasonable and legal alternative available that would mitigate the economic impacts of the proposed action to the extent possible. Although there are no other viable alternatives to mitigate negative impacts in the narrow scope and context of Framework 50 and this proposed rule, there are numerous mitigation measures that have been extensively discussed, considered, and implemented in Amendment 16, and parallel measures that are being proposed for implementation in FY 2013. Amendment 16 established various measures to mitigate negative impacts of lower catch limits, including the sector program that provides substantial flexibility in when, how and where fishing can occur, the carryover provisions from year to year of uncaught quota, special provisions for certain small segments of the fishing fleet, and other measures that can be considered. The Amendment 16 FEIS and final rule can be found on the Council's Web site at: *http://www.nefmc.org/nemulti/index.html.* In addition, both the Council and NMFS are proposing, concurrently with this rule, other measures to mitigate the impacts of the anticipated reductions in the FY 2013 catch limits for most stocks. Mitigating measures are being proposed in Framework 48, including reduction in minimum fish sizes for some species and revisions to the discard strata for GB yellowtail flounder, an emergency action to increase monkfish trip limits, and the FY 2013 Sector Operations Plans and Contracts and Allocation of the NE Multispecies ACE rulemaking which proposes 25 exemptions to allow more flexibility for sector vessels. NMFS has also already taken action on some measures, including announcing its intent to cover at-sea monitoring costs for sector vessels in FY 2013, and an exemption for sector vessels to allow more fishing opportunity on redfish, which is a healthy groundfish stock. All of these proposed and implemented

measures can be found at: *http://www.nero.noaa.gov/sfd/sfdmulti.html.*

The analysis to estimate the economic impacts of this proposed action considered two different scenarios using a low (Scenario 1) and high (Scenario 2) ACL for both GOM cod and GB yellowtail flounder. Both scenarios have similar estimated groundfish gross revenues for FY 2013. Compared to FY 2011, groundfish gross revenues are expected to be approximately 28–30 percent lower. Gross groundfish revenues are expected to be 18 to 20 percent lower than those predicated for FY 2012. Under the proposed action, gross revenues for all species on groundfish trips are expected to be 23 to 25 percent less in FY 2013 when compared to FY 2011, and 11 to 13 percent lower compared to the predicated FY 2012 revenues. These expected revenues in FY 2013 assume the full 10-percent carryover is available to sector vessels from FY 2012 to FY 2013. As explained below, if the carryover available to sector vessels is lower, expected revenue could decrease.

The home port states of Connecticut, New Hampshire, and New Jersey are expected to have the largest percentage declines in landings value compared to FY 2011. Massachusetts would likely see the largest overall decline in gross revenue since FY 2011, with an expected decrease of approximately $21 million. All ports would be negatively affected by this proposed action. Chatham, MA, is expected to have the largest percentage decline in landings value since FY 2011.

The impacts of the proposed action would be non-uniformly distributed across vessel length classes. The economic impact is expected to fall heaviest on the smallest vessel length class (less than 30 feet (9.1 m)) and is expected to taper off as vessel length increases up to the largest vessel length class (greater than 75 feet (22.9 m)). This result is not surprising; relative to larger vessels, small vessels have less scalability in terms of landings, and have a smaller geographic range.

Under both scenarios analyzed, net revenues are expected to decline much less substantially than gross revenues. Gross revenues on sector trips in FY 2013 are expected to decline by approximately $26 million to $27 million from FY 2011, which is a 23 to 25-percent decrease. Net revenues are expected to decline by a range of only $2 to $3 million, or approximately 4 to 6 percent, from FY 2011. This is due in part to limitations of the analysis, which underestimates actual trip costs, and in part to efficiency gains that are predicted to occur. Maintaining net revenues would most likely occur at the expense of smaller vessels operating at a low profit margin that would be forced to lease their quota or sell their permits. Under the proposed action, crew-days, days absent, and total sector trips would also be expected to decline substantially relative to FY 2011, since only the most efficient trips are expected to occur under such highly restrictive quota allocations. Fewer operating vessels and days absent would translate into a reduction in earning opportunities for crew members.

The proposed action would reduce the scallop fishery allocation for GB and SNE/MA yellowtail flounder by at least 38 percent, and 52 percent, respectively. If the scallop fishery exceeds its allocation by more than 56 percent, scallop vessels would not have access to Closed Area II, and revenues would decline by $16.2 million. If an overage occurs, and is less than 56 percent, the AM areas for the scallop fishery would be open to fishing part of the year. Fishing effort could likely be moved to other months. Shorter scallop fishing windows could increase operating costs and have potential negative price impacts from short-term supply increases. If effort was shifted to other seasons when the meat weights are highest, there could be some positive impacts on the long-term revenues, which could offset some negative economic effects.

