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WHEN: Tuesday, February 22, 2011
9 a.m.–12:30 p.m.

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RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 76, No. 28

Thursday, February 10, 2011

Agriculture Department
See Forest Service

Coast Guard
PROPOSED RULES
Safety Zones:
Mississippi River, Mile 842.0 to 839.5, 7515–7518

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 7531–7532

Copyright Royalty Board
NOTICES
Distribution of 2000, 2001, 2002, and 2003 Cable Royalty Funds, 7590–7591

Defense Department
PROPOSED RULES
Federal Acquisition Regulations:
Enhancing Contract Transparency, 7522–7526

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 7549–7550
Meetings:
Advisory Committee on Student Financial Assistance, 7551
President's Board of Advisors on Historically Black Colleges and Universities, 7550–7551

Election Assistance Commission
NOTICES
Meetings; Sunshine Act, 7551–7552

Employment and Training Administration
NOTICES
Affirmative Determinations Regarding Applications for Reconsideration:
Matthews International Corp., Bronze Division, Kingwood, WV, 7584–7585
Amended Certifications Regarding Eligibility To Apply for Worker Adjustment Assistance:
General Motors Corp., Milford Proving Grounds, et al., Milford, MI, 7585
Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance, 7585–7588
Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance, 7588–7589
Negative Determinations Regarding Application for Reconsideration:
Bob Evans Farms, Inc., Galva, IL, 7589–7590
Revised Determinations on Reconsideration:
Bruss North America, Russell Springs, KY, 7590

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
PROPOSED RULES
Outer Continental Shelf Air Regulations Consistency Update for Alaska, 7518–7522
NOTICES
Access in Litigation to Confidential Business Information:
Transfer of Information to the United States Department of Justice and Parties to Certain Litigation, 7559–7560
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects, 7560–7562

Equal Employment Opportunity Commission
NOTICES
Meetings; Sunshine Act, 7562

Executive Office of the President
See Science and Technology Policy Office

Federal Aviation Administration
RULES
Operations Specifications, 7482–7491
PROPOSED RULES
Airworthiness Directives:
Boeing Co. Model 747–400 and –400F Series Airplane, 7513–7515
Empresa Brasileira de Aeronautica S.A. Model ERJ 170 Airplanes; and Model ERJ 190–100 STD, ERJ 190–100 LR, ERJ 190–100 IGW, ERJ 190–200 STD, ERJ 190–200 LR, and ERJ 190–200 IGW Airplanes, 7511–7513
Establishment of Class E Airspace:
Kenbridge, VA; Withdrawal, 7515

Federal Communications Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 7562–7567

Federal Deposit Insurance Corporation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 7567–7568

Federal Emergency Management Agency
RULES
National Flood Insurance Program, Policy Wording Correction, 7508–7510
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Participation in the National Flood Insurance Program, 7576
Debt Collection Financial Statement, 7577
Exemption of State-Owned Properties Under Self-Insurance Plan, 7575–7576

Federal Energy Regulatory Commission
NOTICES
Applications:
Charles River Energy LLC, 7552
Baseline Filings:
DCP Guadalupe Pipeline, LLC, 7552–7553
Combined Filings, 7553–7558
Filings:
Enogex, LLC, 7558
Initial Market-Based Rate Filings Including Requests For Blanket Section 204 Authorization:
GBC Metals LLC, 7558–7559
Technical Conferences:
Tennessee Gas Pipeline Co., 7559

Federal Highway Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
Seattle Ferry Terminal (Colman Dock) in Seattle, WA; Rescinded, 7623

Federal Housing Finance Agency
RULES
Office of the Ombudsman, 7479–7482

Federal Housing Finance Board
RULES
Office of the Ombudsman, 7479–7482

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 7568

Federal Motor Carrier Safety Administration
NOTICES
Applications for Exemptions from Innovative Electronics:
Parts and Accessories Necessary for Safe Operation; Brakes, 7623–7625
Qualification of Drivers; Exemption Applications; Diabetes Mellitus, 7625–7627

Federal Railroad Administration
NOTICES
Petitions for Waivers of Compliance:
Association of American Railroads, 7627–7628
Denton County Transportation Authority, 7628–7629

Federal Reserve System
NOTICES
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 7568

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
12-Month Finding on Petition to List Pacific Walrus as Endangered or Threatened, 7634–7679
90-Day Finding on a Petition To Revise Critical Habitat for Vernal Pool Fairy and Tadpole Shrimp, 7528–7530
NOTICES
Endangered and Threatened Species Permit Applications, 7577–7579
Meetings:
Coral Reef Task Force, 7579
Sport Fishing and Boating Partnership Council, 7579–7580
Permit Applications:
Endangered Species, Marine Mammals, 7580–7581

Forest Service
NOTICES
Meetings:
Lake County Resource Advisory Committee, 7531
Yavapai County Resource Advisory Committee, 7531

General Services Administration
PROPOSED RULES
Federal Acquisition Regulations:
Enhancing Contract Transparency, 7522–7526

Health and Human Services Department
See National Institutes of Health
NOTICES
Findings of Research Misconduct, 7568–7569
Meetings:
Presidential Commission for the Study of Bioethical Issues, 7569–7570
Technical Advisory Panel on Medicare Trustee Reports, 7569

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Indian Affairs Bureau
RULES
Indian Trust Management Reform; Implementation of Statutory Changes, 7500–7508

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
RULES
Indian Trust Management Reform; Implementation of Statutory Changes, 7500–7508

International Trade Administration
RULES
Certification of Factual Information During Antidumping and Countervailing Duty Proceedings, 7491–7500
NOTICES
Extension of Preliminary Results of Antidumping Duty Administrative Review:
Certain Polyester Staple Fiber from the People's Republic of China, 7532
Final Results of Antidumping Duty Administrative Review:
1–Hydroxyethylidene–1, 1–Diphosphonic Acid from India, 7532–7534
Final Results of the Expedited Sunset Review of the Antidumping Duty Order:
Porcelain-on-Steel Cooking Ware from the People's Republic of China, 7534
Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part:
Wooden Bedroom Furniture from the People's Republic of China, 7534–7546
Rescission of Countervailing Duty Administrative Review:
Certain Hot-Rolled Carbon Steel Flat Products from Brazil, 7546

International Trade Commission
NOTICES
Complaints:
Certain Digital Televisions and Components Thereof, 7583
Certain Electronics Devices Having a Blu-Ray Disc Player and Components Thereof, 7582–7583
Meetings; Sunshine Act, 7583–7584
Terminations of Investigations:
Certain Video Displays, Components Thereof and Products Containing Same, 7584

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Pony Express Resource Management Plan Amendment/Mona to Oquirrh Transmission Corridor, 7581–7582

Library of Congress
See Copyright Royalty Board

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulations:
Enhancing Contract Transparency, 7522–7526
Major System Acquisition:
Earned Value Management, 7526–7527

National Archives and Records Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 7591

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Loan Repayment Programs, 7570–7571
Meetings:
Center for Scientific Review, 7572, 7574–7575
National Cancer Institute, 7575
National Institute of Allergy and Infectious Diseases, 7573
National Institute of Environmental Health Sciences, 7572–7574
National Institute of General Medical Sciences, 7573
National Institute on Drug Abuse, 7571–7572, 7575

National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Prohibited Species Donation Program, 7546–7547
Meetings:
Atlantic Highly Migratory Species Advisory Panel, 7547
New England Fishery Management Council, 7548
Taking and Importing Marine Mammals:
Precision Strike Weapons Testing and Training by Eglin Air Force Base in the Gulf of Mexico, 7548–7549

National Science Foundation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 7591–7592

Nuclear Regulatory Commission
NOTICES
Decisions:
Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., 7592–7593

Science and Technology Policy Office
NOTICES
Meetings:
Presidents Council of Advisors on Science and Technology, 7593–7594

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 7594–7596
Self-Regulatory Organizations; Proposed Rule Changes:
C2 Options Exchange, Inc, 7597–7601
Chicago Board Options Exchange, Inc., 7601–7602, 7610–7616
EDGA Exchange, Inc., 7608–7610, 7616–7619
EDGX Exchange, Inc., 7607–7608, 7620–7622
NASDAQ OMX PHLX LLC, 7619–7620
NASDAQ Stock Market LLC, 7602–7604
National Stock Exchange, Inc., 7604–7607

Small Business Administration
NOTICES
Disaster Declarations:
California, 7622–7623
Maine, 7622

State Department
NOTICES
Performance Review Board Members, 7623

Thrift Supervision Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Interagency Charter and Federal Deposit Insurance Application, 7630
Interagency Notice of Change in Control, 7629–7630
Meetings:
OTS Minority Depository Institutions Advisory Committee, 7630–7631

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration

Treasury Department
See Thrift Supervision Office
NOTICES
Meetings:
President's Council on Jobs and Competitiveness, 7629

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 7634–7679

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

12 CFR
907.....7479
1213.....7479

14 CFR
45.....7482
110.....7482
119.....7482
121.....7482
129.....7482
135.....7482

Proposed Rules:
39 (2 documents) 7511, 7513
71.....7515

19 CFR
351.....7491

25 CFR
15.....7500

33 CFR

Proposed Rules:
165.....7515

40 CFR

Proposed Rules:
55.....7518

43 CFR
4.....7500
30.....7500

44 CFR
61.....7508

48 CFR

Proposed Rules:
24.....7522
1834.....7526

50 CFR

Proposed Rules:
17 (2 documents) 7528, 7634

Rules and Regulations

Federal Register
Vol. 76, No. 28
Thursday, February 10, 2011

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

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

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 907

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1213

RIN 2590–AA20

Office of the Ombudsman

AGENCIES: Federal Housing Finance Board; Federal Housing Finance Agency.

ACTION: Final regulation.

SUMMARY: The Federal Housing Finance Agency (FHFA) is adopting a final regulation that establishes an Office of the Ombudsman, which is responsible for considering complaints and appeals from the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks (collectively, regulated entities), the Federal Home Loan Bank System's Office of Finance, and any person that has a business relationship with a regulated entity or the Office of Finance, regarding any matter relating to the regulation and supervision of the regulated entities or the Office of Finance by FHFA.

DATES: *Effective Date:* March 14, 2011.

FOR FURTHER INFORMATION CONTACT: Sandy Comenetz, Executive Advisor to the Acting Director, (202) 414–3771, or Andra Grossman, Senior Counsel, (202) 343–1313 (not toll-free numbers), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654 (2008), amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act) to establish FHFA as an independent agency of the Federal Government.[1] FHFA was established to oversee the prudential operations of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (together, Enterprises), and the Federal Home Loan Banks (FHLBanks); and to ensure that they operate in a safe and sound manner; remain adequately capitalized; foster liquid, efficient, competitive and resilient national housing finance markets; comply with the Safety and Soundness Act and their respective authorizing statutes, as well as all rules, regulations, guidelines, and orders and carry out their missions through activities that are authorized by their respective statutes and are consistent with the public interest. FHFA also has regulatory authority over the FHLBank System's Office of Finance under section 1311(b)(2) of the Safety and Soundness Act (12 U.S.C. 4511(b)(2)).

Section 1105(e) of HERA amended section 1317(i) of the Safety and Soundness Act (12 U.S.C. 4517(i)) to require the Director of FHFA to establish, by regulation, an Office of the Ombudsman (Office). The Office must be headed by an Ombudsman who will consider complaints and appeals from any regulated entity and any person that has a business relationship with a regulated entity regarding any matter relating to the regulation and supervision of such regulated entity. The regulation must specify the authority and duties of the Office.

On August 6, 2010, FHFA published for comment a proposed regulation to establish an Office of the Ombudsman at FHFA.[2] The proposed regulation set forth the authority and duties of the Office, and included provisions concerning retaliation and confidentiality.

FHFA received comment letters from Fannie Mae; Freddie Mac; the FHLBanks of Des Moines, Pittsburgh, Seattle, and Topeka; and Wells Fargo Home Mortgage. All comments were considered and have been posted on the FHFA Web site at *http://www.fhfa.gov.* A discussion of significant comments as they relate to the final regulation follows.

[1] *See* Division A, "Federal Housing Finance Regulatory Reform Act of 2008," Title I, Section 1101 of HERA.

[2] 74 FR 47495.

II. Final Regulation

Specific concerns raised by commenters are described and addressed below. After considering the comments, FHFA adopts a final regulation implementing section 1317(i) of the Safety and Soundness Act as amended by section 1105(e) of HERA to establish an FHFA Office of the Ombudsman.

Scope of Ombudsman's Authority

Several commenters requested that the final regulation clarify that the following types of matters—business decisions of the regulated entities, disputes between the regulated entities or the Office of Finance and vendors, and matters in litigation—are not within the scope of the Office's responsibilities. They requested that the Ombudsman's authority be expressly limited to complaints concerning FHFA's regulatory and supervisory activities.

FHFA's view is that business decisions of the regulated entities, and disputes between the regulated entities or the Office of Finance and vendors may relate to the regulation and supervision of the regulated entities. It is the Ombudsman's responsibility to consider the facts of each case to determine whether the matter is appropriate for consideration. Accordingly, there is no need for clarifying language.

As to the requested language about matters in litigation, FHFA agrees, and the final regulation specifically provides that the Ombudsman will not consider matters in litigation, arbitration, or mediation.

Several commenters requested that the final regulation permit appeals of non-final decisions or conclusions, and also in situations where there is an existing avenue or another forum for appeal. FHFA declines to allow appeals to the Ombudsman in such circumstances on the grounds that to do so would be inefficient and would lead to confusion as to the status of the respective appeals.

One commenter requested that the regulation authorize the Ombudsman to (i) Engage in a collaborative dialogue with the person that has a business

relationship with the regulated entity, (ii) revise a requirement of the regulated entities, and (iii) revise an interpretation of the regulated entities.

Engaging in a collaborative dialogue as a facilitator or mediator is the essence of the Ombudsman's role and does not need further clarification. In contrast, revising a requirement of a regulated entity or an interpretation of a regulated entity's charter does not come within the Ombudsman's authority because the Ombudsman is not a decision maker. However, as with any complaint or appeal, where a supervisory or regulatory requirement or a charter interpretation is challenged, the Ombudsman is authorized to conduct inquiries and submit findings of fact and make a recommendation to the Director concerning resolution of the issue. Accordingly, FHFA concludes there is no need for further clarification of these issues.

Definitions

Business Relationship. In the proposed regulation "business relationship" means a relationship or potential relationship between a person and a regulated entity or the Office of Finance that involves the provision of goods or services, but does not mean a relationship between a mortgagor and a regulated entity that directly or indirectly owns, purchased, guarantees, or sold the mortgage.

Several commenters requested that the definition exclude "potential relationships" because including them would, in their terms, exponentially increase the universe of persons to whom the regulation would apply. They noted that the operative provision, 12 U.S.C. 4517(i), does not use the word "potential." FHFA will not make the change because, like existing business relationships, a potential business relationship may relate to FHFA's regulation and supervision of a regulated entity. FHFA has made a technical revision to the definition of the term "business relationship," by substituting the term "interaction" for "relationship" in the body of the definition.

Person. In the proposed regulation, "person" means an organization, business entity, or individual that has a business relationship with a regulated entity or the Office of Finance or that represents directly or indirectly the interests of a person that has a business relationship with a regulated entity or the Office of Finance. It does not mean an individual borrower.

Some commenters requested that the definition expressly exclude employees to clarify that a dispute between a regulated entity or the Office of Finance and an employee would not come within the Ombudsman's purview. The commenters' rationale is that there are other forums for such disputes, namely State or Federal court.

As the Ombudsman evaluates the facts of each case to determine whether the matter is appropriate for consideration, FHFA's view is that adding the requested language is unnecessary and could lead to confusion as to whether employees may complain about FHFA policies that affect them.

The same commenters requested that the Ombudsman be required to notify a regulated entity of any whistleblower complaint in which the entity is named so that the entity will be able to address the matter quickly. FHFA is not required to provide such notification under applicable law, but will do so as it deems appropriate under the circumstances. No additional language will be added to the final regulation.

Reviews of Disputed Supervisory Determinations

One commenter asked whether the Office is intended to replace the process under 12 CFR 907.9 by which FHLBanks may seek review of a disputed supervisory determination, or whether it is intended to be an alternate path of appeal. The answer is that the Ombudsman's responsibility to consider complaints and appeals from regulated entities replaces the § 907.9 process. All of the regulated entities and the Office of Finance may submit appeals of final supervisory determinations to the Ombudsman for consideration. The Ombudsman will conduct an inquiry and submit findings of fact and a recommendation to the Director concerning resolution of the case. Consequently, 12 CFR 907.9 will be removed on the effective date of this part.

No Retaliation

Proposed § 1213.6 provides that neither FHFA nor any FHFA employee may retaliate against a regulated entity, the Office of Finance, or a person for submitting a complaint or appeal. As proposed, the Ombudsman would receive and address complaints of retaliation and upon completion of an investigation, report the findings to the Director with recommendations, including a recommendation to take disciplinary action against any FHFA employee found to have retaliated.

FHFA did not receive comments from the public on the proposed section. However, subsequent to publication of the proposed rule, the FHFA Inspector General was appointed and confirmed. Accordingly, FHFA has revised § 1213.6 to provide that the Ombudsman, in coordination with the Inspector General, is to examine the basis of the alleged retaliation. At the completion of the examination, the Ombudsman is to report the findings to the Director with recommendations, including any recommendation to take disciplinary action against any FHFA employee found to have retaliated.

Confidentiality

One commenter requested that § 1213.7 of the final regulation permit parties to request that their identity or specific information remain confidential. The final regulation, as does the proposed regulation, requires the Ombudsman to ensure that safeguards exist to preserve confidentiality, and prohibits the Ombudsman from disclosing information, including a party's identity, provided by a party except to appropriate reviewing or investigating officials or if disclosure is required by law. The final regulation clarifies that an appropriate investigating official may include the Inspector General.

Differences Between the FHLBanks and the Enterprises

Section 1313(f) of the Safety and Soundness Act (12 U.S.C. 4513(f)), as amended by section 1201 of HERA, requires the Director, when promulgating regulations relating to the FHLBanks, to consider the differences between the FHLBanks and the Enterprises with respect to the FHLBanks' cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure, and joint and several liability. The Director may also consider any other differences that are deemed appropriate. The Director considered the differences between the FHLBanks and the Enterprises as they relate to the above factors and concluded that none of the unique factors relating to the FHLBanks warranted establishing different treatment under the final regulation.

III. Regulatory Impact

Paperwork Reduction Act

The final regulation does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final regulation under the Regulatory Flexibility Act. FHFA certifies that the final regulation is not likely to have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 907

Administrative practice and procedure, Federal home loan banks.

12 CFR Part 1213

Administrative practice and procedure, Federal home loan banks, Government-sponsored enterprises.

Authority and Issuance

Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4511(b)(2), 4517(i), and 4526, the Federal Housing Finance Agency amends Chapters IX and XII of Title 12, Code of Federal Regulations as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

PART 907—PROCEDURES

■ 1. The authority citation for part 907 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1).

§ 907.9 [Removed and reserved]

■ 2. Remove and reserve § 907.9.

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER A—ORGANIZATION AND OPERATIONS

■ 3. Add part 1213 to subchapter A to read as follows:

PART 1213—OFFICE OF THE OMBUDSMAN

Sec.

1213.1 Purpose and scope.
1213.2 Definitions.
1213.3 Authorities and duties of the Ombudsman.
1213.4 Complaints and appeals from a regulated entity or the Office of Finance.
1213.5 Complaints from a person.
1213.6 No retaliation.
1213.7 Confidentiality.

Authority: 12 U.S.C. 4511(b)(2), 4517(i), and 4526.

§ 1213.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to establish within FHFA the Office of the Ombudsman (Office) under section 1317(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4517(i)), as amended, and to set forth the authorities and duties of the Ombudsman.

(b) *Scope.*—(1) This part applies to complaints and appeals from any regulated entity and any person that has a business relationship with a regulated entity regarding any matter relating to the regulation and supervision of such regulated entity or the Office of Finance by FHFA.

(2) The establishment of the Office does not alter or limit any other right or procedure associated with appeals, complaints, or administrative matters submitted by a person regarding any matter relating to the regulation and supervision of a regulated entity or the Office of Finance under any other law or regulation.

§ 1213.2 Definitions.

For purposes of this part, the term:

Business relationship means any existing or potential interaction between a person and a regulated entity or the Office of Finance for the provision of goods or services. The term *business relationship* does not include any interaction between a mortgagor and a regulated entity that directly or indirectly owns, purchased, guarantees, or sold the mortgage.

Director means the Director of FHFA or his or her designee.

FHFA means the Federal Housing Finance Agency.

Office of Finance means the Office of Finance of the Federal Home Loan Bank System.

Person means an organization, business entity, or individual that has a business relationship with a regulated entity or the Office of Finance, or that represents the interests of a person that has a business relationship with a regulated entity or the Office of Finance. The term *person* does not include an individual borrower.

Regulated entity means the Federal National Mortgage Association and any affiliate, the Federal Home Loan Mortgage Corporation and any affiliate, and any Federal Home Loan Bank.

§ 1213.3 Authorities and duties of the Ombudsman.

(a) *General.* The Office shall be headed by an Ombudsman, who shall consider complaints and appeals from any regulated entity, the Office of Finance, and any person that has a business relationship with a regulated entity or the Office of Finance regarding any matter relating to the regulation and supervision of such regulated entity or the Office of Finance by FHFA. In considering any complaint or appeal under this part, the Ombudsman shall:

(1) Conduct inquiries and submit findings of fact and recommendations to the Director concerning resolution of the complaint or appeal, and

(2) Act as a facilitator or mediator to advance the resolution of the complaint or appeal.

(b) *Other duties.* The Ombudsman shall:

(1) Establish procedures for carrying out the functions of the Office,

(2) Establish and publish procedures for receiving and considering complaints and appeals, and

(3) Report annually to the Director on the activities of the Office, or more frequently, as determined by the Director.

§ 1213.4 Complaints and appeals from a regulated entity or the Office of Finance.

(a) *Complaints.*—(1) *General.* Any regulated entity or the Office of Finance may submit a complaint in accordance with procedures established by the Ombudsman.

(2) *Matters subject to complaint.* A regulated entity or the Office of Finance may submit a complaint regarding any matter relating to the regulation and supervision of a regulated entity or the Office of Finance by FHFA that is not subject to appeal or in litigation, arbitration, or mediation. The Ombudsman may further define what matters are subject to complaint.

(b) *Appeals.*—(1) *General.* Any regulated entity or the Office of Finance may submit an appeal in accordance with procedures established by the Ombudsman.

(2) *Matters subject to appeal.* A regulated entity or the Office of Finance may submit an appeal regarding any final, written regulatory or supervisory conclusion, decision, or examination rating by FHFA. The Ombudsman may further define what matters are subject to appeal.

(3) *Matters not subject to appeal.* Matters for which there is an existing avenue of appeal or for which there is

another forum for appeal; non-final decisions or conclusions; and matters in ongoing litigation, arbitration, or mediation, unless there has been a breakdown in the process, may not be appealed. Matters not subject to appeal include, but are not limited to, appointments of conservators or receivers, preliminary examination conclusions, formal enforcement decisions, formal and informal rulemakings, Freedom of Information Act appeals, final FHFA decisions subject to judicial review, and matters within the jurisdiction of the FHFA Inspector General. The Ombudsman may further define what matters are not subject to appeal.

(4) *Effect of filing an appeal.* An appeal under this section does not excuse a regulated entity or the Office of Finance from complying with any regulatory or supervisory decision while the appeal is pending. However, the Director, upon consideration of a written request, may waive compliance with a regulatory or supervisory decision during the pendency of the appeal.

§ 1213.5 Complaints from a person.

(a) *General.* Any person that has a business relationship with a regulated entity or the Office of Finance may submit a complaint in accordance with procedures established by the Ombudsman.

(b) *Matters subject to complaint.* A person may submit a complaint regarding any matter relating to the regulation and supervision of a regulated entity or the Office of Finance by FHFA that is not a matter in litigation, arbitration, or mediation. The Ombudsman may further define what matters are subject to complaints.

§ 1213.6 No retaliation.

Neither FHFA nor any FHFA employee may retaliate against a regulated entity, the Office of Finance, or a person for submitting a complaint or appeal under this part. The Ombudsman shall receive and address claims of retaliation. Upon receiving a complaint, the Ombudsman, in coordination with the Inspector General, shall examine the basis of the alleged retaliation. Upon completion of the examination, the Ombudsman shall report the findings to the Director with recommendations, including a recommendation to take disciplinary action against any FHFA employee found to have retaliated.

§ 1213.7 Confidentiality.

The Ombudsman shall ensure that safeguards exist to preserve confidentiality. If a party requests that information and materials remain confidential, the Ombudsman shall not disclose the information or materials, without approval of the party, except to appropriate reviewing or investigating officials, such as the Inspector General, or as required by law. However, the resolution of certain complaints (such as complaints of retaliation against a regulated entity or the Office of Finance) may not be possible if the identity of the party remains confidential. In such cases, the Ombudsman shall discuss with the party the circumstances limiting confidentiality.

Dated: February 3, 2011.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2011–2845 Filed 2–9–11; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 45, 110, 119, 121, 129, and 135

[Docket No. FAA–2009–0140; Amendment Nos. 45–27, 110–1, 119–14, 121–353, 129–49, and 135–124]

RIN 2120–AJ45

Operations Specifications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment clarifies and standardizes the rules for applications by foreign air carriers and foreign persons for part 129 operations specifications and establishes new standards for amendment, suspension, and termination of those operations specifications. In addition, the FAA has moved definitions currently contained in a subpart to a separate part for clarity with no substantive changes to the definitions. The amendment also applies to foreign persons operating U.S.-registered aircraft in common carriage solely outside the United States. This action is necessary to update the process for issuing operations specifications and establishes a regulatory basis for current practices, such as amending, terminating, or suspending operations specifications.

DATES: *Effective Date:* These amendments become effective April 11, 2011.

Compliance Date: The compliance date for § 129.9(a)(2) and (b)(2) is February 10, 2012. Affected parties do not have to comply with the information collection requirement in § 129.7 until the FAA publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) for this information collection requirement. Publication of the control number notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995. Compliance with all other provisions of the final rule is required by April 11, 2011.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule contact Darcy D. Reed, International Programs and Policy Division, AFS–50, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; e-mail: *Darcy.D.Reed@faa.gov;* Telephone: 202–385–8078. For legal questions concerning this final rule contact Lorna John, Office of the Chief Counsel, Regulations Division, AGC–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; e-mail: *Lorna.John@faa.gov;* Telephone: 202–267–3921.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is issued under the authority described in Title 49 of the United States Code, subtitle VII, part A, subpart III, section 44701(a)(5). Under that section, the Administrator is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary to ensure safety in air commerce. Clarifying and standardizing the rules for application and establishing new standards for amendment, suspension, and termination of operations specifications issued to foreign air carriers operating in the United States and to foreign air carriers or foreign persons conducting common carriage operations with U.S.-registered aircraft solely outside the United States enhances the FAA's oversight of U.S.-registered aircraft and those foreign air carriers' operations within the United States.

Background

A. Summary of the Notice of Proposed Rulemaking (NPRM)

On May 7, 2010, the FAA published an NPRM that proposed to amend the regulations governing foreign air carrier operations within the United States and the operations of U.S.-registered aircraft solely outside the United States in common carriage (75 FR 25127). Specifically, the FAA proposed to clarify and standardize the rules for applications by foreign air carriers and foreign persons for operations specifications issued under 14 CFR part 129 and establish new standards for amendment, suspension, and termination of those operations specifications. In addition, the FAA proposed moving definitions currently contained in part 119 to a new part 110 for clarity with no substantive changes to the definitions. The comment period closed on August 5, 2010. As discussed below, the FAA received no adverse comments on the NPRM; therefore, the changes to the regulations in the final rule are the same as proposed in the NPRM, except for minor editorial changes.

B. Summary of the Final Rule

This final rule clarifies and standardizes the rules for applications for operations specifications issued under 14 CFR part 129 by foreign air carriers conducting operations within the United States and foreign air carriers and foreign persons operating U.S.-registered aircraft in common carriage solely outside the United States. The rule also establishes new standards for amendment, suspension and termination of those operations specifications. As described in the NPRM, this final rule adds three new sections to subpart A, § 129.5, Operations Specifications; § 129.7, Application, issuance, or denial of operations specifications; and § 129.9 Contents of operations specifications. It also amends § 129.11 to specifically address amendment, suspension, and termination of operations specifications.

Section 129.5 describes which foreign air carriers or foreign persons must hold FAA operations specifications and the effective period of such operations specifications. Section 129.5 also requires the foreign air carrier to keep each of its employees, and other persons used in its operations, informed of the provisions of its FAA-issued operations specifications that apply to that employee's or person's duties and responsibilities. Section 129.5(b) includes and revises provisions formerly contained in the introductory paragraph of § 129.11(a), removes the incorrect reference to "Recommended Practices," and adds a requirement for foreign air carriers to comply with the Standards of Annex 8 to the Convention on International Civil Aviation (the Chicago Convention).

Section 129.7 includes new provisions governing the application, issuance, and denial of operations specifications. As discussed in the NPRM, the new application process required removal of the outdated requirements contained in part 129, appendix A.

Section 129.9 defines the content of operations specifications to be issued to either a foreign air carrier conducting operations within the United States, or a foreign air carrier or foreign person operating U.S.-registered aircraft solely outside the United States in common carriage.

Section 129.11 establishes requirements for amendments, suspensions, and terminations of operations specifications. The amendment process is consistent with the process for amending operations specifications issued to domestic operators under part 119. Under the new rule, an applicant may apply to the responsible Flight Standards District Office (FSDO) for an amendment of its operations specifications, or the Administrator may amend operations specifications if the Administrator determines that safety in air commerce and the public interest require the amendment. Following an adverse decision, the applicant may submit a petition for reconsideration to the Director, Flight Standards Service within 30 days after the date the foreign air carrier or foreign person receives a notice of the decision. The filing of the petition for reconsideration suspends the decision unless the Administrator determines that an emergency exists requiring immediate action to maintain safety in air commerce or air transportation. For suspension and termination, the final rule establishes a process similar to that used for amendments; however, the Administrator may conduct consultations under relevant Air Services Agreements prior to suspending or terminating an operations specification.

The final rule amends § 129.13, the aircraft airworthiness and registration certificate requirements, to include recognition of the validity of certificates of airworthiness issued or validated by a State of the Operator under Article 83*bis* of the Chicago Convention. Currently § 129.13 requires airworthiness certificates for foreign air carriers to be issued or validated by the State of Registry and does not recognize Article 83*bis* agreements with the State of the Operator. The U.S. obligation to recognize those certificates is stated in inspector handbook guidance. The amended provisions in § 129.13 allow recognition of third-party transfers of airworthiness certificates under Article 83*bis* agreements registered with the International Civil Aviation Organization (ICAO).

Similarly, § 129.15 provides for the recognition of the validity of crew licenses (certificates) issued or validated by a State of the Operator under agreements whereby the State of Registry of an aircraft transfers certain oversight functions to the State of the Operator of the aircraft in accordance with Article 83*bis* of the Chicago Convention. Although this U.S. obligation is currently stated in inspector handbook guidance, § 129.15 provides a legal basis for recognition of those crew licenses (certificates).

As discussed in the NPRM, the final rule amends § 129.14 by changing the FAA approval process for the minimum equipment list (MEL) and maintenance programs of U.S.-registered aircraft used by foreign air carriers and foreign persons in common carriage. Under the final rule, the FAA will grant maintenance program and minimum equipment list approval for U.S.-registered aircraft in FAA-issued operations specifications, which is the practice FAA field offices currently follow.

With the addition of §§ 129.5, 129.7, 129.9, and the amendments to §§ 129.11 and 129.14, the FAA is clarifying the applicability of part 129 to certain operations of U.S.-registered aircraft operated solely outside the United States in common carriage by a foreign person or foreign air carrier. Therefore, the FAA is revising § 129.1(b) to clarify that §§ 129.5, 129.7, 129.9, 129.11, 129.14, 129.20, and 129.24 and subpart B apply to U.S.-registered aircraft operated solely outside the United States in common carriage by a foreign person or foreign air carrier.

As discussed in the NPRM, the FAA has transferred all of the definitions in § 119.3 to a new part 110. This change clarifies that all of the definitions formerly located in § 119.3 apply to subchapter G, including part 129. Section 119.3 is redesignated as § 110.2, and all of the references in parts 45, 119, 121 and 135 of subchapter G to the definitions formerly contained in § 119.3 were changed to § 110.2. These changes to parts 110, 119, 121 and 135 are editorial in nature, and the FAA has made no substantive changes to any of

the definitions transferred to the new part. Further, this editorial change will have no impact on the applicability of the definitions contained in 14 CFR part 1 to subchapter G, unless otherwise specified.

Additionally, the final rule eliminates the outdated reference to the Civil Aeronautics Board (CAB) in 14 CFR § 129.1(a)(1) because the CAB no longer exists, and all economic authority is now granted by the Department of Transportation (DOT).

The following table summarizes the changes to existing provisions of parts 119 and 129, identifies new provisions, and references the relevant ICAO standard implemented in the rule, if applicable.

Existing part 119	New part 110
Definitions: Definitions applicable to part 129 are currently included in part 119, subchapter G. Since part 119 applies to certification requirements for part 135 and 121 operators, there is potential confusion concerning whether subchapter G applies to part 129.	*Definitions:* The final rule removes definitions from subchapter G of part 119 and includes them in a new part 110.
Existing part 129	**Part 129 changes**
Ops Specs—Amendment, suspension or termination: Current regulations do not provide for the amendment, suspension, or termination of Operations Specifications. Information is currently in the Inspector Guidance.	*Ops Specs—Amendment, suspension or termination:* The final rule provides a legal basis for the amendment, suspension, and termination of Operations Specifications.
Application process: The application process and requirements are outdated and impose an unnecessary burden on the operator and the FAA, with no safety value (*e.g.,* provide names, license type and class held by each flightcrew member to include en route training—certificate holders could employ numerous airmen and the required information could change frequently).	*Application process:* The final rule removes outdated portions of part 129, appendix A and places general requirements in the new § 129.7(a). Specific application processes will be contained in Inspector Guidance for easy updating. In addition, the final rule clarifies and standardizes the rules for applications by foreign air carriers and foreign persons for operations specifications issued under 14 CFR part 129.
Appeal process for foreign operators: There is no formal administrative process for a foreign operator to appeal a decision to amend, suspend, or terminate its operations specifications.	*Appeal process for foreign operators:* The final rule provides an administrative appeals process allowing foreign operators and foreign persons to submit a petition for reconsideration to the Director, Flight Standards Service, before seeking judicial review under 49 U.S.C. 46110.
Chicago Convention: There is no regulatory provision for the recognition of Article 83*bis* of the Chicago Convention. However, current FAA guidance contains this information. (Note: Article 83*bis* allows the transfer of certain functions and duties from the State of Registry to the State of the Operator under an agreement between the States concerned.)	*Chicago Convention:* The final rule allows the FAA to recognize crew licenses and airworthiness certificates issued or validated by a State of the Operator under agreements whereby the State of Registry of an aircraft transfers certain oversight functions to the State of the Operator in accordance with Article 83*bis* of the Chicago Convention.

C. Summary of Comments

The FAA received one comment in response to the NPRM. The commenter, Air Pacific Limited, had no objection to the proposal.

Paperwork Reduction Act

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

This final rule will impose new information collection requirements as described below. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these information collection amendments to OMB for its review. Notice of OMB approval for this information collection will be published in a future **Federal Register** document.

Title: Part 129 Operations Specifications

Summary: This rule will clarify and standardize the rules for applications by foreign air carriers and foreign persons for operations specifications issued under 14 CFR part 129 and establish new standards for amendment, suspension and termination of those operations specifications. This final rule will also apply to foreign air carriers and foreign persons operating U.S.-registered aircraft in common carriage solely outside the United States. This action is necessary to update the process for issuing operations specifications, and it will establish a regulatory basis for current practices, such as amending, terminating, and suspending operations specifications.

Public comments: The FAA did not receive any comments concerning the proposed information collection requirements.

Use: This final rule supports the information needs of the FAA in order to maintain an adequate level of safety oversight.

Respondents (including number of): The likely respondents to this information requirement are potential new applicants for operations specifications. The average number of respondents is approximately 25 each year.

Frequency: The FAA estimates five FSDOs will receive approximately five applications each per year.

Annual Burden Estimate: This final rule opens a new information collection requirement and as a result the FAA will begin recording an annual recordkeeping and reporting burden as follows: 75 hours annually. However, the FAA has streamlined the application process and reduced the burden to less than it would have been in the absence of the rule.

International Compatibility

Consistent with U.S. obligations under the Chicago Convention, it is the FAA's policy to conform our regulations to ICAO standards to the maximum extent practicable. The final rule will allow the FAA to carry out its

obligations under the Chicago Convention by providing for the recognition of the validity of certificates of airworthiness and crew licenses issued or validated by a State of the Operator in accordance with Article 83*bis* of the Chicago Convention. Additionally, the provisions relating to the issuance of operations specifications are consistent with the ICAO standard for issuing operations specifications to operators conducting international air transportation.

The European Aviation Safety Agency (EASA) obtained competence from the European Parliament to regulate third country operators of aircraft engaged in commercial operations into, within, or out of the European Community (EC) in 2008. Regulation (EC) No 216/2008 provides competence to EASA to issue and renew authorizations for third country operators and to amend, limit, suspend or revoke the relevant authorization. The FAA will continue to coordinate with EASA on methods to streamline the operations specifications process, as appropriate.

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

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

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

This final rule will not impose costs on domestic operators since it only applies to foreign air carriers and foreign persons. The rule removes outdated requirements in the application process, and therefore may result in a reduction in costs for foreign air carriers or foreign persons who will apply for operations specifications. By clarifying and standardizing the operations specifications application process, providing a regulatory basis for amendment, suspension and termination of those operations specifications, and creating an administrative appeals process, the rule may result in some benefits to foreign air carriers and foreign persons. It will impose minimal costs on the FAA because it will not significantly change the rules regarding the FAA's obligation for safety oversight of foreign air carriers and foreign persons under the Chicago Convention. Additionally, this rule incorporates new provisions for the recognition of airworthiness certificates and crewmember licenses under Article 83*bis* of the Chicago Convention. In the NPRM, the FAA requested, but did not receive, comments on the costs and benefits of the proposed changes. For these reasons we conclude that this final rule will have minimal economic impact.

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

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

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

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule clarifies and standardizes the rules for applications by foreign air carriers and foreign persons for operations specifications issued under 14 CFR part 129 and establishes new standards for amendment, suspension, and termination of operations specifications. The rule applies to foreign air carriers operating within the United States and foreign persons operating U.S.-registered aircraft in common carriage solely outside the United States. As the rule removes outdated requirements in the application process, it may result in a reduction in costs for foreign air carriers or foreign persons who will apply for operations specifications. Furthermore, it creates an administrative appeals process that may result in some benefits to foreign air carriers and foreign persons. Domestic operators are not impacted by this rule. This rule merely revises and clarifies the FAA operations specifications application process; the expected outcome will not increase cost to any United States small entity. Furthermore, there were no comments regarding small business impacts. Therefore, as FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to

the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it may provide minimal cost savings to international entities and thus has a neutral trade impact.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

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

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312d and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

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

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

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment or docket number of this rulemaking.

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) or you may visit *http://DocketsInfo.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 45

Aircraft, Exports, Signs and symbols.

14 CFR Part 110

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flight, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Security measures, Smoking.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Drug testing, Reporting and recordkeeping requirements.

The Amendments

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

PART 45—IDENTIFICATION AND REGISTRATION MARKING

■ 1. The authority citation for part 45 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 44109, 40113–40114, 44101–44105, 44107–44108, 44110–44111, 44504, 44701, 44708–44709, 44711–44713, 44725, 45302–45303, 46104, 46304, 46306, 47122.

§ 45.11 [Amended]

■ 2. Amend § 45.11(g)(1)(ii) and (g)(3) by removing the citation "§ 119.3" and adding the citation "§ 110.2" in its place.

■ 3. Add part 110 to read as follows:

PART 110—GENERAL REQUIREMENTS

Sec.

110.1 Applicability.
110.2 Definitions.

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

§ 110.1 Applicability.

This part governs all operations conducted under subchapter G of this chapter.

§ 110.2 Definitions

For the purpose of this subchapter, the term—

All-cargo operation means any operation for compensation or hire that

is other than a passenger-carrying operation or, if passengers are carried, they are only those specified in § 121.583(a) or § 135.85 of this chapter.

Certificate-holding district office means the Flight Standards District Office that has responsibility for administering the certificate and is charged with the overall inspection of the certificate holder's operations.

Commercial air tour means a flight conducted for compensation or hire in an airplane or helicopter where a purpose of the flight is sightseeing. The FAA may consider the following factors in determining whether a flight is a commercial air tour:

(1) Whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire;

(2) Whether the person offering the flight provided a narrative that referred to areas or points of interest on the surface below the route of the flight;

(3) The area of operation;

(4) How often the person offering the flight conducts such flights;

(5) The route of flight;

(6) The inclusion of sightseeing flights as part of any travel arrangement package;

(7) Whether the flight in question would have been canceled based on poor visibility of the surface below the route of the flight; and

(8) Any other factors that the FAA considers appropriate.