The Council-preferred alternative for the FY 2013 GB yellowtail flounder ABC would result in a scallop allocation of 192.1 mt, and the proposed emergency action to implement a FY 2013 ABC of 500 mt would result in a scallop allocation of 83.4 mt. The medium estimate of GB yellowtail flounder bycatch by the scallop fishery in FY 2013 is 85.3 mt. The high estimate of 2013 GB yellowtail flounder bycatch is 152.8 mt. Thus, if these estimates are accurate, it is unlikely that a significant overage would occur in FY 2013. As a result, scallop-dependent small entities are not expected to be significantly impacted by this action. *NMFS is seeking comments on the economic impacts of the proposed GB yellowtail flounder levels on the scallop fishery.*

Carryover

This proposed action would continue to allow up to 10 percent of unused FY 2012 sector ACE to be used in FY 2013 in conjunction with the proposed catch limits in this action. NMFS is proposing to reduce the allowable GOM cod unused ACE from a maximum of 10 percent down to a maximum of 1.85 percent to better ensure overfishing does not occur. The actual amount of carryover to FY 2013 depends on the amount of ACE not harvested in FY 2012.

The economic impact analysis conducted for Framework 50 assumed that the full 10-percent carryover amount, including GOM cod, was available and utilized for all carryover-eligible stocks. As such, carryover contributes to the projected $64.3 million gross groundfish revenues resulting from the preferred-alternative catch limits. The analysis also evaluated if no carryover of GOM cod was permitted in FY 2013. This reduced projected gross groundfish revenue by $2.6 million to $61.7 million. NMFS estimates that the 1.85-percent GOM cod carryover could contribute approximately $50,000 to the FY 2013 gross groundfish revenue (i.e., roughly 1.85 percent of the $2.6 million value of GOM cod carryover). Consistent with the overall findings on FY 2013 catch limit economic impacts, the reduction in GOM cod carryover proposed by NMFS would have the highest impact on vessels under 30 feet (9.1 m) in length.

The proposed carryover amounts mitigate adverse economic impact to the maximum extent possible while ensuring NMFS meets its statutory obligation to propose catch limits, in this case FY 2013 ACLs plus the potential carryover, that do not result in overfishing stocks.

FY 2013 Recreational Management Measures

This proposed action would increase the minimum fish size for GOM haddock in the recreational fishery. Total potential losses in gross revenues for party/charter vessels operating in the GOM as a result of the proposed action were estimated to be approximately $974 thousand. Total potential losses in gross revenues were estimated by multiplying the projected FY 2013 decline in fishing trips (7,109 trips) by the estimated average access fee paid by party/charter anglers ($137). Assuming the number of actively participating party/charter vessels in FY 2013 would be the same as in FY 2011, the proposed action would result in an average projected gross revenue loss of $5,729 per vessel ($974 thousand divided by 170 vessels). Actual losses would likely be lower than estimated, since some anglers may switch to other species besides haddock and cod (striped bass, bluefish, black sea bass, scup, etc.) not considered in this analysis. For-hire businesses that are able to offer more non-groundfish fishing trips specifically marketed towards alternative species

may be able offset some of the estimated losses.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

This action contains no new collection-of-information, reporting, or recordkeeping requirements. This action does not duplicate, overlap, or conflict with any other Federal law.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 27, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. Further amend § 648.82, as proposed to be amended at 78 FR 18188, March 25, 2013, by adding paragraph (n)(2)(vi), to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(n) * * *

(2) * * *

(vi) *SNE/MA winter flounder AM.* If the common pool fishery sub-ACL for SNE/MA winter flounder is exceeded, including the common pool's share of any overage of the total ACL, as specified at § 648.90(a)(5), by an amount that exceeds the management uncertainty buffer, the AM described in this paragraph would be implemented in the following fishing year. The AM would be effective for the entire fishing year. Common pool vessels fishing on a NE Multispecies DAS with trawl gear may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(*3*); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6) in the SNE/MA Winter Flounder Trawl Gear AM Areas. The AM areas are defined below, and are bounded by the following coordinates, connected in the order listed by straight lines, unless otherwise noted.

SNE/MA WINTER FLOUNDER TRAWL GEAR AM AREA 1

Point	N. latitude	W. longitude
1	41°10′	(1) 71°40′
2	41°10′	71°20′
3	41°00’	71°20′
4	41°00′	71°40′

(1) Point 1 connects to Point 2 along 41°10′ N or the southern coastline of Block Island, RI, whichever is farther south.