Commuter operation means any scheduled operation conducted by any person operating one of the following types of aircraft with a frequency of operations of at least five round trips per week on at least one route between two or more points according to the published flight schedules:

(1) Airplanes, other than turbojet-powered airplanes, having a maximum passenger-seat configuration of 9 seats or less, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less; or

(2) Rotorcraft.

Direct air carrier means a person who provides or offers to provide air transportation and who has control over the operational functions performed in providing that transportation.

DOD commercial air carrier evaluator means a qualified Air Mobility Command, Survey and Analysis Office cockpit evaluator performing the duties specified in Public Law 99–661 when the evaluator is flying on an air carrier that is contracted or pursuing a contract with the U.S. Department of Defense (DOD).

Domestic operation means any scheduled operation conducted by any person operating any airplane described in paragraph (1) of this definition at locations described in paragraph (2) of this definition:

(1) Airplanes:

(i) Turbojet-powered airplanes;

(ii) Airplanes having a passenger-seat configuration of more than 9 passenger seats, excluding each crewmember seat; or

(iii) Airplanes having a payload capacity of more than 7,500 pounds.

(2) Locations:

(i) Between any points within the 48 contiguous States of the United States or the District of Columbia; or

(ii) Operations solely within the 48 contiguous States of the United States or the District of Columbia; or

(iii) Operations entirely within any State, territory, or possession of the United States; or

(iv) When specifically authorized by the Administrator, operations between any point within the 48 contiguous States of the United States or the District of Columbia and any specifically authorized point located outside the 48 contiguous States of the United States or the District of Columbia.

Empty weight means the weight of the airframe, engines, propellers, rotors, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

Flag operation means any scheduled operation conducted by any person operating any airplane described in paragraph (1) of this definition at the locations described in paragraph (2) of this definition:

(1) Airplanes:

(i) Turbojet-powered airplanes;

(ii) Airplanes having a passenger-seat configuration of more than 9 passenger seats, excluding each crewmember seat; or

(iii) Airplanes having a payload capacity of more than 7,500 pounds.

(2) Locations:

(i) Between any point within the State of Alaska or the State of Hawaii or any territory or possession of the United States and any point outside the State of Alaska or the State of Hawaii or any territory or possession of the United States, respectively; or

(ii) Between any point within the 48 contiguous States of the United States or the District of Columbia and any point outside the 48 contiguous States of the United States and the District of Columbia.

(iii) Between any point outside the U.S. and another point outside the U.S.

Justifiable aircraft equipment means any equipment necessary for the operation of the aircraft. It does not include equipment or ballast specifically installed, permanently or otherwise, for the purpose of altering the empty weight of an aircraft to meet the maximum payload capacity.

Kind of operation means one of the various operations a certificate holder is authorized to conduct, as specified in its operations specifications, *i.e.,* domestic, flag, supplemental, commuter, or on-demand operations.

Maximum payload capacity means:

(1) For an aircraft for which a maximum zero fuel weight is prescribed in FAA technical specifications, the maximum zero fuel weight, less empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flightcrew, foods and beverages, and supplies and equipment related to foods and beverages, but not including disposable fuel or oil).

(2) For all other aircraft, the maximum certificated takeoff weight of an aircraft, less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, and flightcrew). The allowance for the weight of the crew, oil, and fuel is as follows:

(i) Crew—for each crewmember required by the Federal Aviation Regulations—

(A) For male flightcrew members—180 pounds.

(B) For female flightcrew members—140 pounds.

(C) For male flight attendants—180 pounds.

(D) For female flight attendants—130 pounds.

(E) For flight attendants not identified by gender—140 pounds.

(ii) Oil—350 pounds or the oil capacity as specified on the Type Certificate Data Sheet.

(iii) Fuel—the minimum weight of fuel required by the applicable Federal Aviation Regulations for a flight between domestic points 174 nautical miles apart under VFR weather conditions that does not involve extended overwater operations.

Maximum zero fuel weight means the maximum permissible weight of an aircraft with no disposable fuel or oil. The zero fuel weight figure may be found in either the aircraft type certificate data sheet, the approved Aircraft Flight Manual, or both.

Noncommon carriage means an aircraft operation for compensation or hire that does not involve a holding out to others.

On-demand operation means any operation for compensation or hire that is one of the following:

(1) Passenger-carrying operations conducted as a public charter under part 380 of this chapter or any operations in which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative that are any of the following types of operations:

(i) Common carriage operations conducted with airplanes, including turbojet-powered airplanes, having a passenger-seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, except that operations using a specific airplane that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) of this chapter for those operations are considered supplemental operations;

(ii) Noncommon or private carriage operations conducted with airplanes having a passenger-seat configuration of less than 20 seats, excluding each crewmember seat, and a payload capacity of less than 6,000 pounds; or

(iii) Any rotorcraft operation.

(2) Scheduled passenger-carrying operations conducted with one of the following types of aircraft with a frequency of operations of less than five round trips per week on at least one route between two or more points according to the published flight schedules:

(i) Airplanes, other than turbojet powered airplanes, having a maximum passenger-seat configuration of 9 seats or less, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less; or

(ii) Rotorcraft.

(3) All-cargo operations conducted with airplanes having a payload capacity of 7,500 pounds or less, or with rotorcraft.

Passenger-carrying operation means any aircraft operation carrying any person, unless the only persons on the aircraft are those identified in §§ 121.583(a) or 135.85 of this chapter, as applicable. An aircraft used in a passenger-carrying operation may also carry cargo or mail in addition to passengers.

Principal base of operations means the primary operating location of a certificate holder as established by the certificate holder.

Provisional airport means an airport approved by the Administrator for use by a certificate holder for the purpose of providing service to a community when the regular airport used by the certificate holder is not available.

Regular airport means an airport used by a certificate holder in scheduled operations and listed in its operations specifications.

Scheduled operation means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for which the certificate holder or its representative offers in advance the departure location, departure time, and arrival location. It does not include any passenger-carrying operation that is conducted as a public charter operation under part 380 of this chapter.

Supplemental operation means any common carriage operation for compensation or hire conducted with any airplane described in paragraph (1) of this definition that is a type of operation described in paragraph (2) of this definition:

(1) Airplanes:

(i) Airplanes having a passenger-seat configuration of more than 30 seats, excluding each crewmember seat;

(ii) Airplanes having a payload capacity of more than 7,500 pounds; or

(iii) Each propeller-powered airplane having a passenger-seat configuration of more than 9 seats and less than 31 seats, excluding each crewmember seat, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) of this chapter for those operations; or

(iv) Each turbojet powered airplane having a passenger seat configuration of 1 or more and less than 31 seats, excluding each crewmember seat, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) of this chapter for those operations.

(2) Types of operation:

(i) Operations for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative;

(ii) All-cargo operations; or

(iii) Passenger-carrying public charter operations conducted under part 380 of this chapter.

Wet lease means any leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crewmember. A wet lease does not include a code-sharing arrangement.

When common carriage is not involved or operations not involving common carriage means any of the following:

(1) Noncommon carriage.

(2) Operations in which persons or cargo are transported without compensation or hire.

(3) Operations not involving the transportation of persons or cargo.

(4) Private carriage.

Years in service means the calendar time elapsed since an aircraft was issued its first U.S. or first foreign airworthiness certificate.

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 4. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

§ 119.3 [Removed and reserved]

■ 5. Remove and reserve § 119.3.

§ 119.51 [Amended]

■ 6. Amend § 119.51(c)(1)(i) by removing the citation "§ 119.3" and adding the citation "§ 110.2" in its place.

§ 119.53 [Amended]

■ 7. Amend § 119.53(e) by removing the citation "§ 119.3" and adding the citation "§ 110.2" in its place.

PART 121—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 8. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40119, 41706, 44101, 44701, 44702, 44705, 44709, 44710, 44711, 44713, 44716, 44717, 44722, 46105.

§ 121.313 [Amended]

■ 9. Amend § 121.313(k) by removing the citation "§ 119.3" and adding the citation "§ 110.2" in its place.

§ 121.582 [Amended]

■ 10. Amend § 121.582 by removing the citation "§ 119.3" and adding the citation "§ 110.2" in its place.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

■ 11. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71 sec. 104.

■ 12. Amend § 129.1 by revising paragraphs (a)(1), (a)(2), and (b) to read as follows:

§ 129.1 Applicability and definitions.

(a) * * *

(1) A permit issued by the U.S. Department of Transportation under 49 U.S.C. 41301 through 41306, or

(2) Other appropriate economic or exemption authority issued by the U.S. Department of Transportation.

(b) *Operations of U.S.-registered aircraft solely outside the United States.* In addition to the operations specified under paragraph (a) of this section, §§ 129.5, 129.7, 129.9, 129.11, 129.14, 129.20 and 129.24, and subpart B of this part also apply to operations of U.S.-registered aircraft operated solely outside the United States in common carriage by a foreign person or foreign air carrier.

* * * * *

■ 13. Add § 129.5 to read as follows:

§ 129.5 Operations specifications.

(a) Each foreign air carrier conducting operations within the United States, and each foreign air carrier or foreign person operating U.S.-registered aircraft solely outside the United States in common carriage must conduct its operations in accordance with operations specifications issued by the Administrator under this part.

(b) Each foreign air carrier conducting operations within the United States must conduct its operations in accordance with the Standards contained in Annex 1 (Personnel Licensing), Annex 6 (Operation of Aircraft), Part I (International Commercial Air Transport—Aeroplanes) or Part III (International Operations—Helicopters), as appropriate, and in Annex 8 (Airworthiness of Aircraft) to the Convention on International Civil Aviation.

(c) No foreign air carrier may operate to or from locations within the United States without, or in violation of, appropriate operations specifications.

(d) No foreign air carrier or foreign person shall operate U.S.-registered aircraft solely outside the United States in common carriage without, or in violation of, appropriate operations specifications.

(e) Each foreign air carrier must keep each of its employees and other persons used in its operations informed of the provisions of its operations specifications that apply to that employee's or person's duties and responsibilities.

(f) Operations specifications issued under this part are effective until—

(1) The foreign air carrier or foreign person surrenders them to the FAA;

(2) The Administrator suspends or terminates the operations specifications; or

(3) The operations specifications are amended as provided in § 129.11.

(g) Within 30 days after a foreign air carrier or foreign person terminates operations under part 129 of this subchapter, the operations specifications must be surrendered by the foreign air carrier or foreign person to the responsible Flight Standards District Office.

(h) No person operating under this part may operate or list on its operations specifications any airplane listed on operations specifications issued under part 125 of this chapter.

■ 14. Add § 129.7 to read as follows:

§ 129.7 Application, issuance, or denial of operations specifications.

(a) A foreign air carrier or foreign person applying to the FAA for operations specifications under this part must submit an application—

(1) In a form and manner prescribed by the Administrator; and

(2) At least 90 days before the intended date of operation.

(b) An authorized officer or employee of the applicant, having knowledge of the matters stated in the application, must sign the application and certify in writing that the statements in the application are true. The application must include two copies of the appropriate written authority issued to that officer or employee by the applicant.

(c) A foreign applicant may be issued operations specifications, if after review, the Administrator finds the applicant—

(1) Meets the applicable requirements of this part;

(2) Holds the economic or exemption authority required by the Department of Transportation, applicable to the operations to be conducted;

(3) Complies with the applicable security requirements of 49 CFR chapter XII;

(4) Is properly and adequately equipped to conduct the operations described in the operations specifications; and

(5) Holds a valid air operator certificate issued by the State of the Operator.

(d) An application may be denied if the Administrator finds that the applicant is not properly or adequately equipped to conduct the operations to be described in the operations specifications.

■ 15. Add § 129.9 to read as follows:

§ 129.9 Contents of operations specifications.

(a) The contents of operations specifications issued to a foreign air carrier conducting operations within the United States under § 129.1(a) shall include:

(1) The specific location and mailing address of the applicant's principal place of business in the State of the Operator and, if different, the address that will serve as the primary point of contact for correspondence between the FAA and the foreign air carrier;

(2) Within 1 year after February 10, 2012, the designation of an agent for service within the United States, including the agent's full name and office address or usual place of residence;

(3) The certificate number and validity of the foreign air carrier's Air Operator Certificate issued by the State of the Operator;

(4) Each regular and alternate airport to be used in scheduled operations;

(5) The type of aircraft and registration markings of each aircraft;

(6) The approved maintenance program and minimum equipment list for United States registered aircraft authorized for use; and

(7) Any other item the Administrator determines is necessary.

(b) The contents of operations specifications issued to a foreign air carrier or foreign person operating U.S.-registered aircraft solely outside the United States in common carriage in accordance with § 129.1(b) shall include—

(1) The specific location and mailing address of the principal place of business in the State of the Operator and, if different, the address that will serve as the primary point of contact for correspondence between the FAA and the foreign air carrier or foreign person;

(2) Within 1 year after February 10, 2012, the designation of an agent for service within the United States, including the agent's full name and office address or usual place of residence;

(3) In the case of a foreign air carrier, the certificate number and validity of the foreign air carrier's Air Operator Certificate issued by the State of the Operator;

(4) Any other business names under which the foreign air carrier or foreign person may operate;

(5) The type, registration markings, and serial number of each United States registered aircraft authorized for use;

(6) The approved maintenance program and minimum equipment list for United States registered aircraft authorized for use; and

(7) Any other item the Administrator determines is necessary.

■ 16. Revise § 129.11 to read as follows:

§ 129.11 Amendment, suspension and termination of operations specifications.

(a) The Administrator may amend any operations specifications issued under this part if—

(1) The Administrator determines that safety in air commerce and the public interest require the amendment; or

(2) The foreign air carrier or foreign person applies for an amendment, and the Administrator determines that safety in air commerce and the public interest allows the amendment.

(b) The Administrator may suspend or terminate any operations specifications issued under this part if the Administrator determines that safety in air commerce and the public interest require the suspension or termination;

(c) Except as provided in paragraphs (f) and (g) of this section, when the Administrator initiates an action to amend, suspend or terminate a foreign air carrier or foreign person's operations specifications, the following procedure applies:

(1) The responsible Flight Standards District Office notifies the foreign air carrier or foreign person in writing of the proposed amendment, suspension or termination.

(2) The responsible Flight Standards District Office sets a reasonable period (but not less than 7 days) within which the foreign air carrier or foreign person may submit written information, views, and arguments on the amendment, suspension or termination.

(3) After considering all material presented, the responsible Flight Standards District Office notifies the foreign air carrier or foreign person of—

(i) The adoption of the proposed amendment, suspension or termination;

(ii) The partial adoption of the proposed amendment, suspension or termination; or

(iii) The withdrawal of the proposed amendment, suspension or termination.

(4) If the responsible Flight Standards District Office issues an action to amend, suspend or terminate the operations specifications, it becomes effective not less than 30 days after the foreign air carrier or foreign person receives notice of it unless—

(i) The responsible Flight Standards District Office finds under paragraph (g) of this section that there is an emergency requiring immediate action with respect to safety in air commerce; or

(ii) The foreign air carrier or foreign person petitions for reconsideration of the amendment, suspension or termination under paragraph (e) of this section.

(d) When the foreign air carrier or foreign person applies for an amendment to its operations specifications, the following procedure applies:

(1) The foreign air carrier or foreign person must file an application to amend its operations specifications—

(i) At least 90 days before the date proposed by the applicant for the amendment to become effective in cases of mergers; acquisitions of airline operational assets that require an additional showing to Department of Transportation for economic authority; major changes in the type of operation; and resumption of operations following a suspension of operations as a result of bankruptcy actions, unless a shorter time is approved by the Administrator.

(ii) At least 30 days before the date proposed by the applicant for the amendment to become effective in all other cases.

(2) The application must be submitted to the responsible Flight Standards District Office in a form and manner prescribed by the Administrator.

(3) After considering all material presented, the responsible Flight Standards District Office notifies the foreign air carrier or foreign person of—

(i) The adoption of the applied for amendment;

(ii) The partial adoption of the applied for amendment; or

(iii) The denial of the applied for amendment.

(4) If the responsible Flight Standards District Office approves the amendment, following coordination with the foreign air carrier or foreign person regarding its implementation, the amendment is effective on the date the responsible Flight Standards District Office approves it.

(e) The foreign air carrier or foreign person may petition for reconsideration of a full or partial adoption of an amendment, a denial of an amendment or a suspension or termination of operations specifications.

(f) When a foreign air carrier or foreign person seeks reconsideration of a decision from the responsible Flight Standards District Office concerning the amendment, suspension or termination of operations specifications, the following procedure applies:

(1) The foreign air carrier or foreign person must petition for reconsideration of that decision within 30 days after the date that the foreign air carrier or foreign person receives a notice of the decision.

(2) The foreign air carrier or foreign person must address its petition to the Director, Flight Standards Service.

(3) A petition for reconsideration, if filed within the 30-day period, suspends the effectiveness of any amendment, suspension or termination issued by the responsible Flight Standards District Office unless the responsible Flight Standards District Office has found, under paragraph (g) of this section, that an emergency exists requiring immediate action with respect to safety in air transportation or air commerce.

(g) If the responsible Flight Standards District Office finds that an emergency exists requiring immediate action with respect to safety in air commerce or air transportation that makes the procedures set out in this section impracticable or contrary to the public interest, that office may make the amendment, suspension or termination effective on the day the foreign air carrier or foreign person receives notice of it. In the notice to the foreign air carrier or foreign person, the responsible Flight Standards District Office will articulate the reasons for its finding that an emergency exists requiring immediate action with respect to safety in air transportation or air commerce or that makes it impracticable or contrary to the public interest to stay the effectiveness of the amendment, suspension or termination.

■ 17. Amend § 129.13 by revising paragraph (a) to read as follows:

§ 129.13 Airworthiness and registration certificates.

(a) No foreign air carrier may operate any aircraft within the United States unless that aircraft carries a current registration certificate and displays the nationality and registration markings of the State of Registry, and an airworthiness certificate issued or validated by:

(1) The State of Registry; or

(2) The State of the Operator, provided that the State of the Operator and the State of Registry have entered into an agreement under Article 83*bis* of the Convention on International Civil Aviation that covers the aircraft.

* * * * *

■ 18. Amend § 129.14 by revising paragraphs (a), (b)(4), and (b)(7) to read as follows:

§ 129.14 Maintenance program and minimum equipment list requirements for U.S.-registered aircraft.

(a) Each foreign air carrier and each foreign person operating a U.S.-registered aircraft within or outside the United States in common carriage must ensure that each aircraft is maintained

in accordance with a program approved by the Administrator in the operations specifications.

(b) * * *

(4) The FAA operations specification permitting the operator to use an approved minimum equipment list is carried aboard the aircraft. An approved minimum equipment list, as authorized by the operations specifications, constitutes an approved change to the type design without requiring recertification.

* * * * *

(7) The aircraft is operated under all applicable conditions and limitations contained in the minimum equipment list and the operations specification authorizing the use of the list.

■ 19. Revise § 129.15 to read as follows:

§ 129.15 Flightcrew member certificates.

Each person acting as a flightcrew member must hold a certificate or license that shows the person's ability to perform duties in connection with the operation of the aircraft. The certificate or license must have been issued or rendered valid by:

(a) The State in which the aircraft is registered; or

(b) The State of the Operator, provided that the State of the Operator and the State of Registry have entered into an agreement under Article 83*bis* of the Convention on International Civil Aviation that covers the aircraft.

Appendix A to Part 129 [Removed and Reserved]

■ 20. Remove and reserve appendix A to part 129.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 21. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 41706, 44701, 44702, 44705, 44709, 44711, 44713, 44715, 44717, 44722, 46105.

§ 135.127 [Amended]

■ 22. Amend § 135.127 in paragraphs (b)(1)(iii) and (b)(2) introductory text by removing the citation "§ 119.3" and adding the citation "§ 110.2" in its place.

Issued in Washington, DC, on January 31, 2011.

J. Randolph Babbitt,

Administrator.

[FR Doc. 2011–2834 Filed 2–9–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

RIN 0625–AA66

[Docket No.: 0612243022–1049–01]

Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Interim final rule and request for comments.

SUMMARY: The Department of Commerce ("the Department") is amending its regulation which governs the certification of factual information submitted to the Department by a person or his or her representative during antidumping ("AD") and countervailing duty ("CVD") proceedings. The amendments are intended to strengthen the current certification requirements. For example, these amendments revise the certification in order to identify to which document the certification applies, to identify to which segment of an AD/CVD proceeding the certification applies, to identify who is making the certification, and to indicate the date on which the certification was made. In addition, the amendments are intended to ensure that parties and their counsel are aware of potential consequences for false certifications. The Department is also requesting comments on this interim final rule.

DATES: The effective date of this interim final rule is March 14, 2011. This interim final rule will apply to all investigations initiated on the basis of petitions filed on or after March 14, 2011, and other segments of AD/CVD proceedings initiated on or after March 14, 2011.