SNE/MA WINTER FLOUNDER TRAWL GEAR AM AREA 2

Point	N. latitude	W. longitude
1	41°20′	70°30′
2	41°20′	70°20′
3	41°00′	70°20′
4	41°00′	70°30′

SNE/MA WINTER FLOUNDER TRAWL GEAR AM AREA 3

Point	N. latitude	W. longitude
1	41°20′	69°20′
2	41°20′	69°10′
3	41°10′	69°10′
4	41°10′	69°20′

SNE/MA WINTER FLOUNDER TRAWL GEAR AM AREA 4

Point	N. latitude	W. longitude
1	41°20′	69°20′
2	41°20′	(1)
3	(1)	69°00′
4	41°00′	69°00′
5	41°00′	69°10′
6	41°10′	69°10′
7	41°10′	69°20′

(1) The southwest-facing boundary of Closed Area I.

* * * * *

■ 3. Further amend § 648.85, as proposed to be amended at 78 FR 18188, March 25, 2013, by:

■ a. Revising paragraphs (b)(5) introductory text, (b)(5)(i), (b)(6)(iv)(D), (b)(8)(v)(F), and (b)(8)(v)(H), and

■ b. Adding paragraph (b)(5)(iii).

The added and revised text reads as follows:

§ 648.85 Special management programs.

* * * * *

(b) * * *

(5) *Incidental Catch TACs.* Unless otherwise specified in this paragraph (b)(5), Incidental Catch TACs shall be based upon the portion of the ACL for a stock specified for the common pool vessels pursuant to § 648.90(a)(4), and allocated as described in this paragraph (b)(5), for each of the following stocks: GOM cod, GB cod, GB yellowtail flounder, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA winter flounder, and witch flounder. Because GB yellowtail flounder and GB cod are transboundary stocks, the incidental catch TACs for these stocks shall be based upon the common pool portion of the ACL available to U.S. vessels. NMFS shall send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod and GB yellowtail flounder.* With the exception of GB cod and GB yellowtail flounder, 100 percent of the Incidental Catch TACs specified in this paragraph (b)(5) shall be allocated to the Regular B DAS Program described in paragraph (b)(6) of this section.

* * * * *

(iii) *GB yellowtail flounder.* The Incidental Catch TAC for GB yellowtail flounder specified in this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program described in paragraph (b)(6) of this section and 50 percent to the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

* * * * *

(6) * * *

(iv) * * *

(D) *Landing limits.* Unless otherwise specified in this paragraph (b)(6)(iv)(D), or restricted pursuant to § 648.86, a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species/stocks from the areas specified in paragraph (b)(6)(v) of this section: Cod (both GOM and GB), American plaice, white hake, witch flounder, SNE/MA winter flounder, and GB yellowtail flounder; and may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM yellowtail flounder. In addition, trawl vessels, which are required to fish with a haddock separator trawl, as specified in paragraph (a)(3)(iii)(A) of this section, or a Ruhle trawl, as specified in paragraph (b)(6)(iv)(J) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described in paragraph (b)(6)(iv)(J) of this section, are restricted to the trip limits specified in paragraph (e) of this section.

* * * * *

(8) * * *

(v) * * *

(F) *Landing limits.* Unless otherwise restricted under this part, a vessel fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP under a NE multispecies DAS may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod, per trip, regardless of trip length. A common pool vessel fishing in the Eastern U.S./Canada Haddock SAP under a NE multispecies DAS is subject to the haddock requirements described in § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section. A common pool vessel fishing in the Eastern U.S./Canada Haddock SAP may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, of GB yellowtail flounder, up to a maximum of 500 lb (227 kg) of all flatfish species, combined. Possession of monkfish (whole weight) and skates (whole weight) is limited to 500 lb (227 kg) each, unless otherwise restricted by § 648.94(b)(3), and possession of lobsters is prohibited. Possession limits for all other stocks are as specified in § 648.86.

* * * * *

(H) *Incidental TACs.* The maximum amount of GB cod and GB yellowtail flounder, both landings and discards, that may be caught when fishing in the Eastern U.S./Canada Haddock SAP Program in a fishing year by vessels fishing under a Category B DAS, as authorized in paragraph (b)(8)(v)(A) of this section, is the amount specified in paragraphs (b)(5)(ii) and (iii) of this section. All regulated species and ocean pout caught by a vessel on a sector trip will be applied against the ACE for each stock that is specified for the sector in which the vessel participates.

* * * * *

■ 4. § 648.86 is amended by revising paragraph (l) to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(l) *Ocean pout, windowpane flounder, and Atlantic wolffish.* A vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions may not fish for, possess, or land ocean pout, windowpane flounder, or Atlantic wolffish.