Request for Public Comment: The Department seeks public comment on this interim final rule. To be assured of consideration, comments must be received no later than May 11, 2011 and rebuttal comments must be received no later than June 27, 2011. All comments should refer to RIN 0625–AA66. The Department intends to issue a final rule no later than nine months after the publication of this interim final rule.

ADDRESSES: All comments must be submitted through the Federal eRulemaking Portal at *http://www.regulations.gov*, Docket No. ITA–2010–0007, unless the commenter does not have access to the internet. Commenters that do not have access to the internet may submit the original and two copies of each set of comments by mail or hand delivery/courier. All comments should be addressed to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, Room 1870, Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

The Department will consider all comments received before the close of the comment period. The Department will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. All comments responding to this notice will be a matter of public record and will be available for inspection at Import Administration's Central Records Unit (Room 7046 of the Herbert C. Hoover Building) and on the Federal eRulemaking Portal at *www.Regulations.gov*. and the Department's Web site at *http://www.trade.gov/ia/*.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, e-mail address: *webmaster-support@ita.doc.gov.*

FOR FURTHER INFORMATION CONTACT: William Isasi, Senior Attorney, Office of the General Counsel, Office of Chief Counsel for Import Administration, or Myrna Lobo, International Trade Compliance Analyst, Office 6, Import Administration, U.S. Department of Commerce, 1401 Constitution Ave., NW., Washington, DC 20230, 202–482–4339 or 202–482–2371, respectively.

SUPPLEMENTARY INFORMATION:

Background

Section 782(b) of the Tariff Act of 1930, as amended, ("the Act") requires that any person providing information to the Department during an AD/CVD proceeding must certify to the accuracy and completeness of such information. 19 U.S.C. 1677m(b). Department regulations set forth the specific content requirements for such certifications. 19 CFR 351.303(g). The current language of the certification requirements does not address certain important issues. For example, the current language does not require the certifying official to specify the document or the proceeding for which the certification is submitted, or even the date on which the certification is signed.

Therefore, on January 26, 2004, the Department published a notice of inquiry in the **Federal Register**, and inquired as to whether the current certification requirements are sufficient to protect the integrity of Import Administration's ("IA") administrative processes and, if not, whether the current certification statements should be amended or strengthened and, if so, how. *See Certification and Submission of False Statements to Import Administration During Antidumping and Countervailing Duty Proceedings-Notice of Inquiry,* 69 FR 3562 (January 26, 2004) ("*Notice of Inquiry*").

Based on the comments received in response to the *Notice of Inquiry,* the Department published a Notice of Proposed Rulemaking and Request for Comments in the **Federal Register**, proposing to amend the current regulation, which governs the certification of factual information submitted to the Department. *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings-Notice of Proposed Rulemaking and Request for Comment,* 69 FR 56738 (September 22, 2004) ("*Notice of Proposed Rulemaking*"). The Department proposed specific boilerplate language for the certifications and requested comments on the proposed amendment.

The Department received 16 submissions in response to the *Notice of Proposed Rulemaking* through December 7, 2004. The submissions included a wide variety of positions. Some commenters were opposed to the amendments, others supported the amendments, and many provided general recommendations for amending the certification requirements, as well as comments suggesting specific changes in the text of the certifications. In addressing these comments, the Department notes that at least one commenter has requested a hearing. The Administrative Procedure Act does not require the Department to hold a hearing. 5 U.S.C. 553. Given the numerous detailed submissions received from a variety of parties, the Department finds a hearing unnecessary. After evaluating the comments, the Department decided that additional consultation with the Office of Inspector General and the Department of Justice was necessary in order to ensure that all concerns could be adequately addressed. Furthermore, because it has been several years since we last received comments on the proposed changes to the certification requirements, we have decided, as set forth above, to implement these changes through an interim final rule, thereby affording parties an additional opportunity to comment on these regulations.

Analysis of Comments

General Comments on Proposed Changes To the Certification

1. The Department's Authority To Change the Certification

Multiple commenters questioned whether the Department has authority to change the certification. In particular, one commenter argued that section 782(b) of the Act explicitly provides the nature of the certification to be rendered, namely, the certification is to be provided by the "person providing factual information," and the person must certify "to the best of that person's knowledge." This commenter concluded that in changing the certification requirements the Department may be expanding the certification obligation beyond that established by Congress and, thus, acting inconsistently with the law.

Response: The amendments to the certification that the Department has adopted in this notice do not expand the legal obligations set out in the Act. Rather, these amendments serve to identify more specifically the document to which a certification applies and to note the penalty that already exists in the law for providing false statements to the Government, including false certifications. In this regard, the Department has updated the language in the certification to more closely track the language found in Section 782(b) of the Act.

2. Equal Application to All Parties

One commenter argued that any new certification requirements should apply equally to petitioners and respondents.

Response: All parties submitting factual information to the Department must comply with the certification requirements including respondents and petitioners.

3. Date of Signature on the Certification

The Department proposed to require new certifications to include the specific date on which the submitted information is certified. Most commenters did not oppose this proposal. Other commenters argued that the requirement was unnecessary, but did not oppose it. Some commenters opposed the date requirement for company/government certifications, noting that certifications are sometimes signed a few days before the date of the submission itself, and argued that this could cause confusion with respect to what date to use on the certification. Further, they argued that this requirement could be burdensome to companies that are making multiple filings simultaneously. These commenters, however, did not oppose the date requirement for the representative certification, but recommended requiring the date to be noted only once in the certification.

Response: Because there were no substantive objections to including the signature date on the certification, the Department will require it on the certification. The Department does not agree with the logistical concerns raised (*e.g.,* confusion arising from certifications being signed and dated prior to filing date). Certifications should be dated the day they are signed and, assuming a submission is completed prior to filing date, certifications may be signed and dated prior to filing date. Finally, the Department agrees that certifications only need to be dated once on the date of signature, and we have altered the certifications accordingly.

4. Identification of the Particular Submission to which the Certification Applies

The Department proposed that certifications should identify the specific material to which the person is certifying. Most commenters did not oppose this proposed change. For example, one commenter supported the proposed change because, in their experience, a certifying official sometimes signed "blank checks" for multiple future submissions that the official may not read. This commenter argued that identifying the actual submission would prevent this practice. Commenters who opposed this requirement argued that this requirement was redundant because certifications apply to the submissions to which they are attached.

Response: Because there were no substantive objections to identifying the submission to which the certification pertains, the Department has decided to adopt this change to the certification. This revision is intended to ensure that the signer is aware of the exact submission to which he or she is certifying and for which he or she is responsible. In addition, this provision will help to prevent the use of a generic "blank check" certification that could simply be copied and attached to a submission irrespective of whether the signer had reviewed the submission. Further, identifying the submission to which a certification applies would assist in linking the certification to its

submission in the event that the certification became detached.

5. Level of Accuracy and Completeness Contemplated by the Certification

One commenter argued that the Department must ensure that the new certification includes definitions that are sufficiently broad to cover all violations that may have a material effect on the outcome under the specific facts and circumstances of the segment [1] of the AD/CVD proceeding in which the certification is submitted. This commenter argued that the definition should not only include the knowing submission of false information, but also the failure to take reasonable care in assuring the completeness and accuracy of information. Multiple commenters argued that the Department should only impose well-defined standards on parties; otherwise the certification requirements would impose unfairly vague legal standards. In addition, and as noted *infra* at *Comment 17,* many parties submitted comments on defining the level of inquiry a representative must undertake to determine whether a submission is accurate and complete before certifying the submission.

Response: The Department has not adopted the commenters' proposal. We disagree that additional definitions regarding the level of accuracy and completeness are needed. The correct standard to which parties are held is the standard provided in the Act. *See* section 782(b) of the Act. Furthermore, we believe the certification language is sufficiently precise to accomplish the purpose intended and, thus, there is no need to include additional definitions. *See* 19 CFR 351.304(g).

6. Specification of Enforcement Procedures

In the proposed revisions to the certification regulation, the Department did not specify the enforcement procedures that would be available. Some commenters argued that in order for the certifications to be effective, the Department must establish specific enforcement procedures. For example, one commenter argued that the Department should specify its procedures for conferring with the Inspector General's Office and law enforcement agencies, such as the Department of Justice. This commenter also argued that the Department should formulate guidelines that permit the Department to maintain records to be used in any investigation of misconduct rather than allowing a company to terminate participation and withdraw its submissions. Further, this commenter argued that the Department should draft regulations for investigation of inaccurate or incomplete factual information that mirror those outlined in the Department's regulations for violations of administrative protective orders.

Response: The Department has not adopted the commenters' proposal to establish enforcement procedures. As explained *supra* at *Comment 1,* the amended certifications serve to clarify and strengthen already existing obligations regarding the submission of information to the Department. The inclusion of a warning pursuant to 18 U.S.C. 1001 in the revised certification makes plain the consequences of a false certification. These consequences were implicit under the previous certification requirement. The inclusion of this warning does not indicate that the Department thinks it is necessary to establish comprehensive enforcement procedures for certification violations. Rather, certification violations would continue to be referred to the appropriate offices better equipped to handle such matters, such as the Department's Office of the Inspector General. These offices would employ their normal procedures for handling possible violations of 18 U.S.C. 1001. Additionally, we note that unlike our statutory authority to promulgate Administrative Protective Orders which includes an enforcement authority (*see* 19 U.S.C. 1677f(c)), there is no specific statutory authority for the Import Administration, itself, to investigate and impose sanctions with respect to certification violations, except through those available more broadly to the Inspector General's Office. *See also* 19 CFR part 354.

With regard to concerns that parties may withdraw information from the record of the AD/CVD proceeding, the Department notes, as an initial matter, that it does not permit parties to withdraw public submissions from the record of AD/CVD proceedings. While the Department does permit parties to withdraw business proprietary submissions from the record of AD/CVD proceedings, the Department intends, where necessary, to preserve business proprietary submissions in order to determine whether a false certification has been filed. The Department may preserve these submissions pursuant to its general authority to protect its administrative process. Thus, while a party may terminate participation in an AD/CVD proceeding and withdraw its business proprietary submissions, such a withdrawal of submissions would only apply to the AD/CVD proceeding, and not the Department's investigation of a false certification. The Department has updated the certification language in order to ensure that parties are aware that the Department may preserve business proprietary submissions to investigate false certifications even if a party withdraws its submissions from an AD/CVD proceeding.

7. Specification of Sanctions

The Department proposed including in the certification a reference to criminal sanctions that exist under 18 U.S.C. 1001 for those individuals who knowingly make misstatements to the U.S. Government. One commenter supported this proposal, arguing that reference to 18 U.S.C. 1001 underscored the seriousness of falsely certifying a factual submission. Multiple commenters argued that the Department must establish additional specific sanctions in order for the certifications to be effective. For example, one commenter argued that sanctions should include referring the matter for criminal prosecution, subjecting companies to full scale audits, barring company officials from future certifications, imposing adverse facts available, and barring representatives from practicing before the Department.

Another commenter generally agreed with the proposal but noted that the language referenced 18 U.S.C. 1001, but not the rules of professional conduct. This commenter suggested that it would also be useful to indicate that false statements would be referred to the appropriate bar association. One commenter opposed the proposal, arguing that by characterizing 18 U.S.C. 1001 as applying to knowingly made misstatements, the Department's proposal over-reaches because the statute deals only with "material" matters. Further, subsection (b) of 18 U.S.C. 1001 excludes from the scope of subsection (a) representations made in the context of a judicial proceeding. According to this commenter, this exclusion was created to avoid chilling advocacy in judicial fora and because there were already statutes addressing and punishing those who willfully mislead the judicial branch. The commenter concluded that these exemptions were equally applicable to proceedings before the Department.

This commenter also argued that, under the WTO Agreements, the United States had agreed on the consequences to interested parties who fail to

[1] An AD/CVD proceeding consists of one or more segments. For example, an AD or CVD investigation, an administrative review of the resulting AD/CVD order, and a scope inquiry under the AD/CVD order each would constitute a segment of the proceeding. *See* 19 CFR 351.102 ("Segment of proceeding").

cooperate with investigating authorities, *i.e.,* Article 6.8 of the Agreement on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement)—adverse facts available. Thus, this commenter concluded that application of 18 U.S.C. 1001 is a remedy beyond that which the WTO Agreements permit. Another commenter argued that the reminder in the certification did not accurately reflect 18 U.S.C. 1001. This commenter noted that the law provides criminal sanctions for "false, fictitious, or fraudulent statements" rather than "misstatements" as noted in the proposed certification. Another commenter argued that, given the sanctions available in the AD/CVD proceeding and the code of professional conduct governing legal counsel, it was doubtful whether any legitimate purpose could be served by recourse to criminal sanctions. This commenter was concerned that such sanctions could deter parties from submitting information, the accuracy of which cannot be absolutely certified (*e.g.,* information from sub-contractors).

Response: The Department has made changes to its proposed certification based on these comments. First, the Department agrees with those commenters that argued that the text of the certification should follow more precisely the statutory language found in 18 U.S.C. 1001, and we have updated the text of the certification accordingly. Additionally, we have added a reference to 18 U.S.C. 1001 which reminds parties that serious consequences exist for false certifications, thereby strengthening the certification process. The Department disagrees, however, with those commenters that argue the Department should adopt specific sanctions. The Department does not have the authority or resources to create independent sanctions for false certifications. Sanctions for false certifications will be determined by the offices to which the Department refers alleged certification violations under 18 U.S.C. 1001 (*e.g.,* the Department's Office of the Inspector General). However, if a party is found to have violated 18 U.S.C. 1001, the Department reserves the right to protect its administrative process through appropriate steps.

The Department also disagrees that the judicial exception found in 18 U.S.C. 1001(b) is applicable to AD/CVD proceedings before the Department. The terms of this exception apply only to judicial proceedings, and not Executive Branch agency proceedings.

The Department disagrees with the arguments related to the WTO Agreements, including Article 6.8 of the Antidumping Agreement. Including a reference in the certifications to the U.S. Government's standard admonition regarding false statements in no way contravenes the United States' obligations under the WTO Agreements. This is a common reference included in many Government agencies' forms. This reference promotes the integrity of the Government's administrative processes. The Department also disagrees that Article 6.8 of the Antidumping Agreement limits the Government's ability to protect the integrity of its administrative process.

With regard to referring matters to state bar associations, it is not the Department's general practice to become involved in proceedings before state bar associations regarding allegations of attorney misconduct. Such efforts could result in excessive expenditures of time and personnel. Notwithstanding the Department's general practice, the Department reserves the right to refer matters to state bar associations when the Department determines that the circumstances warrant such a referral.

With regard to arguments that the Department should impose adverse facts available under Section 776 of the Act for false certifications, the Department notes that filing a false certification could result in the application of adverse facts available for a respondent. 19 U.S.C. 1677e. For example, false certifications could result in unverifiable information and could signify that a respondent had failed to cooperate to the best of its ability within the meaning of Section 776 of the Act. In such instances where the criteria in Section 776 of the Act are met, the Department could apply adverse facts available in its determination.

With regard to arguments pertaining to the submission of third party information (*e.g.,* information from sub-contractors), the culpability standards established in 18 U.S.C. 1001 that require, for example, actions made knowingly and willfully, provide relevant protections. Furthermore, the Department notes that this standard has been successfully applied to parties submitting information to the Government in a wide variety of circumstances and the Department expects that this standard is equally workable in an AD/CVD proceeding.

Comments on Proposed Changes to the Company/Government Certification

8. Requirement for Companies To Keep Signed Original Certifications in its "Official Records"

The Department proposed including an obligation for certifying company officials to maintain the original certification in their company's official records. Many commenters did not oppose this suggestion. One commenter argued that using the phrase "official records" unduly complicates the matter, while another commenter stated that this requirement had no practical utility and does not improve the accuracy or completeness of a factual submission. Additionally, this latter commenter stated the term "official records" was undefined and unclear. Moreover, this commenter argued that it was unclear how long a company must maintain the original in its records. Another commenter argued that companies may prefer legal counsel to maintain the original copy of the certifications, in which case providing the Department with original documents could violate attorney-client privilege.

Response: Some commenters argued that requiring original certifications to be filed with submissions is unduly burdensome. *See Comment 14 infra* (describing this argument in more detail). The Department finds that requiring the originals to be available for inspection strikes a reasonable balance between the need for the Department to be able to verify the original certifications without placing a burden on parties to file original certifications with each submission. This is no different than the requirement that respondent companies and governments retain original source documentation for Department officials to examine during the course of on-site verifications.

However, in order to avoid any confusion regarding both the definition of "official business records" and the time period for which parties are responsible for maintaining originals, we have revised the certification to state: "* * * I will retain the original for a five-year period commencing with the filing of this document. The original will be available for inspection by U.S. Department of Commerce officials." Thus, parties are required to maintain the original certifications in a manner that allows the Department to review them during any verification pursuant to 782(i) of the Act. 19 U.S.C. 1677m(i). Alternatively, the Department could require parties, on a case-by-case basis, to send the original to the Department after the submission has been filed. In addition, parties need to retain the originals for a five-year period commencing with the filing of the document. This five-year period is consistent with the statute of limitations for prosecution under 18 U.S.C. 1001. *See* 18 U.S.C. 3282.

With regard to the commenter's concern about possible violations of attorney-client privilege, the

Department is specifically requesting that companies and governments, and not legal counsel, maintain the company's or government's original certifications. Thus, maintenance of the certifications should not implicate attorney-client privilege.

9. Requirement To List Person(s) Officially Responsible for Presentation of the Factual Information

The Department proposed that the person(s) officially responsible for the presentation of factual information certify that he or she "had sole or substantial responsibility for preparation (or the supervision of the preparation) of the submission and have a reasonable basis to formulate an informed judgment as to the accuracy and completeness of the information contained in the submission." One commenter argued that this proposal was necessary because the current certification provides no assurance that the certifying official has any real knowledge of the underlying facts to which they are certifying. Many commenters did not object to this proposal. Some commenters argued that the term "substantial responsibility," "reasonable basis" and "informed judgment" were sufficiently vague to subject parties to uncertain legal standards. In addition, one commenter argued that submissions in AD/CVD cases can involve many thousands of pages of data, obtained from many sources, including related companies. As a result, it is unrealistic to expect one person to ensure total accuracy. Another commenter argued that this proposal raised problems because it assumes a strict supervisory hierarchy in companies (or governments) when often such a hierarchy is not clearly discernable. In such instances, it would be difficult for any person to provide a certification with regard to supervision of others significantly involved in the preparation of a submission.

Response: The Department is obligated to calculate AD/CVD margins as accurately as possible. *Rhone Poulenc, Inc.* v. *United States,* 899 F. 2d 1185, 1191 (Fed. Cir. 1990). To accomplish this task, the Department must be presented with accurate and complete information and, thus must hold parties responsible for submitting accurate and complete information. In this regard, it would be ineffective for the Department to have numerous individuals held accountable for certain portions of a submission. *See also Comment 10 infra.* In such circumstances, it could be very difficult for the Department to hold a person(s) responsible for his or her certification because that person could argue that any inaccuracies or incompleteness were attributable to another person responsible for another portion of the submission. In addition, it is important that the information, as a whole, be evaluated for accuracy and completeness. Permitting piecemeal certifications would allow parties to present information to the Department without ever engaging in this overall evaluation. Rather, in order for a certification to be effective, there must be an individual (or a very limited number of individuals) [2] to hold accountable for the accuracy and completeness of the entire submission based on that person(s)'s knowledge of the entire submission. The person(s) that the submitting party has identified as accountable for the accuracy and completeness of the entire submission should complete the certification.

The Department disagrees with the argument that is premised on a lack of hierarchies in companies or governments. It has not been the Department's experience that companies and governments are unable to identify a responsible person(s) to complete certifications due to a lack of hierarchy in their organizational structures. In order to function, companies and governments must both establish clear chains of authority. The Department expects that companies and governments will consider these chains of authority when identifying the party(s) responsible for the submission of factual information. Accordingly, the Department has not made any changes to the proposed certification based on these comments.

10. Requirement To List on Certifications Other Individuals With Significant Responsibility for Preparation of Part or All of the Submission

The Department proposed including within the certification a list of all individuals with significant responsibility for part or all of the submission. Several comments were received in response to this proposal. Some commenters stated that it raised issues of confidentiality/business proprietary information to include such a list. Many commenters argued that there would be varying opinions as to what "significant responsibility" means, while others said it would be burdensome to identify all such persons in cases of large companies that sometimes rely on hundreds of staff members for the preparation of questionnaire responses. In this regard, one commenter argued that in CVD investigations, the proposed certification would be quite onerous because of the multiple levels of government and many responding departments and agencies. One commenter noted that this requirement would add a burden without appearing to add anything of substance to the certification process because under the current certification an official must already attest to the accuracy of the submission. Another commenter argued that the list would rapidly become outdated as personnel left the company. One commenter inquired if the requirement would include company officials who prepared financial statements.

Response: Based on the concerns raised by these commenters, the Department has decided not to adopt the requirement to list in the certification other individuals with significant responsibility for preparing the submission. The Department agrees that referring to numerous other individuals in the certification may create ambiguity with respect to the primary responsibility of the person(s) officially responsible for the presentation of the factual information to certify the accuracy and completeness of the entire submission. *See Comment 9 supra.* Additionally, this would require us to define what constitutes "significant responsibility" and what constitutes "part * * * of a submission," *e.g.,* one piece of information, two pieces of data, etc. Also, this requirement could easily become overly burdensome. In order for this proposal to have value, each person responsible for a significant portion of a submission would have to sign the certification and identify the particular portion of the submission for which he or she was responsible. When a submission contains a great deal of information, assigning each portion of a submission to persons and collecting the corresponding signatures could prove complicated and time consuming. For these reasons, the Department has deleted this proposed requirement.

[2] While it is optimal to have only one person sign the certification, the Department recognizes that sometimes this could be impossible because of the size or organization of a company or government. For instance, if different subsidiaries from a multinational company were presenting information to the Department in one submission, there may be more than one person officially responsible for presenting the information. The Department expects that this situation would be the exception rather than the rule. Under such circumstances, the Department expects the persons to work together to ensure the accuracy and completeness of the entire submission, rather than only certifying to a portion of the submission.

11. Application of Certification to Affiliated Party Submissions

One commenter argued that the proposed changes do not address whether certification requirements apply to submissions containing information from affiliated parties.

Response: The amended regulation does not change the current requirement with regard to submissions containing information from affiliated parties. That is, information presented to the Department, including information a party acquires from an affiliate, must include a factual certification.[3] If one person is unable to certify to the accuracy and completeness of a submission, this regulation allows for multiple parties to sign the certification. However, as discussed above, the Department expects such circumstances to be the exception rather than the rule. *See Comment 9 supra.*

12. Whether the Certification Is Deemed To Be "Continuing in Effect"

The Department proposed requiring the signer to certify that he or she is aware that the certification is deemed to be continuing in effect, such that the signer must notify the Department in writing, if at any point during the segment of the proceeding, he or she possessed knowledge or had reason to know of any material misrepresentation or omission of fact in the submission or in any previously certified information upon which the submission relied. One commenter argued that this proposal strengthened the certification requirements. Another commenter supported the proposal generally because it would help the Department obtain the most complete and accurate record feasible. However, this commenter was concerned that a party might use this continuing obligation to submit corrections beyond the normal deadlines enumerated by the Department. In addition, this commenter stated that, consistent with 19 CFR 351.301(c), the Department should allow other interested parties an opportunity to comment when a party notifies the Department of material misrepresentations or omissions of facts.

Other commenters raised concerns that the proposal was vague in so far as: It was unclear how quickly the certifying official must notify the Department of the misrepresentation or omission of fact; it was unclear how the Department would determine that parties had failed to meet their ongoing obligation, including whether the Department would conduct such a determination at verification; it was unclear what burden of proof the Department would apply in order to determine whether a party had complied with this continuing obligation; it was unclear whether this continuing obligation continued even when the company was no longer participating in the AD/CVD proceeding or when the employee was no longer working at the company. In addition, one commenter expressed concern that the Department's inquiries on whether the errors constituted "material misrepresentation or omission of fact" could be burdensome and incommensurate with the errors or omissions because, in the vast majority of instances, the errors or omissions are inadvertent. Another commenter argued that this obligation could impose an individual duty on employees to report errors or omissions in violation of contractual, ethical or legal obligations.

Response: The Department has decided that adding the proposed language does not strengthen the certification requirement because the obligation to report material misrepresentations or omissions of fact already exists. First, this requirement is implicit in the certification requirement found in Section 782(b) of the Act. Additionally, this requirement is implicit in the verification requirements found in Section 782(i) of the Act. 19 U.S.C. 1677m(i); *see also* 19 CFR 351.307(b). Generally speaking, in order for the Department to use information in an AD/CVD proceeding, it needs to be verifiable, and information that contains a material misrepresentation or omission would not be verifiable. Therefore, the proposed language is not adopted in this interim final rule.

13. Applicability to Governments

One commenter requested clarification of whether this proposed regulation applies to foreign governments. This commenter argued that there is an inconsistency between the text of the regulation, which refers to a requirement that certifications need to be filed by the "person(s) officially responsible for presentation of factual information," and the text of the certification itself, which covers a "company certification" to be filed by someone "employed by (COMPANY NAME)," and does not cover submissions by foreign governments. Another commenter argued that changes to the current certification requirements with regard to governments were unnecessary because government officials are presumed to provide accurate information.

Response: The Act does not provide an exception from the certification requirement for information presented by governments. Thus, for example, in CVD proceedings where a government is an interested party and presents information to the Department, the certification requirement applies. The text of the company/government certification has been amended to include the term "GOVERNMENT" which clarifies that it is applicable to both companies and governments. That is, the title of the company/government certification now reads "COMPANY/GOVERNMENT CERTIFICATION"; the first sentence of this certification now includes "employed by COMPANY NAME or GOVERNMENT"; and the first sentence of the counsel/representative certification now includes "counsel or representative to COMPANY OR GOVERNMENT OR PARTY."

Comments on Proposed Changes to the Representative Certification

14. Requirement for Representatives To Submit Signed Original Certifications to the Department

The Department proposed that legal or other representatives must file original certifications with the Department and must maintain a copy of the certification in their records during the pendency of the AD/CVD proceeding. One commenter argued that there are circumstances in which submitting an original certification would be impractical. For example, when the filing attorney is not in Washington on the filing date, that attorney may need to fax or send a PDF copy of the submission to Washington for filing.

Response: Based on these comments as well as those described *supra* at *Comment 8,* the Department has decided that requiring an original to be filed may be overly burdensome. Common technology (*e.g.,* fax machines and email) allows the certifying representative to review documents, even on filing day, without being physically located in Washington. Under such circumstances, it may be impossible to file an original certification with the Department. Consistent with the requirements for company/government certifications, the Department is requiring representatives to maintain original certifications for a five-year period commencing with the filing of the document to which the certification applies.

[3] *See Comment 16 infra* (discussing the narrow exception to the certification requirement when certain information is moved from one segment of a proceeding to another).

15. Requirement To List on the Certification Legal Counsel or Representative that Supervised the Advising, Preparing, or Review of the Submission or Other Individuals With Significant Responsibility for Advising, Preparing, or Reviewing the Submission

The Department proposed that the representative certification include a provision for when the representative "supervised the advising, preparing or reviewing part or all of the submission." There were no specific comments received on this portion of our proposed amendment.

Additionally, the Department proposed including in the representative certification a list of other individuals with significant responsibility for advising, preparing or reviewing part or all of the submission. Many commenters opposed this proposal. One commenter noted that this requirement would interfere with the attorney-work product privilege and argued that the Department and other parties are not entitled to know how a law firm assigns its attorneys and staff to a case, nor which attorneys are providing advice to a client on specific aspects of the submission. This commenter concluded that this proposal would not add to the accuracy and completeness of factual submissions because under the applicable laws and rules of professional responsibility, the supervising attorney is legally responsible for the work of subordinate attorneys and legal staff. Similar to the comments pertaining to the proposal to include a list of other individuals with significant responsibility in company/government certifications, multiple commenters argued that without a definition of "significant responsibility," the proposal was too vague. *See Comment 10 supra.* Another commenter argued that this requirement went far beyond the reasonable goals of traceability and accountability because it would impose a significant burden on top of the already tight deadlines. Moreover, it did not provide additional insurance of accuracy and truthfulness.

Response: The Department has decided not to require representatives to list multiple parties on the certification. As discussed above, in order for a representative certification to be effective, there must be an individual (or very limited number of individuals) [4] responsible for the accuracy and completeness of the entire submission based on that person(s)'s knowledge of the entire submission. *See Comment 9* and *Comment 10 supra.*

16. Whether Representative Certification Is "Continuing in Effect"

The Department proposed requiring the representative to certify that he or she is aware that the certification is deemed to be continuing in effect, such that the signer must notify the Department in writing, if at any point during the segment of the proceeding, he or she possessed knowledge or had reason to know of any material misrepresentation or omission of fact in the submission or in any previously certified information upon which the submission relied. The majority of commenters opposed this proposal. Some commenters were concerned that this continuing obligation could conflict with the attorney's rules of professional conduct, which may include a responsibility to maintain attorney-client confidences (*e.g.,* DC Rules of Professional Conduct 1.6). These commenters noted that the correct response under this rule, if a client is unwilling to rectify a falsehood, is for counsel to withdraw representation, not for the counsel to disclose the falsehood to the Department. This same commenter noted that in many jurisdictions there are rules of professional conduct that prohibit attorneys from knowingly making false statements or assisting their clients in fraudulent conduct (*e.g.,* DC Rules of Prof'l Conduct 3.3, 4.1, and 8.4). Another commenter noted that often information is moved from one segment of proceeding to another. As such, this commenter concluded that, if the certification was going to include a continuing obligation, it should not be limited in duration to one segment of a proceeding. Other commenters noted that increases in the certification requirements for counsel would increase the cost of parties participating in trade remedy proceedings and severely limit the ability of lawyers to represent parties in such proceedings. This commenter also argued that the Department didn't have statutory authority to regulate the professional conduct of attorneys or other representatives.

Response: The Department has decided not to add the proposed language to the representative certification. As discussed above, adding this language does not strengthen the certification requirement because the obligation to report material misrepresentations or omissions of fact already exists. *See Comment 12 supra.* The Department notes that this obligation is to be read in conjunction with a representative's professional responsibilities. *See, e.g.,* D.C. Code of Prof'l Conduct, R. 4.1 (prohibiting an attorney from making false statements to a third person in the course of representing a client); D.C. Code of Prof'l Conduct, R. 3.3 (prohibiting an attorney from offering evidence that the attorney knows is false). The requirement to disclose material misrepresentations or omissions should be interpreted in a manner consistent with a representative's professional responsibilities.

With regard to information moved from the record of one segment of a proceeding to another, the continuing obligation exists in so far as a representative is moving his or her own client's information or otherwise knows that the information contains material misrepresentations or omissions. For example, if counsel for a foreign producer is moving his or her client's questionnaire response from a prior segment to the record of an ongoing segment, counsel must include a certification with this questionnaire response. If, however, counsel is placing another party's information on the record, no certification is required. Notwithstanding this exception, if counsel otherwise has a basis to know that the information he or she is moving to the ongoing segment contains material misrepresentations or omissions, the continuing obligation to disclose exists. That is, counsel must never knowingly move information containing material misrepresentations or omissions onto the record of another segment of the proceeding without disclosing these misrepresentations or omissions to the Department. Moreover, if information from a prior review is submitted because it applies to the current segment's entries, it must have a new company/government certification stating it is accurate as to the current segment.

17. Requirement To Make "An Inquiry Reasonable under the Circumstances"

The Department proposed requiring representatives to make an inquiry reasonable under the circumstances before certifying that the submission is accurate and complete. A few commenters generally supported this proposal. For example, one commenter argued that the current certification

[4] While it is optimal to have only one representative sign the certification, the Department recognizes that sometimes this could be impossible because there may be more than one representative officially responsible for a submission. For instance, multiple law firms could submit a document together. The Department expects that this situation would be the exception rather than the rule. Under such circumstances, the Department expects the representatives to work together to ensure the accuracy and completeness of the entire submission, rather than only certifying to a portion of the submission.

requirement permitted certification even when the person certifying knew little about the submission.

Many commenters opposed this proposal. One commenter argued that the proposal was improper because the scope of the reasonable inquiry requirement was vague, particularly in light of the fact that the Department also requires a detailed company/government certification. In this regard, some commenters noted that the Department's discussion in the *Notice of Proposed Rulemaking* conflicts with the proposed text of the certification in so far as the former references "due diligence" while the latter references "a reasonable inquiry under the circumstances." Further, a commenter argued that it was unclear whether the Department contemplates attorneys "auditing" their clients' submissions, comparing submissions made to different agencies, or merely asking questions concerning the sources relied upon to respond to questionnaires. This commenter also noted that there is no precedent or common understanding regarding what constitutes "due diligence" in the context of trade cases. This commenter argued that instead of the obligation imposed by this proposal, the Department should impose an obligation that the attorney "did not consciously disregard other facts and information indicating that a particular submission included false statements or omitted material information." With this language, the Department could clarify that it only intends attorneys to review the information provided rather than searching out potentially conflicting information from other sources. Another commenter noted that the representative certification contemplates a representative that is fully engaged in all aspects of the proceeding, including the submission of factual information. However, representatives may be hired to simply copy and file documents with the Department or to consult on discrete issues. This commenter concluded that under these circumstances it is improper for the Department to require representatives to file certifications.

Another commenter argued that imposing an affirmative duty on attorneys to inquire into the facts provided by clients in conjunction with the obligation to notify the Department of misstatements—particularly in light of the threat of criminal sanctions—could compromise the attorney's professional judgment by placing his or her interests over that of the client. Another commenter noted it was unrealistic for legal representatives to perform such a detailed inquiry given the tight deadlines for filing responses to the Department's request for information, the client's location in a foreign country, and the fact that the source data is often in a foreign language. Another commenter argued that requiring attorneys to conduct such an inquiry would increase costs which, in turn, would decrease legal representation, ultimately resulting in more decisions relying on adverse facts available.

One commenter noted the proposed rule threatens criminal sanctions, but Federal Rule of Civil Procedure 11 ("Rule 11") does not. Furthermore, this commenter noted that, under Rule 11, the attorney may withdraw the offending pleading or motion without further consequences; but no such safeguard is included in the proposal. Additionally, multiple commenters noted in promulgating this rule and the corresponding rule of the Court of International Trade, guidance was explicitly provided regarding the inquiry that was expected. These commenters argued that the Department must provide similar guidance.

Another commenter noted that the Act does not impose the obligation contemplated by this proposal and, as such, the Department has no authority to impose an affirmative obligation on counsel to review the information the client wishes to submit. This commenter stated that, nevertheless, if the Department retains the "reasonable inquiry" requirement, it should mirror this requirement after the IRS regulation, 31 CFR 10.34(c) which permits a practitioner to rely generally in good faith on the information furnished by a client without verifying that information. For similar reasons, another commenter advocated this same standard. Lastly, one commenter stated this requirement would give the Department too much discretion.

Response: The Department has decided not to include this requirement in the representative certification. The proposed language mirrors the language in Rule 11 of the U.S. Court of International Trade. This is not the correct standard to place on representatives in AD/CVD proceedings before the Department. Rather, the correct standard is that which exists in the Act. Specifically, counsel must certify that "the information contained in this submission is accurate and complete to the best of my knowledge." Section 782(b) of the Act. In the event of any alleged violation of the counsel certification requirement, the Department expects that the offices investigating the alleged violations (*e.g.,* the Department's Office of the Inspector General or the Department of Justice) will address the meaning of the terms rather than IA.

The Department disagrees with the argument that a representative need not file a certification when that representative simply copies and files documents. In order to appear as a representative of an interested party in and AD/CVD proceeding, that representative must take on the duties incumbent on a representative. One of those duties includes a duty to certify all information that the representative presents to the Department on behalf of his or her client. If a party is hired to simply copy and file documents for an interested party then that party should not appear as a representative in an AD/CVD proceeding.

Issuance of Interim Final Rule

After analyzing and carefully considering all of the comments that the Department received in response to the *Notice of Proposed Rulemaking* and after further review of the provisions of the proposed rule, the Department is hereby publishing an interim final regulation pertaining to the certifications that must accompany factual submissions in AD/CVD proceedings. This regulation strengthens the certification requirement by requiring parties to identify the submission to which the certification applies; to identify to which segment of an AD/CVD proceeding the certification applies; to identify who is making the certification; to indicate the date on which the certification was made; and to make clear that parties and their representatives are subject to serious consequences for false certifications.[5]

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* the Chief Counsel for Regulation at the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule, if promulgated as final, will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule in 2004. However, due to the length of time since the publication of the proposed rule, the Department now updates the factual basis. The amendment would have little or no

[5] The Department is developing a procedure for electronic filing in AD/CVD proceedings. The Department will consider what changes, if any, this interim final rule will require to meet electronic filing procedures. *See, e.g.,* Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures, 75 FR 44163 (July 28, 2010).

economic impact on the companies/governments or their legal or other representatives since it only alters existing requirements. The amendment would have few, if any, new paperwork burdens since it only requires a small amount of additional supplemental information. IA possesses limited information regarding the number of entities that might be affected by this proposed rulemaking. In the 12 months ending September 2010, IA conducted 246 antidumping and countervailing duty investigations and reviews (excluding sunset reviews and suspension agreements), including initiation of 17 antidumping and countervailing duty investigations. However, IA is unable to estimate the number of entities that participated in each of these investigations and reviews, and is therefore unable to estimate the number of entities, including those that would be considered to be small businesses, affected by the proposed rulemaking. In addition, no comments were received regarding the economic impact of this rule. As a result, the conclusion in the original certification remains unchanged and a final regulatory flexibility analysis is not required and has not been prepared.

Paperwork Reduction Act

It has been determined that this proposed rulemaking is not subject to the Paperwork Reduction Act. In this regard, the Department notes that earlier versions of this rulemaking stated that the Paperwork Reduction Act was applicable. However, since that time, the Office of the Assistant General Counsel for Legislation and Regulation has determined that this rulemaking is not subject to the Paperwork Reduction Act because certifications accompany information submitted during the course of AD/CVD proceedings. *See* 5 CFR 1320.4(a)(2) (explaining that the Paperwork Reduction Act does not apply to administrative action against specific individuals or entities).

Executive Order 12866

It has been determined that the proposed rulemaking is not significant for purposes of Executive Order 12866.

Executive Order 13132

It has been determined that the proposed rulemaking does not contain federalism implications warranting the preparation of a federalism assessment.

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping duties, Business and industry, Confidential business information, Countervailing duties, Investigations, Reporting and recordkeeping requirements.

Dated: January 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

For the reasons stated above, 19 CFR part 351 is amended as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

■ 1. The authority citation for 19 CFR part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.;* and 19 U.S.C. 3538.

■ 2. Section 351.303(g) is revised as follows:

§ 351.303 Filing, format, translation, service, and certification of documents.

* * * * *

(g) *Certifications.* A person must file with each submission containing factual information the certification in paragraph (g)(1) of this section and, in addition, if the person has legal counsel or another representative, the certification in paragraph (g)(2) of this section.

(1) For the person(s)* officially responsible for presentation of the factual information:

COMPANY/GOVERNMENT CERTIFICATION

I, *(PRINTED NAME AND TITLE)*, currently employed by *(COMPANY NAME or GOVERNMENT),* certify that I prepared or otherwise supervised the preparation of the attached submission of *(IDENTIFY THE SPECIFIC SUBMISSION BY TITLE AND DATE)* pursuant to the *(INSERT ONE OF THE FOLLOWING: THE (ANTIDUMPING OR COUNTERVAILING DUTY) INVESTIGATION OF (PRODUCT) FROM (COUNTRY) (CASE NUMBER) or THE (DATES OF POR) (ADMINISTRATIVE OR NEW SHIPPER) REVIEW UNDER THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY)) (CASE NUMBER) or THE SUNSET REVIEW OR CHANGED CIRCUMSTANCE REVIEW OR SCOPE RULING OR CIRCUMVENTION INQUIRY OF AD/CVD ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER).* I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce. I am also aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the Department may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that I am filing a copy of this signed certification with this submission to the U.S. Department of Commerce and that I will retain the original for a five-year period commencing with the filing of this document. The original will be available for inspection by U.S. Department of Commerce officials.

Signature: _____

Date: _____

* For multiple person certifications, all persons should be listed in the first sentence of the certification and all persons should sign and date the certification. In addition, singular pronouns and possessive adjectives should be changed accordingly, e.g., "I" should be changed to "we" and "my knowledge" should be changed to "our knowledge."

(2) For the legal counsel or other representative:**

REPRESENTATIVE CERTIFICATION

I, *(PRINTED NAME) ,* with *(LAW FIRM or OTHER FIRM) ,* counsel or representative to *(COMPANY OR GOVERNMENT OR PARTY),* certify that I have read the attached submission of *(IDENTIFY THE SPECIFIC SUBMISSION BY TITLE AND DATE)* pursuant to the *(INSERT ONE OF THE FOLLOWING: THE (ANTIDUMPING OR COUNTERVAILING DUTY) INVESTIGATION OF (PRODUCT) FROM (COUNTRY) (CASE NUMBER) or THE (DATES OF POR) (ADMINISTRATIVE OR NEW SHIPPER) REVIEW UNDER THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER) or THE SUNSET REVIEW OR CHANGED CIRCUMSTANCE REVIEW OR SCOPE RULING OR CIRCUMVENTION INQUIRY OF AD/CVD ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER).* In my capacity as an adviser, counsel, preparer or reviewer of this submission, I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that U.S. law (including, but not limited

to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the Department may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that I am filing a copy of this signed certification with this submission to the U.S. Department of Commerce and that I will retain the original for a five-year period commencing with the filing of this document. The original will be available for inspection by U.S. Department of Commerce officials.