* * * * *

■ 5. § 648.87 is amended as follows:

■ a. Revise paragraphs (b)(1)(i)(A) and (c)(2)(ii)(A);

■ b. Suspend paragraph (b)(1)(i)(C); and

■ c. Add paragraphs (b)(1)(i)(F) and (b)(1)(i)(G).

The added and revised text reads as follows:

§ 648.87 Sector allocation.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) *Allocated stocks.* Each sector shall be allocated a TAC in the form of an ACE for each NE multispecies stock, with the exception of Atlantic halibut, ocean pout, windowpane flounder (both the GOM/GB and the SNE/MA stocks), and Atlantic wolffish based upon the cumulative PSCs of vessels/permits participating in each sector during a particular fishing year, as described in paragraph (b)(1)(i)(E) of this section.

* * * * *

(F)(*1*) *Carry-over.* (*i*) With the exception of GB yellowtail flounder and GOM cod, a sector may carry over an amount of ACE equal to up to 10 percent of its original ACE allocation for each stock that is unused at the end of one fishing year into the following fishing year. A sector may carry over an amount of ACE equal to up to 1.85 percent of its original GOM cod ACE allocation that is unused at the end of one fishing year into the *following* fishing year.

(*ii*) For FY 2013, no carryover shall be counted against a sector's ACE.

(*2*) *Eastern GB cod and haddock carryover.* Any unused ACE allocated for Eastern GB stocks pursuant to paragraph (b)(1)(i)(B) of this section will contribute to the 10-percent carry-over allowance for each stock, as specified in paragraph (b)(1)(i)(F)(*1*), but will not increase an individual sector's allocation of Eastern GB stocks during the following year.

(*3*) *Carry-over when vessels leave or change sectors.* Carry-over ACE remains effective during the subsequent fishing year even if vessels that contributed to the sector allocation during the previous fishing year are no longer participating in the same sector for the subsequent fishing year.

(G) *Carryover accounting.* (*1*) Beginning in FY 2014, carryover of a particular stock attributed to a sector, other than the NMFS-specified *de minimus* amount, shall be counted against the sector's ACE only for purposes of determining an overage subject to the AM in paragraph (b)(4)(iii) of this section in circumstances there the stock-level ACL has been exceeded.

(*2*) In instances where the stock-level ACL has been exceeded and sectors have utilized available carryover in excess of the NMFS specified *de minimus* amount, the sector will be subject to the AM provision, inclusive of the carryover amount in excess of the stock-level ACL, as outlined in paragraph (b)(4)(iii) of this section.

(*3*) NMFS reserves the right to reduce the available eligible carryover amount to ensure the total potential catch, the stock-level ACL plus the carryover amount, does not exceed the stock overfishing limit, to maintain consistency with the requirements of the Magnuson-Stevens Act.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(A) Trip limits on NE multispecies stocks for which a sector receives an allocation of ACE pursuant to paragraph (b)(1)(i) of this section (i.e., all stocks except Atlantic halibut, ocean pout, windowpane flounder, and Atlantic wolffish);

* * * * *

§ 648.89 [*Amended*]

■ 6. Section 648.89 is amended as follows:

■ a. Remove paragraph (c)(7); and

■ b. Redesignate paragraph (c)(6) as paragraph (c)(5);; paragraph (c)(8) as paragraph (c)(6) and paragraph (c)(9) as paragraph (c)(7) .

■ 7. Further amend § 648.90, as proposed to be amended at 78 FR 18188, March 25, 2013, by revising paragraph (a)(5)(i)(A) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(a) * * *

(5) * * *

(i) * * *

(A) *Excessive catch by common pool vessels.* If the catch of regulated species and ocean pout by common pool vessels exceeds the amount of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(H)(*2*) of this section, then the AMs described in § 648.82(n) shall take effect. Pursuant to the distribution of ABCs/ACLs specified in paragraph (a)(4)(iii)(H)(*2*) of this section, for the purposes of this paragraph (a)(5)(i)(A), the catch of each regulated species or ocean pout stock not allocated to sectors pursuant to § 648.87(b)(1)(i)(F) (i.e., Atlantic halibut, ocean pout, windowpane flounder, and Atlantic wolffish) during fishing years 2010 and 2011 shall be added to the catch of such stocks by common pool vessels to determine whether the differential DAS counting AM described in § 648.82(n)(1) shall take effect. If such catch does not exceed the portion of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(H)(*2*) of

this section, then no AMs shall take effect for common pool vessels.

* * * * *

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