Signature: _____

Date: _____

** For multiple representative certifications, all representatives and their firms should be listed in the first sentence of the certification and all representatives should sign and date the certification. In addition, singular pronouns and possessive adjectives should be changed accordingly, e.g., "I" should be changed to "we" and "my knowledge" should be changed to "our knowledge."

[FR Doc. 2011–2761 Filed 2–9–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 15

Office of the Secretary

43 CFR Parts 4, 30

[Docket ID: BIA–2009–0001]

RIN 1076–AF07

Indian Trust Management Reform—Implementation of Statutory Changes

AGENCY: Bureau of Indian Affairs, Office of the Secretary, Interior.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule implements the latest statutory changes to the Indian Land Consolidation Act, as amended by the 2004 American Indian Probate Reform Act and later amendments (ILCA/AIPRA). These changes primarily affect the probate of permanent improvements owned by a decedent that are attached to trust or restricted property owned by the decedent. These changes also affect the purchase of small fractional interests at probate by restricting who may purchase without consent and what interests may be purchased without consent.

DATES: This interim final rule is effective on February 10, 2011. Submit comments by March 14, 2011.

ADDRESSES: You may submit comments by any of the following methods:

—*Federal rulemaking portal: http://www.regulations.gov.* The rule is listed under the agency name "Bureau of Indian Affairs." The rule has been assigned Docket ID: BIA–2009–0001. If you would like to submit comments through the Federal e-Rulemaking Portal, go to *http://www.regulations.gov* and do the following. Go to the box entitled "Enter Keyword or ID," type in "BIA–2009–0001," and click the "Search" button. The next screen will display the Docket Search Results for the rulemaking. If you click on BIA–2009–0001, you can view this rule and submit a comment. You can also view any supporting material and any comments submitted by others.

—*E-mail: Michele.Singer@bia.gov.* Include the number 1076–AF07 in the subject line of the message.

—*Fax:* (505) 563–3811. Include the number 1076–AF07 in the subject line of the message.

—*Mail:* Michele Singer, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1001 Indian School Road, NW., Suite 312, Albuquerque, NM 87104. Include the number 1076–AF07 in the subject line of the message.

—*Hand delivery:* Michele Singer, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1001 Indian School Road, NW., Suite 312, Albuquerque, NM 87104. Include the number 1076–AF07 in the subject line of the message.

We cannot ensure that comments received after the close of the comment period (*see* **DATES**) will be included in the docket for this rulemaking and considered. Comments set to an address other than those listed above will not be included in the docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Michele Singer, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1001 Indian School Road, NW., Suite 312, Albuquerque, NM 87104, phone: (505) 563–3805; fax: (505) 563–3811; e-mail: *Michele.Singer@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Description of Changes
A. Purchase at Probate
B. Permanent Improvements
1. Rule of Descent When Decedent Died Intestate
2. Presumption When Decedent Died Testate (*i.e.,* With a Valid Will)
3. Jurisdiction Over Permanent Improvements
4. Recourse To Avoid Potential Diminishment or Destruction of Permanent Improvements Pending Probate
C. List of All Regulatory Changes Made by This Interim Final Rule
III. Procedural Requirements
A. Regulatory Planning and Review (E.O. 12866)
B. Regulatory Flexibility Act
C. Small Business Regulatory Enforcement Fairness Act
D. Unfunded Mandates Reform Act
E. Takings (E.O. 12630)
F. Federalism (E.O. 13132)
G. Civil Justice Reform (E.O. 12988)
H. Consultation With Indian Tribes (E.O. 13175)
I. Paperwork Reduction Act
J. National Environmental Policy Act
K. Information Quality Act
L. Effects on the Energy Supply (E.O. 13211)
M. Clarity of This Regulation
N. Public Availability of Comments
O. Determination To Issue an Interim Final Rule With Immediate Effective Date

I. Background

On November 13, 2008, the U.S. Department of the Interior published a final rule related to Indian trust management in the areas of probate, probate hearings and appeals, Tribal probate codes, and life estates and future interests in Indian land (73 FR 67256). The final rule updated regulations to, among other things, implement ILCA/AIPRA. On November 20, 2008, Congress passed a bill that made several changes to ILCA/AIPRA. On December 2, 2008, the President signed the bill into law. *See* Public Law 110–453. This interim final rule updates the affected regulatory provisions to reflect the changes that Public Law 110–453 made to ILCA, as amended by AIPRA.

II. Description of Changes

There are two main subjects covered by this interim final rule: purchase at probate and the treatment of permanent improvements. This interim final rule also makes additional, non-substantive clarifications.

A. Purchase at Probate

Public Law 110–453 amended statutory provisions regarding the purchase at probate of small undivided interests. Previously, ILCA/AIPRA had stated that an heir's consent was not required for the purchase of an interest that would pass to the heir through intestate succession if the interest passing was less than 5 percent of the entire undivided ownership in the parcel. The public law changed ILCA/AIPRA, to provide that the heir's consent is not required for the purchase of an interest, under specified conditions, where the decedent's interest in the parcel, rather than the interest passing to the heir, is less than 5 percent of the entire undivided ownership in the parcel.

The conditions specified in the public law for purchase without consent are that: (1) The interest is passing by intestate succession; (2) the decedent's interest in the land represents less than 5 percent of the entire undivided ownership in the parcel; (3) either the Secretary, under the Indian Land Consolidation Program on behalf of the Tribe with jurisdiction over the parcel, or the Tribe itself, purchases the interest; (4) the heir or surviving spouse is not living on the parcel; and (5) if the Tribe is the purchaser, the heir or surviving spouse is not a member or eligible to be a member of the Tribe.

Therefore, under the changes made by the public law, the consent of an heir is not required for purchase of an interest at probate that would pass via intestate succession, if the decedent's interest is less than 5 percent of the entire undivided ownership in the parcel, and if the Secretary or the Indian Tribe with jurisdiction, under the circumstances explained above, purchases the interest.

To address this statutory change, this interim final rule revises 43 CFR 30.163 to change the threshold for consent to whether the decedent owns less than 5 percent of the entire undivided ownership in the parcel, and to incorporate the new limitations regarding who may purchase at probate without consent.

B. Permanent Improvements

Public Law 110–453 amended ILCA/AIPRA to specify what happens to permanent improvements when someone dies owning both trust land, or an interest in trust land, and a permanent improvement, or an interest in the permanent improvement, attached to that trust land.

1. Rule of Descent When Decedent Died Intestate

The Public Law established a rule of descent for permanent improvements attached to trust or restricted property where the decedent owns an interest in both the permanent improvement and the underlying trust or restricted property. The rule of descent is that the decedent's interest in any permanent improvement attached to trust property will descend with the decedent's interests in the underlying trust property, where the decedent died intestate. This rule of descent will apply only if a Tribal probate code approved pursuant to 25 U.S.C. 2205, or approved consolidation agreement does not provide for a different descent. If a Tribal probate code approved pursuant to 25 U.S.C. 2205 or approved consolidation agreement specifies how permanent improvements will descend, then that code or agreement will govern. If there is a renunciation, then the person receiving the interest in the underlying trust or restricted land under the renunciation will also receive the interest in the permanent improvement.

The rule of descent applies only to decedents who died on or after December 2, 2008 (the effective date of Pub. L. 110–453). Therefore, if a decedent owned an interest in a parcel that is trust or restricted property, and also owned an interest in the house on that parcel, then ownership of the decedent's interest in the house passes to the heir(s) receiving the decedent's interest in the parcel, if (1) The decedent died on or after December 2, 2008; (2) there is no applicable and approved Tribal probate code or consolidation agreement among the heirs stating otherwise; and (3) the heir(s) have not renounced the interest in the parcel.

2. Presumption When Decedent Died Testate (*i.e.,* With a Valid Will)

Public Law 110–453 also amended ILCA/AIPRA to establish a presumption for permanent improvements attached to trust or restricted property where the decedent owned an interest in both the permanent improvement and the underlying trust or restricted property. When a decedent dies with a valid will that devises the decedent's interests in trust land, the presumption is that the devise includes the interest of the decedent in any permanent improvements attached to that trust land.

The presumption applies only to decedents who died on or after December 2, 2008. Therefore, if a decedent owned an interest in a parcel that is trust or restricted property, and also owned an interest in the house on that parcel, then ownership of the decedent's interest in the house passes to the devisee(s) receiving the decedent's interest in the parcel, if (1) the decedent died on or after December 2, 2008; and (2) the will does not expressly provide otherwise.

3. Jurisdiction Over Permanent Improvements

As a general rule, the Department considers permanent improvements to be non-trust property, and OHA does not probate them. The Department does not keep an inventory of permanent improvements on trust or restricted lands, nor is the Department responsible for maintaining the covered permanent improvements on trust lands. Nevertheless, in cases where the decedent died on or after December 2, 2008, the Administrative Law Judges (ALJs) and Indian Probate Judges (IPJs) will include in probate orders a general statement of the substantive law of descent or devise of permanent improvements. The orders will determine the heirs or devisees of trust property and direct its distribution, as usual. The courts of competent jurisdiction that normally probate non-trust property (*i.e.,* Tribal and State courts) would then apply the substantive rules of descent or devise, as stated in ILCA/AIPRA, to any non-trust permanent improvements, based on the ALJ's or IPJ's determination of heirs or devisees and their respective interests.

If the Tribal or State court has already completed the probate of the decedent's non-trust property by the time the ALJ or IPJ issues a probate order, the heirs or devisees may have the opportunity to petition the Tribal or State court to reopen the estate, if necessary, to reflect the proper descent or devise of the decedent's interest in any non-trust permanent improvements.

C. List of All Regulatory Changes Made by This Interim Final Rule

"Trust estate"

The interim final rule changes "trust estate" to "estate" in several sections: 25 CFR 15.1, 15.2 (definition of "*you* or *I*"), 15.12; 43 CFR 4.320, 30.100, 30.101 (definition or "*you* or *I*"), 30.110, 30.140. This is not a substantive change. This change has been made because "estate" is already defined to mean "the trust or restricted land and trust personalty owned by the decedent at the time of death," making the phrase "trust estate" redundant.

25 CFR Part 15

Section 15.2 What definitions do I need to know?

In the definition of "summary probate proceeding," the word "does" is changed to "did" to correct the tense. This is not a substantive change; it is merely a grammatical change that is appropriate because the threshold amount will be determined as of a past date (the date of death).

Section 15.10 What assets will the Secretary probate?

The interim final rule deletes references to "estate" in this section to eliminate the redundancy in the phrase "trust or restricted land or personalty in an estate" and to better explain what the Secretary probates. For consistency, the interim final rule also changes the heading to this section from "Will the Secretary probate all the land and assets in an estate?" to "What assets will the Secretary probate?" This change clarifies what the Secretary probates by explaining what is in an estate, rather than referring to the term.

Section 15.202 What items must the agency include in the probate file?

This section addresses what items the agency must include in the probate file. Paragraph (e) requires that a certified inventory of trust and restricted land be included, and states that such inventory should include "accurate and adequate descriptions of all land and appurtenances." The interim final rule deletes the phrase "and appurtenances" because BIA does not maintain records on appurtenances, and appurtenances have not been, and are not included in certified inventories. Deleting "and appurtenances" is consistent with the change that Public Law 110–453 made to the definition of "land" in 25 U.S.C. 2201(7). That definition used to read, "any real property, and includes within its meaning for purposes of this Act improvements permanently affixed to real property." Congress deleted the reference to "improvements permanently affixed to real property," and the definition now reads simply, "any real property."

Section 15.203 What information must Tribes provide BIA to complete the probate file?

This section clarifies that a Tribal probate order, where one exists, is among the documents that the Department may request to complete the probate file. While not binding on the Department, the Tribal probate order may provide relevant information regarding heirship, paternity, adoption, marriage, divorce, or other relevant matters. OHA may also refer to the Tribal probate order for determinations about non-trust permanent improvements that may be relevant in cases involving consolidation agreements and renunciations.

43 CFR Part 4

Section 4.324 How is the record on appeal prepared?

The interim final rule amends this section to more accurately reflect the actual process as set forth in 43 CFR 30.233, wherein the ALJ provides the record to the LTRO after the probate is completed (rather than the agency providing the record to the LTRO). In the event of an appeal to the Interior Board of Indian Appeals, the ALJ or IPJ must also provide a transcript of the hearing to the LTRO, for inclusion in the record.

The interim final rule also updates the language, deleting the verb "conform" and instead using plain language to explain that the LTRO copies the record before sending the original to the Board and a copy to the agency to have available for public inspection. Where the current regulation specifies that the LTRO must send the original record to the Board by certified mail, the interim final rule adds "or other service with delivery confirmation" to allow for the use of delivery services such as DHL, FedEx, and UPS.

43 CFR Part 30

Section 30.100 How do I use this part?

In addition to replacing "trust estate" with "estate" in paragraph (a)(6), the interim final rule adds "or restricted" to clarify that probate of the estates of Indians who die possessed of trust or restricted property are governed by this part.

Section 30.101 What definitions do I need to know?

The interim final rule adds a definition of "covered permanent improvement" to this section to incorporate the definition from Public Law 110–453, which establishes rules of descent and devise.

In the definition for "summary probate proceeding," the word "does" is changed to "did" to correct the tense. This is the same change made to the definition in 25 CFR 15.2, and is not a substantive change.

Section 30.102 What assets will the Secretary probate?

As in 25 CFR 15.10, the interim final rule deletes references to "estate" in this section to eliminate the redundancy in the phrase "trust or restricted land or personalty in an estate" and to better explain what the Secretary probates. For consistency, the interim final rule also changes the heading to this section from "Will the Secretary probate all the land and assets in an estate?" to "What assets will the Secretary probate?" This change clarifies what the Secretary probates by explaining what is in an estate, rather than referring to the term.

Section 30.128 What happens if an error in BIA's estate inventory is alleged?

The interim final rule deletes the word "interests" from this section as superfluous because the phrase "trust property" includes any interests therein. This is not a substantive change.

Section 30.142 Will a judge authorize payment of a claim from the trust estate if the decedent's non-trust estate was or is available?

The interim final rule changes "trust or restricted property" to "estate," and changes "estate" to "property," for clarity.

Section 30.143 Are there any categories of claims that will not be allowed?

The interim final rule adds the word "the" where it was inadvertently omitted.

Section 30.151 May the devisees or eligible heirs in a probate proceeding consolidate their interests?

The interim final rule adds that a consolidation agreement may include the interests of the decedent, the devisees, or eligible heirs in any covered permanent improvements attached to a parcel of trust or restricted land in the decedent's trust inventory. The rule also adds "devisees or" where it was inadvertently omitted and simplifies the language by omitting the statutory references.

Section 30.160 What may be purchased at probate?

The interim final rule deletes the phrase "of a trust or restricted estate" because the meaning of this phrase is already captured in "estate."

Section 30.163 Is consent required for a purchase at probate?

The interim final rule rewrites this section to incorporate the change Public Law 110–453 made to the threshold for consent. The threshold is now measured by the decedent's percentage of ownership in a parcel, rather than the interest passing to the heir. The revised section also incorporates the change

Public Law 110–453 made allowing only the Tribe with jurisdiction over the interest or the Department, on behalf of the Tribe with jurisdiction, to purchase certain intestate interests without consent.

Section 30.167 How does OHA decide whether to approve a purchase at probate?

The interim final rule incorporates the change Public Law 110–453 made to ILCA/AIPRA, which specifies that, if multiple eligible purchasers make requests to purchase at probate, the heir, devisee, or surviving spouse may select the eligible purchaser.

Section 30.170 What may I do if I disagree with the judge's determination to approve a purchase at probate?

The interim final rule updates a section number reference to accommodate the new section 30.236.

Section 30.236 How are covered improvements treated?

The interim final rule adds a new section to detail how "covered permanent improvements," which are defined in section 30.101, are treated. Remaining sections are renumbered to accommodate the insertion of this new section.

Section 30.238 May I file a petition for rehearing if I disagree with the judge's decision in the formal probate hearing?

The interim final rule updates a section number reference to accommodate the new section 30.236.

Section 30.243 May a closed probate case be reopened?

The interim final rule corrects a paragraph numbering error that resulted in two paragraphs (a)(2); the second has been renumbered (a)(3).

Section 30.262 When may a Tribe exercise its statutory option to purchase?

The interim final rule updates a section number reference to accommodate the new section 30.236.

Section 30.266 When is a final decision issued?

The interim final rule updates a section number reference to accommodate the new section 30.236.

III. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866)

This interim final rule is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866. This rule implements statutory changes regarding permanent improvements owned by a decedent on trust or restricted property owned by the decedent and purchased at probate.

The changes regarding permanent improvements incorporate statutory changes regarding the rule of descent, in intestate cases, and a presumption, in testate cases, for permanent improvements attached to trust or restricted land, where the decedent owns an interest in both the permanent improvement and underlying trust or restricted land.

The changes regarding purchase at probate specify when an heir or surviving spouse's interest may be purchased at probate without his or her consent, generally restricting when such purchases without consent may be made. First, this interim final rule states that a purchase without consent at probate may be made only if the decedent's interest was less than 5 percent of the entire undivided interests in the parcel, which will be true in fewer cases than if the measurement were whether the interest passing to the heir is less than 5 percent of the entire undivided interest in the parcel. Second, this interim final rule restricts who may purchase without consent to the Secretary when purchasing the interest under the Indian Land Consolidation program on behalf of the Tribe with jurisdiction over the parcel, and the Tribe itself, in those cases in which the heir or surviving spouse is not a member or eligible to be a member of the Tribe.

(1) This rule will not have an effect of $100 million or more on the economy or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. This rule will have no effect on the economy because it merely updates the regulations to reflect changes in ILCA/AIPRA made by Congress.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency because the Department is the only agency with authority for handling Indian trust management issues related to probate. This rule does not affect the jurisdiction of Tribal and State courts over permanent improvements.

(3) This rule does involve entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The revisions have no budgetary effects and do not affect the rights or obligations of any recipients.

(4) These regulatory changes directly implement statutory provisions and do not raise novel legal or policy issues.

Overall, the impact of the rule is confined primarily to the Federal Government, individual Indians, and Tribes, and does not impose a compliance burden on the economy generally. Accordingly, this rule is not a "significant regulatory action" from an economic standpoint, nor does it otherwise create any inconsistencies, materially alter any budgetary impacts, or raise novel legal or policy issues.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not change current funding requirements or regulate small entities.

C. Small Business Regulatory Enforcement Fairness Act

This interim final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. Because this rule is limited to the probate of Indian trust estates, land, and assets within the United States and within Tribal communities, it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

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

E. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this interim final rule does not affect individual property rights protected by the Fifth Amendment nor does it involves a compensable "taking."

A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this interim final rule has no 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. This rule implements a statutory change, in Public Law 110–453, which establishes a Federal rule of descent and a presumption for interpretation of wills with regard to permanent improvements on trust or restricted land owned by a decedent. This Federal rule of descent and presumption for interpretation of wills will override any State rule of descent or presumption; however, the State (through the county courts) will continue to have jurisdiction to order the distribution of non-trust permanent improvements (in the absence of Tribal jurisdiction).

Because the rule does not affect the Federal government's relationship to the States or the balance of power and responsibilities among various levels of government, it will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Civil Justice Reform (E.O. 12988)

This interim final rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments," Executive Order 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have evaluated the potential effects on Federally recognized Indian Tribes and Indian trust assets and have identified potential effects. The Department engaged Tribal government representatives throughout development of the final rule that is being amended by this interim final rule. During those consultations, Tribal representatives requested one of the changes that Congress passed and that this interim final rule implements, specifically, that the consent requirements for purchase at probate be measured with reference to the decedent's ownership in the parcel, rather than with reference to the interest passing to the heir. Additional Tribal consultation regarding this rule is not required because it merely updates the regulations to reflect changes in ILCA/AIPRA made by Congress, amends internal agency procedures and makes minor technical changes.

I. Paperwork Reduction Act

OMB Control No. 1076–0169 currently authorizes the collections of information contained in 25 CFR part 15. OMB Control No. 1076–0169 authorizes 1,037,433 burden hours. This interim final rule clarifies an information collection requirement in section 15.203. This section requires Tribes to provide "any information" that BIA requires or requests to complete the probate file, and lists, as examples, a few specific items of information may be required or requested. The interim final rule adds to the specific items of information that may be required or requested a copy of the Tribal probate order, where one exists. This information collection requirement does not add to the number of responses, respondents, or type of information collected, and the time required to collect these additional items is covered by the 1,037,433 burden hours authorized under OMB Control No. 1076–0169. As such, a new submission under the Paperwork Reduction Act is not required. If you have comments on this collection, please submit your comments to the person identified in the **ADDRESSES** section of this notice.

J. National Environmental Policy Act

This interim final rule does not constitute a major Federal action significantly affecting the quality of the human environment.

K. Information Quality Act

In developing this interim final rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

L. Effects on the Energy Supply (E.O. 13211)

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

M. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the "COMMENTS" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, *etc.*

N. Public Availability of Comments

Before including your address, phone number, e-mail 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.

O. Determination To Issue an Interim Final Rule With Immediate Effective Date

This rule is being published as an interim final rule with request for comment, and without prior notice and comment, under 5 U.S.C. 553(b)(A) and (B). Under section 553(b)(A), rules of agency procedure or practice, such as the clarification concerning evidence the agency must provide, do not require a notice of proposed rulemaking.

Under section 553(b)(B), the Department for good cause finds that prior notice and comment are unnecessary because this rule amends the existing rule to conform with statutory changes and eliminates inconsistencies between the Department's probate regulations and ILCA/AIPRA as amended by Public Law 110–453. Prior notice and comment are also unnecessary with respect to the balance of the changes effected by this rule because they are minor technical amendments.

Under 5 U.S.C. 553(d)(3), the Department for good cause finds that this rule should be made effective upon publication in the **Federal Register**, rather than after the usual 30-day

period. This finding is based on the reasons explained above.

We have requested comments on this interim final rule. We will review any comments received and, by a future publication in the **Federal Register**, address any comments received and confirm the interim final rule with or without change or initiate a proposed rulemaking.

List of Subjects

25 CFR Part 15

Estates, Indians—law.

43 CFR Part 4

Administrative practice and procedure, Claims, Indians, Lawyers.

43 CFR Part 30

Administrative practice and procedure, Claims, Estates, Indians, Lawyers.

For the reasons given in the preamble, the Department of the Interior amends chapter 1 of title 25 and subtitle A of title 43 of the Code of Federal Regulations as follows.

TITLE 25—INDIANS

Chapter 1—Bureau of Indian Affairs, Department of the Interior

PART 15—PROBATE OF INDIAN ESTATES, EXCEPT FOR MEMBERS OF THE OSAGE NATION AND THE FIVE CIVILIZED TRIBES

■ 1. The authority citation for part 15 continues to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 372–74, 410, 2201 *et seq.;* 44 U.S.C. 3101 *et seq.*

■ 2. Revise § 15.1(a) to read as follows:

§ 15.1 What is the purpose of this part?

(a) This part contains the procedures that we follow to initiate the probate of the estate of a deceased person for whom the United States holds an interest in trust or restricted land or trust personalty. This part tells you how to file the necessary documents to probate the estate. This part also describes how probates will be processed by the Bureau of Indian Affairs (BIA), and when probates will be forwarded to the Office of Hearings and Appeals (OHA) for disposition.

* * * * *

■ 3. In § 15.2, revise the definition of "Summary probate proceeding" and revise the definition of "You or I" to read as follows:

§ 15.2 What definitions do I need to know?

* * * * *

Summary probate proceeding means the consideration of a probate file without a hearing. A summary probate proceeding may be conducted if the estate involves only an IIM account that did not exceed $5,000 in value on the date of the decedent's death.

* * * * *

You or I means an interested party, as defined herein, with an interest in the decedent's estate unless the context requires otherwise.

■ 4. Revise § 15.10 to read as follows:

§ 15.10 What assets will the Secretary probate?

(a) We will probate only the trust or restricted land, or trust personalty owned by the decedent at the time of death.

(b) We will not probate the following property:

(1) Real or personal property other than trust or restricted land or trust personalty owned by the decedent at the time of death;

(2) Restricted land derived from allotments made to members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek, and Seminole) in Oklahoma; and

(3) Restricted interests derived from allotments made to Osage Indians in Oklahoma (Osage Nation) and Osage headright interests owned by Osage decedents.

(c) We will probate that part of the lands and assets owned by a deceased member of the Five Civilized Tribes or Osage Nation who owned a trust interest in land or a restricted interest in land derived from an individual Indian who was a member of a Tribe other than the Five Civilized Tribes or Osage Nation.

■ 5. In § 15.12, revise paragraph (a) to read as follows:

§ 15.12 What happens if assets in an estate may be diminished or destroyed while the probate is pending?

(a) This section applies if an interested party or BIA:

(1) Learns of the death of a person owning trust or restricted property; and

(2) Believes that an emergency exists and the assets in the estate may be significantly diminished or destroyed before the final decision and order of a judge in a probate case.

* * * * *

■ 6. Revise § 15.202(e) to read as follows:

§ 15.202 What items must the agency include in the probate file?

* * * * *

(e) A certified inventory of trust or restricted land, including:

(1) Accurate and adequate descriptions of all land; and

(2) Identification of any interests that represent less than 5 percent of the undivided interests in a parcel.

* * * * *

■ 7. Revise § 15.203 to read as follows:

§ 15.203 What information must Tribes provide BIA to complete the probate file?

Tribes must provide any information that we require or request to complete the probate file. This information may include enrollment and family history data or property title documents that pertain to any pending probate matter, and a copy of Tribal probate orders where they exist.

TITLE 43—PUBLIC LANDS: INTERIOR

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

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

Authority: 5 U.S.C. 301, 503–504; 25 U.S.C. 9, 372–74, 410, 2201 *et seq.;* 43 U.S.C. 1201, 1457; Pub. L. 99–264, 100 Stat. 61, as amended.

■ 9. Revise § 4.320 to read as follows:

§ 4.320 Who may appeal a judge's decision or order?

Any interested party has a right to appeal to the Board if he or she is adversely affected by a decision or order of a judge under part 30 of this subtitle:

(a) On a petition for rehearing;

(b) On a petition for reopening;

(c) Regarding purchase of interests in a deceased Indian's estate; or

(d) Regarding modification of the inventory of an estate.

■ 10. Revise § 4.324 to read as follows:

§ 4.324 How is the record on appeal prepared?

(a) On receiving a copy of the notice of appeal, the judge whose decision is being appealed must notify:

(1) The agency concerned; and

(2) The LTRO where the original record was filed under § 30.233 of this subtitle.

(b) If a transcript of the hearing was not prepared, the judge must have a transcript prepared and forwarded to the LTRO within 30 days after receiving a copy of the notice of appeal. The LTRO must include the original transcript in the record.

(c) Within 30 days of the receipt of the transcript, the LTRO must do the following:

(1) Prepare a table of contents for the record;

(2) Make two complete copies of the original record, including the transcript and table of contents;

(3) Certify that the record is complete;

(4) Forward the certified original record, together with the table of contents, to the Board by certified mail or other service with delivery confirmation; and

(5) Send one copy of the complete record to the agency.

(d) While the appeal is pending, the copies of the record will be available for inspection at the LTRO and the agency.

(e) Any party may file an objection to the record. The party must file his or her objection with the Board within 15 days after receiving the notice of docketing under § 4.325.

(f) For any of the following appeals, the judge must prepare an administrative record for the decision and a table of contents for the record and must forward them to the Board:

(1) An interlocutory appeal under § 4.28;

(2) An appeal from a decision under §§ 30.126 or 30.127 regarding modification of an inventory of an estate; or

(3) An appeal from a decision under § 30.124 determining that a person for whom a probate proceeding is sought to be opened is not deceased.

PART 30—INDIAN PROBATE HEARINGS PROCEDURES

■ 11. The authority citation for part 30 continues to read as follows:

Authority: 5 U.S.C. 301, 503; 25 U.S.C. 9, 372–74, 410, 2201 *et seq.;* 43 U.S.C. 1201, 1457.

■ 12. Revise § 30.100(a) to read as follows:

§ 30.100 How do I use this part?

(a) The following table is a guide to the relevant contents of this part by subject matter.

For provisions relating to . . .	consult . . .
(1) All proceedings in part 30	§§ 30.100 through 30.102.
(2) Claims against probate estate	§§ 30.140 through 30.148.
(3) Commencement of probate	§§ 30.110 through 30.115.
(4) Consolidation of interests	§§ 30.150 through 30.153.
(5) Formal probate proceedings before an administrative law judge or Indian probate judge	§§ 30.210 through 30.246.
(6) Probate of estates of Indians who die possessed of trust or restricted property	All sections except §§ 30.260 through 30.274.
(7) Purchases at probate	§§ 30.160 through 30.175.
(8) Renunciation of interests	§§ 30.180 through 30.188.
(9) Summary probate proceedings before an attorney decision maker	§§ 30.200 through 30.207.
(10) Tribal purchase of certain property interests of decedents under special laws applicable to particular Tribes.	§§ 30.260 through 30.274.

* * * * *

■ 13. In § 30.101, add in alphabetical order a new definition of "Covered permanent improvement" and revise the definitions of "Summary probate proceeding" and "You or I" to read as follows:

§ 30.101 What definitions do I need to know?

* * * * *

Covered permanent improvement means a permanent improvement (including an interest in such an improvement) that is:

(1) Owned by the decedent at the time of death; and

(2) Attached to a parcel of trust or restricted land that is also, in whole or in part, owned by the decedent at the time of death.

* * * * *

Summary probate proceeding means the consideration of a probate file without a hearing. A summary probate proceeding may be conducted if the estate involves only an IIM account that did not exceed $5,000 in value on the date of the death of the decedent.

* * * * *

You or I means an interested party, as defined herein, with an interest in the decedent's estate unless a specific section states otherwise.

■ 14. Revise § 30.102 to read as follows:

§ 30.102 What assets will the Secretary probate?

(a) We will probate only the trust or restricted land or trust personalty owned by the decedent at the time of death.

(b) We will not probate the following property:

(1) Real or personal property other than trust or restricted land or trust personalty owned by the decedent at the time of death;

(2) Restricted land derived from allotments made to members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek, and Seminole) in Oklahoma; and

(3) Restricted interests derived from allotments made to Osage Indians in Oklahoma (Osage Nation) and Osage headright interests owned by Osage decedents.

(c) We will probate that part of the lands and assets owned by a deceased member of the Five Civilized Tribes or Osage Nation who owned either a trust interest in land or a restricted interest in land derived from an individual Indian who was a member of a Tribe other than the Five Civilized Tribes or the Osage Nation.

■ 15. Revise § 30.110 to read as follows:

§ 30.110 When does OHA commence a probate case?

OHA commences probate of an estate when OHA receives a probate file from the agency.

■ 16. In § 30.128, revise the introductory text and paragraph (a) to read as follows:

§ 30.128 What happens if an error in BIA's estate inventory is alleged?

This section applies when, during a probate proceeding, an interested party alleges that the estate inventory prepared by BIA is inaccurate and should be corrected.

(a) Alleged inaccuracies may include, but are not limited to, the following:

(1) Trust property should be removed from the inventory because the decedent executed a gift deed or gift deed application during the decedent's lifetime, and BIA had not, as of the time of death, determined whether to approve the gift deed or gift deed application;

(2) Trust property should be removed from the inventory because a deed through which the decedent acquired the property is invalid;

(3) Trust property should be added to the inventory; and

(4) Trust property included in the inventory is described improperly, although an erroneous recitation of acreage alone is not considered an improper description.

* * * * *

■ 17. Revise § 30.140 introductory text to read as follows:

§ 30.140 Where and when may I file a claim against the probate estate?

You may file a claim against the estate of an Indian with BIA or, after the agency transfers the probate file to OHA, with OHA.

* * * * *

■ 18. Revise § 30.142 to read as follows:

§ 30.142 Will a judge authorize payment of a claim from the estate if the decedent's non-trust property was or is available?

The judge will not authorize payment of a claim from the estate if the judge determines that the decedent's non-trust property was or is available to pay the claim. This provision does not apply to a claim that is secured by trust or restricted property.

■ 19. Revise § 30.143(b)(1) to read as follows:

§ 30.143 Are there any categories of claims that will not be allowed?

* * * * *

(b) * * *

(1) Has existed for such a period as to be barred by the applicable statute of limitations at the date of decedent's death;

* * * * *

■ 20. In § 30.151, revise the introductory text and paragraphs (a) and (b) to read as follows:

§ 30.151 May the devisees or eligible heirs in a probate proceeding consolidate their interests?

The devisees or eligible heirs may consolidate interests in trust property already owned by the devisees or heirs or in property from the inventory of the decedent's estate, or both.

(a) A judge may approve a written agreement among devisees or eligible heirs in a probate case to consolidate the interests of a decedent's devisees or eligible heirs.

(1) To accomplish a consolidation, the agreement may include conveyances among decedent's devisees or eligible heirs of:

(i) Interests in trust or restricted land in the decedent's trust inventory;

(ii) Interests of the devisees or eligible heirs in trust or restricted land which are not part of the decedent's trust inventory; and

(iii) Interests of the decedent, the devisees, or eligible heirs in any covered permanent improvements attached to a parcel of trust or restricted land in the decedent's trust inventory.

(2) The parties must offer evidence sufficient to satisfy the judge of the percentage of ownership held and offered by a party.

(3) If the decedent's devisees or eligible heirs enter into an agreement, the parties to the agreement are not required to comply with the Secretary's rules and requirements otherwise applicable to conveyances by deed.

(b) If the judge approves an agreement, the judge will issue an order distributing the estate in accordance with the agreement.

* * * * *

■ 21. In § 30.160, revise the introductory text to read as follows:

§ 30.160 What may be purchased at probate?

An eligible purchaser may purchase, during the probate, all or part of the estate of a person who died on or after June 20, 2006.

* * * * *

■ 22. Revise § 30.163 to read as follows:

§ 30.163 Is consent required for a purchase at probate?

(a) Except as provided in paragraphs (b) and (c) of this section, to purchase an interest in trust or restricted land at probate you must have the consent of:

(1) The heirs or devisees of such interest; and

(2) Any surviving spouse who receives a life estate under 25 U.S.C. 2206(a)(2)(A) or (D).

(b) If you are the Tribe with jurisdiction over the parcel containing the interest, you do not need consent under paragraph (a) of this section if the following four conditions are met:

(1) The interest will pass by intestate succession;

(2) The judge determines based on our records that the decedent's interest at the time of death was less than 5 percent of the entire undivided ownership of the parcel of land;

(3) The heir or surviving spouse was not residing on the property at the time of the decedent's death; and

(4) The heir or surviving spouse is not a member of your Tribe or eligible to become a member.

(c) We may purchase an interest in trust or restricted land on behalf of the Tribe with jurisdiction over the parcel containing the interest. If we do so, we must obtain consent under paragraph (a) of this section, unless the conditions in paragraphs (b)(1) through (3) of this section are met.

■ 23. Revise § 30.167(a) to read as follows:

§ 30.167 How does OHA decide whether to approve a purchase at probate?

(a) OHA will approve a purchase at probate if an eligible purchaser submits a bid in an amount equal to or greater than the market value of the interest.

(1) In cases where the sale of the interest does not require consent under § 30.163(b), OHA will sell the interest to the eligible purchaser.

(2) In all other cases, OHA will sell the interest to the eligible purchaser selected by the applicable heir, devisee, or surviving spouse.

* * * * *

■ 24. Revise § 30.170(c) to read as follows:

§ 30.170 What may I do if I disagree with the judge's determination to approve a purchase at probate?

* * * * *

(c) If the objection is not timely filed, the judge will issue an order denying the request for review as untimely and will furnish copies of the order to the interested parties and the agencies. If you disagree with the decision of the judge as to whether your objection was timely filed, you may file a petition for rehearing under § 30.238 after the judge issues a decision under § 30.235.

§§ 30.236 through 30.245 [Redesignated as §§ 30.237 through 30.246]

■ 25a. Redesignate §§ 30.236 through 30.245 as §§ 30.237 through 30.246.

■ 25b. Add § 30.236 to read as follows:

§ 30.236 How are covered permanent improvements treated?

(a) In an intestate case, under the Act, an interest in a covered permanent improvement attached to a parcel of trust or restricted land is treated as shown in the following table:

If . . .	then the covered permanent improvement passes to . . .
(1) A Tribal probate code approved under 25 CFR part 18 specifies how the covered permanent improvement will be handled.	the person(s) designated in the Tribal probate code to receive it.
(2) A consolidation agreement approved under subpart F of this part specifies how the covered permanent improvement will be handled.	the person(s) designated in the consolidation agreement to receive it.

If . . .	then the covered permanent improvement passes to . . .
(3) There is neither an approved Tribal probate code nor an approved consolidation agreement that specifies how the covered permanent improvement will be handled, but there is a renunciation of the trust or restricted interest in the parcel under subpart H of this part.	the recipient of the trust or restricted interest in the parcel under the renunciation.
(4) There is neither an approved Tribal probate code nor an approved consolidation agreement that specifies how the covered permanent improvement will be handled, and there is no renunciation of the trust or restricted interest in the parcel under subpart H of this part.	each eligible heir to whom the trust or restricted interest in the parcel descends.

(b) In a testate case, under the Act, an interest in a covered permanent improvement attached to a parcel of trust or restricted land is treated as shown in the following table:

If . . .	then the covered permanent improvement passes to . . .
(1) The will expressly states how the covered permanent improvement will be handled.	the person(s) designated in the will to receive it.
(2) The will does not expressly state how the covered permanent improvement will be handled.	the person(s) designated in the will to receive the trust or restricted interest in the parcel.

(c) The provisions of the Act apply to a covered permanent improvement:

(1) Even though it is not held in trust; and

(2) Without altering or otherwise affecting its non-trust status.

(d) The judge's decision will specifically direct the distribution only of the decedent's trust or restricted property, and not any non-trust permanent improvement attached to a parcel of trust or restricted land. However, the judge:

(1) Will include in the decision a general statement of the substantive law of descent or devise of permanent improvements; and

(2) Can approve a consolidation agreement under subpart F of this part that includes a covered permanent improvement.

■ 26. Revise newly redesignated § 30.238(a) to read as follows:

§ 30.238 May I file a petition for rehearing if I disagree with the judge's decision in the formal probate hearing?

(a) If you are adversely affected by the decision, you may file with the judge a written petition for rehearing within 30 days after the date on which the decision was mailed under § 30.237.

* * * * *

§ 30.243 [Amended]

■ 27. In newly redesignated § 30.243, redesignate the second paragraph (a)(2) as paragraph (a)(3).

■ 28. Revise § 30.262(a)(1) to read as follows:

§ 30.262 When may a Tribe exercise its statutory option to purchase?

(a) * * *

(1) Within 60 days after mailing of the probate decision unless a petition for rehearing has been filed under § 30.238 or a demand for hearing has been filed under § 30.268; or

* * * * *

■ 29. Revise § 30.266(b)(3) to read as follows:

§ 30.266 When is a final decision issued?

* * * * *

(b) * * *

(3) A copy of the probate decision, together with a copy of the valuation report, must be distributed to all interested parties under § 30.237.

Dated: December 13, 2010.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

Dated: December 20, 2010.

Rhea S. Suh,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2011–2896 Filed 2–9–11; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 61

[Docket ID: FEMA–2010–0021]

RIN 1660–AA70

National Flood Insurance Program, Policy Wording Correction

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: In a Notice of Proposed Rulemaking, the Federal Emergency Management Agency (FEMA) proposed a technical correction to the FEMA, Federal Insurance and Mitigation Administration, Standard Flood Insurance Policy regulations. In order to increase the clarity of one of the provisions of the Standard Flood Insurance Policy, FEMA is adding two unintentionally omitted words in this final rule.

DATES: This rule is effective March 14, 2011.

ADDRESSES: The Notice of Proposed Rulemaking is part of Docket ID: FEMA–2010–0021 and is available online by going to *http://www.regulations.gov,* inserting FEMA–2010–0021 in the "Keyword" box, and then clicking "Search". The Docket is also available for inspection or copying at FEMA, 500 C Street, SW., Room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Edward L. Connor, Acting Federal Insurance and Mitigation Administrator, DHS/FEMA, 1800 South Bell Street, Arlington, VA 20598–3010. Phone: (202) 646–3429. Facsimile: (202) 646–7970. E-mail: *Edward.Connor@dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Under the authority of sections 1304 and 1345 of the National Flood Insurance Act of 1968, Public Law 90–448, 82 Stat. 574, as amended (42 U.S.C. 4011, 4081), the Federal Emergency Management Agency (FEMA) provides insurance protection against flood damage to homeowners, businesses, and others by means of the National Flood Insurance Program (NFIP). The sale of flood insurance is largely implemented by private insurance companies that participate in the NFIP Write-Your-Own

(WYO) Program. Through the WYO Program, insurance companies enter into agreements with FEMA to sell and service flood insurance policies and adjust claims after flood losses.

The policy sold is the FEMA Standard Flood Insurance Policy (SFIP), which is published in 44 CFR part 61, Appendix A. The SFIP has six parts, the Dwelling Form (App A(1)), General Property Form (App A(2)), Residential Condominium Building Association Policy (App A(3)), Endorsement to Dwelling Form (App A(4)), Endorsement to General Property Form (App A(5)), and the Endorsement to Residential Condominium Building Association Policy (App A(6)). The language in the Dwelling Form and the General Property Form are similar with respect to their discussion of the property covered. For example, the paragraph at 44 CFR part 61 Appendix A(1) III.B.3 contains the same substance as the paragraph at 44 CFR part 61 Appendix A(2) III.B.4.

However, 44 CFR part 61 Appendix A(2) III.B.4 reads:

> Items of property in a building enclosure below the lowest elevated floor of an elevated post-FIRM building located in zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement, regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source: * * *

While 44 CFR part 61 Appendix A(1) III.B.3 reads:

> Coverage for items of property in a building enclosure below the lowest elevated floor of an elevated post-FIRM building located in Zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement, regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source: * * *

On May 31, 2000, FEMA published a Notice of Proposed Rulemaking (NPRM) at 65 FR 34823 that proposed to revise the SFIP so that it would conform to "plain language" standards. The rule also proposed changes that would bring the three forms of the SFIP more in line with the format of the insurance industry's homeowners policy. FEMA also proposed changes in the coverage.

On October 12, 2000, FEMA published a final rule at 65 FR 60757. The final rule changed the SFIP so that it was in "plain language" and restructured the format to resemble the homeowners policy. FEMA also made changes in the policy's coverage and addressed the comments received after the publication of the NPRM.

The SFIP General Property Form is missing "Coverage for" at the beginning of 44 CFR part 61 Appendix A(2) III.B.4. This omission started in the May 31, 2000 NPRM. However, the omission did not affect 44 CFR until the final rule's effective date of December 31, 2000. The words "Coverage for" do not substantively change the effect of the paragraph in question, as FEMA has always interpreted the substance of the paragraph as discussing those items which are or are not covered by the policy. However, on September 3, 2010, FEMA published an NPRM entitled National Flood Insurance Program, Policy Wording Correction in the **Federal Register** (75 FR 54076), to clarify and ensure consistency with the other paragraphs in Appendix A. FEMA proposed to correct the paragraph by adding the words "Coverage for" at the beginning of 44 CFR part 61 Appendix A(2) III.B.4. With this change, it will be clear on its face that the paragraph discusses the limitations of coverage for these certain types of items.

II. Discussion of Comments and Changes

FEMA received no comments on the September 3, 2010 NPRM. No public meeting was requested, and none was held. Therefore, in this final rule FEMA is amending 44 CFR with the language that was proposed in the NPRM without change.

III. Regulatory Analyses

A. Executive Order 12866, Regulatory Planning and Review

This final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, Oct. 4, 1993), accordingly FEMA has not submitted it to the Office of Management and Budget (OMB) for review. This rule is solely adding two unintentionally omitted words to the SFIP and will not affect the way that FEMA interprets or applies the policy. FEMA expects that this change would have no economic impact.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires that special consideration be given to the effects of proposed regulations on small entities. This rule will not have an economic impact on the regulated public. Therefore, FEMA certifies that this will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3501 *et seq.*), as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Although this final regulatory change will not result in a new collection of information affected by the PRA, the collection of information for the National Flood Insurance Program Policy Forms is approved under OMB Number, 1660–0006. The expiration date for 1660–0006 is August 31, 2013.

D. Executive Order 13132, Federalism

A rule has implications for federalism under Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999), 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. FEMA has analyzed this final rule under Executive Order and determined that it does not have implications for federalism.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48 (Mar. 22, 1995) (2 U.S.C. 1501 *et seq.*), requires Federal agencies to assess the effects of their discretionary regulatory actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. As this final rule will not have a substantive effect on the public, this rule is not an unfunded Federal mandate.

F. Executive Order 12630, Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights" (53 FR 8859, Mar. 18, 1988).

G. Executive Order 12898, Environmental Justice

Under Executive Order 12898, as amended "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, Feb. 16, 1994), FEMA incorporates environmental justice into its policies and programs. Executive Order 12898 requires each Federal agency to conduct its programs, policies, and activities that

substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in, denying persons the benefit of, or subjecting persons to discrimination because of their race, color, or national origin or income level. No action that FEMA can anticipate under this final rule will have a disproportionately high and adverse human health or environmental effect on any segment of the population.

H. Executive Order 12988, Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, Feb. 7, 1996), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, "Consultation and Coordination With Indian Tribal Governments" (65 FR 67249, Nov. 9, 2000), 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.

J. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This final rule will not create environmental health risks or safety risks for children under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997).

K. National Environmental Policy Act

Rulemaking is a major Federal action subject to the National Environmental Policy Act of 1969, Public Law 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*), as amended. The *List of exclusion categories* at 44 CFR 10.8(d)(2)(ii) excludes the preparation, revision, and adoption of regulations from the preparation of an environmental assessment or environmental impact statement, where the rule relates to actions that qualify for categorical exclusions. Technical corrections to a rulemaking are categorically excluded under 44 CFR 10.8(d)(2)(i) and no extraordinary circumstances exist requiring the need to develop an environmental assessment or environmental impact statement. Thus, the preparation, revision, and adoption of regulations related to this action is categorically excluded.

L. Congressional Review of Agency Rulemaking

FEMA has sent this final rule to Congress and to the Government Accountability Office under the Congressional Review of Agency Rulemaking Act (Act), Public Law 104–121, 110 Stat. 873 (Mar. 29, 1996) (5 U.S.C. 804). The rule is not a "major rule" within the meaning of that Act and will not result in an annual effect on the economy of $100,000,000 or more. Moreover, it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. FEMA does not expect that it will have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

List of Subjects in 44 CFR Part 61

Flood insurance, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FEMA amends 44 CFR chapter I as set forth below:

PART 61—INSURANCE COVERAGE AND RATES

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

Appendix A(2) to Part 61—[Amended]

■ 2. Amend Appendix A(2) to part 61, by removing "Items" and adding "Coverage for items" in its place in paragraph III.B.4.

Dated: February 4, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–2942 Filed 2–9–11; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 76, No. 28
Thursday, February 10, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0038; Directorate Identifier 2010–NM–153–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes; and Model ERJ 190–100 STD, ERJ 190–100 LR, ERJ 190–100 IGW, ERJ 190–200 STD, ERJ 190–200 LR, and ERJ 190–200 IGW Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated 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:

[T]he occurrence of drill marks [has been found] at the lower ring region of the rear pressure bulkhead between [the] circumferential splice joint and rear skin located between stringers 12 and 13. These marks may result in formation of fatigue cracks accelerated by corrosion reducing the structural strength of the rear pressure bulkhead, which may cause a sudden decompression of the passenger cabin.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by March 28, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), 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; e-mail *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0038; Directorate Identifier 2010–NM–153–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directives 2010–06–01R1 and 2010–06–02R1, both dated August 25, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

[T]he occurrence of drill marks [has been found] at the lower ring region of the rear pressure bulkhead between [the] circumferential splice joint and rear skin located between stringers 12 and 13. These marks may result in formation of fatigue cracks accelerated by corrosion reducing the structural strength of the rear pressure bulkhead, which may cause a sudden decompression of the passenger cabin.

The required actions include doing a detailed inspection for signs of drill marks and repairing if necessary. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

EMBRAER has issued Service Bulletins 170–53–0082 and 190–53–0042, both Revision 01, both dated April 28, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe

condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 241 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $20,485, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 2 work-hours and require parts costing $20, for a cost of $190 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2011–0038; Directorate Identifier 2010–NM–153–AD.

Comments Due Date

(a) We must receive comments by March 28, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Empresa Brasileira de Aeronautica S.A. (EMBRAER) 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; serial numbers 17000002, 17000004 through 17000013 inclusive, 17000015 through 17000212 inclusive, 17000216 through 17000233 inclusive, 17000236, 17000269, 17000281 through 17000291 inclusive, and 17000293; and Model ERJ 190–100 STD, ERJ 190–100 LR, ERJ 190–100 IGW, ERJ 190–200 STD, ERJ 190–200 LR, and ERJ 190–200 IGW airplanes; certificated in any category; serial numbers 19000002, 19000004, 19000006 through 19000108 inclusive, 19000110 through 19000139 inclusive, 19000141 through 19000157 inclusive, 19000160, 19000165, 19000167 through 19000176 inclusive, 19000178 through 19000199 inclusive, 19000273 through 19000276 inclusive, 19000279 through 19000286 inclusive, 19000288 through 19000295 inclusive, 19000297 through 19000304 inclusive, and 19000309.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

[T]he occurrence of drill marks [has been found] at the lower ring region of the rear pressure bulkhead between [the] circumferential splice joint and rear skin located between stringers 12 and 13. These marks may result in formation of fatigue cracks accelerated by corrosion reducing the structural strength of the rear pressure bulkhead, which may cause a sudden decompression of the passenger cabin.

* * * * *

Compliance

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

Actions

(g) Before the accumulation of 20,000 flight cycles, do a detailed inspection for signs of drill marks at the left and right lower ring region of the rear pressure bulkhead between the circumferential splice joint and rear skin between stringers 12 and 13, in accordance with EMBRAER Service Bulletin 170–53–0082 or 190–53–0042, both Revision 01, both dated April 28, 2010, as applicable. If drill marks are found, repair before further flight, in accordance with EMBRAER Service Bulletin 170–53–0082 or 190–53–0042, both Revision 01, both dated April 28, 2010, as applicable.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: Although EMBRAER Service Bulletins 170–53–0082 and 190–53–0042, both Revision 01, both dated April 28, 2010, specify doing a

general visual inspection, this AD requires doing a detailed inspection.

Other FAA AD Provisions

(h) 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. Send information to ATTN: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–227–2768; fax 425–227–1149. Information may be e-mailed 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.

Related Information

(i) Refer to MCAI Brazilian Airworthiness Directives 2010–06–01R1 and 2010–06–02R1, both dated August 25, 2010; and EMBRAER Service Bulletins 170–53–0082 and 190–53–0042, both Revision 01, both dated April 28, 2010; for related information.

Issued in Renton, Washington, on February 3, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–2926 Filed 2–9–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0041; Directorate Identifier 2010–NM–227–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–400 and –400F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require a general visual inspection for cracks and holes of the main equipment center (MEC) drip shields, and repairs if necessary; installation of a fiberglass reinforcing overcoat; and, for certain airplanes, installation of stiffening panels to the MEC drip shields. This proposed AD was prompted by a report of a loss of bus control unit number 1 and generator control units numbers 1 and 2 while the airplane was on the ground, and multiple operator reports of cracked MEC drip shields. We are proposing this AD to prevent water penetration into the MEC, which could result in the loss of flight critical systems.

DATES: We must receive comments on this proposed AD by March 28, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Marcia Smith, Aerospace Engineer, Cabin Safety & Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6484; *fax:* 425–917–6590; *e-mail: marcia.smith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0041; Directorate Identifier 2010–NM–227–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received a report of a loss of bus control unit number 1 and generator control units numbers 1 and 2 while the airplane was on the ground, and multiple operators have reported cracked main equipment center (MEC) drip shields. Cracking in the MEC drip shield and exhaust plenum has been identified as part of the water leak path into the MEC. This condition, if not corrected, could result in water penetration into the MEC, which could result in the loss of flight critical systems.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 747–25A3588, dated July 19, 2010. The service information describes procedures for performing a general visual inspection of the MEC drip shield for cracks and holes, performing repairs if necessary, and installing a fiberglass reinforcing overcoat to the MEC drip shield. Additionally, for airplanes identified as Groups 1 and 3, the service information describes procedures for installing MEC drip shield panel stiffeners.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or

develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 41 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and installation: Groups 1, 3 (24 airplanes).	20 work-hours × $85 per hour = $1,700	$1,109	$2,809	$67,416
Inspection and installation: Group 2 (17 airplanes).	17 work-hours × $85 per hour = $1,445	Negligible	1,445	24,565

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per airplane
Hole repair	1 work-hour × $85 per hour = $85 per hole	Negligible	$85 per hole.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2011–0041; Directorate Identifier 2010–NM–227–AD.

Comments Due Date

(a) We must receive comments by March 28, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 747–400 and –400F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–25A3588, dated July 19, 2010.

Subject

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

Unsafe Condition

(e) This AD was prompted by a report of a loss of bus control unit number 1 and generator control units numbers 1 and 2 while the airplane was on the ground, and multiple operator reports of cracked main equipment center (MEC) drip shields. We are issuing this AD to prevent water penetration into the MEC, which could result in the loss of flight critical systems.

Compliance

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

Inspection

(g) Within 24 months after the effective date of this AD, do the actions specified in paragraph (g)(1) or (g)(2) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3588, dated July 19, 2010.

(1) For Group 1 and Group 3 airplanes, as identified in Boeing Alert Service Bulletin 747–25A3588, dated July 19, 2010: Do a general visual inspection of the MEC drip

shield to detect cracking and holes; do all applicable repairs; and install the MEC drip shield panel stiffeners and the fiberglass reinforcing overcoat to the MEC drip shield; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3588, dated July 19, 2010. Do all applicable repairs before further flight.

(2) For Group 2 airplanes, as identified in Boeing Alert Service Bulletin 747–25A3588, dated July 19, 2010: Do a general visual inspection of the MEC drip shield to detect cracking and holes; do all applicable repairs; and install the fiberglass reinforcing overcoat to the MEC drip shield; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3588, dated July 19, 2010. Do all applicable repairs before further flight.

Alternative Methods of Compliance (AMOCs)

(h)(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 e-mailed 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.

Related Information

(i) For more information about this AD, contact Marcia Smith, Aerospace Engineer, Cabin Safety & Environmental Systems Branch, ANM–150S FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6484; *fax:* 425–917–6590; *e-mail: marcia.smith@faa.gov.*

(j) For service information identified in this AD, contact Boeing Commercial Airplanes, *Attention:* Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 3, 2011.

Ali Bahrami,

Manager,Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–2952 Filed 2–9–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0582; Airspace Docket No. 10–AEA–15]

Proposed Establishment of Class E Airspace; Kenbridge, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: This action withdraws the NPRM published in the **Federal Register** on November 29, 2010, which proposed to establish Class E airspace at Lunenburg County Airport, Kenbridge, VA. The NPRM is being withdrawn as a portion of the proposed airspace was not included. A new rulemaking will be forthcoming to correctly establish the new airspace.

DATES: Effective 0901 UTC, February 10, 2011, the proposed rule published November 29, 2010, at 75 FR 73016, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Richard Horrocks, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

History

On November 29, 2010, a NPRM was published in the **Federal Register** to establish Class E airspace at Kenbridge, VA to accommodate special standard instrument approach procedure for Lunenburg County Airport (75 FR 73016) Docket No. FAA–2010–0582. After publication the FAA found that the airspace description in the proposed rule inadvertently excluded extensions necessary for the airport legal description. To avoid confusion this proposed rule is being withdrawn and will be established under another rulemaking.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, Airspace Docket No. 10–AEA–15, as published in the **Federal Register** on November 29, 2010 (75 FR 73016) (FR Doc. 2010–0582), is hereby withdrawn.

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

Issued in College Park, Georgia, on January 25, 2011.

Mark D. Ward,

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

[FR Doc. 2011–2986 Filed 2–9–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–1097]

RIN 1625–AA00

Safety Zone; Mississippi River, Mile 842.0 to 839.5

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone for all waters of the Upper Mississippi River, Mile 842.0 to 839.5, extending the entire width of the river. This safety zone is needed to protect participants and event personnel during the swim leg of the OptumHealth Half Iron Triathlon occurring in the Upper Mississippi River. Entry into this zone would be prohibited unless specifically authorized by the Captain of the Port Upper Mississippi River or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before March 14, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2010–1097 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 e-mail Lieutenant (LT) Rob McCaskey, Sector Upper Mississippi River Response Department at telephone 314–269–2541, e-mail *Rob.E.McCaskey@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–1097), 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 *http://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 e-mail 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,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–1097" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–1097" and click "Search." Click the "Open Docket Folder" in the "Actions" column. 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.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before February 25, 2011, using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LT Rob McCaskey at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Background and Purpose

On July 24, 2011, OptumHealth will be sponsoring a Half Iron Triathlon. There will be approximately 2,000 participants swimming the 1.2 mile course. A safety zone will be established at mile marker 842.0 and extend to mile marker 839.5 on the Upper Mississippi River, extending the entire width of the river. This safety zone is necessary to protect the safety of participants, event personnel, spectators, and other users and vessels of the Upper Mississippi River during the swim leg of the OptumHealth Half Iron Triathlon.

Discussion of Proposed Rule

The Coast Guard is proposing to establish a safety zone for all waters of the Upper Mississippi River, Mile 842.0 to 839.5, extending the entire width of the river. Entry into, transiting through, or anchoring within this zone would be prohibited to all vessels and persons except participants and those persons and vessels specifically authorized by the Captain of the Port Upper Mississippi River. We are proposing an effective period from 6:30 a.m. until 10:30 a.m. CST July 24, 2011. The Captain of the Port Upper Mississippi River will inform the public through broadcast notice to mariners of all safety zone changes and enforcement periods.

Regulatory Analyses

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

Regulatory Planning and Review

This 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). This rule would be in effect for only a short period of time during the swim leg of the OptumHealth Half Iron Triathlon. Vessels that need to enter the safety zone may request permission to do so from the Captain of the Port Upper Mississippi River.

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 rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the Upper Mississippi River, Mile 842.0 to 839.5 from 6:30 a.m. until 10:30 a.m. CST on July 24, 2011. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reason: (1) This rule would only be in effect for a limited period of time.

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.

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 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on 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.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. We believe this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. 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. 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. 1226, 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.T08–1097 to read as follows:

§ 165.T08–1097 Safety Zone; Upper Mississippi River, Mile 842.0 to 839.5.

(a) Location. The following area is a safety zone: All waters of the Upper Mississippi River, Mile 842.0 to 839.5 extending the entire width of the waterway.

(b) Effective date. This rule is effective from 6:30 a.m. until 10:30 a.m. on July 24, 2011.

(c) Periods of Enforcement. This rule will be enforced from 6:30 a.m. until 10:30 a.m. CST on July 24, 2011. The Captain of the Port Upper Mississippi River will inform the public through broadcast notice to mariners of all safety zone changes and enforcement periods.

(d) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Upper Mississippi River or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Upper Mississippi River or a designated representative. The Captain of the Port Upper Mississippi River representative may be contacted at 314–269–2332.

(3) All persons and vessels must comply with the instruction of the Captain of the Port Upper Mississippi River or their designated representative. Designated Captain of the Port representatives includes United States Coast Guard commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: January 25, 2011.

S.L. Hudson,

Captain, U.S. Coast Guard, Captain of the Port Upper Mississippi River.

[FR Doc. 2011–2860 Filed 2–9–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R10–OAR–2011–0045; FRL–9265–3]

Outer Continental Shelf Air Regulations Consistency Update for Alaska

AGENCY: Environmental Protection Agency (“EPA”).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf (“OCS”) Air Regulations. Requirements applying to OCS sources located within 25 miles of States’ seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area, as mandated by the Clean Air Act (“the Act”). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources in the State of Alaska. The intended effect of approving the OCS requirements for the State of Alaska is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below is proposed to be incorporated by reference into the Code of Federal Regulations and is listed in the appendix to the OCS air regulations.

DATES: Written comments must be received on or before March 14, 2011.

ADDRESSES: Submit your comments, identified by docket number EPA–R10–OAR–2011–0045, by one of the following methods:

A. *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the on-line instructions for submitting comments;

B. *E-Mail: greaves.natasha@epa.gov;*

C. *Mail:* Natasha Greaves, Federal and Delegated Air Programs Unit, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop: AWT–107, Seattle, WA 98101;

D. *Hand Delivery:* U.S. Environmental Protection Agency Region 10, Attn: Natasha Greaves (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101, 9th Floor. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket number. EPA–R10–OAR–2011–0045. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (“CBI”) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov.* The *http://www.regulations.gov* Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Natasha Greaves, Federal and Delegated Air Programs Unit, Office of Air, Waste, and Toxics, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop: AWT–107, Seattle, WA 98101; telephone number: (206) 553–7079; email address: *greaves.natasha@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background Information
Why is EPA taking this action?
II. EPA’s Evaluation
What criteria were used to evaluate rules submitted to update 40 CFR part 55?
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Coordination With Indian Tribal Government
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act

I. Background Information

Why is EPA taking this action?

On September 4, 1992, EPA promulgated 40 CFR part 55 (the OCS rule),[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the corresponding onshore area ("COA".) Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) of the Act requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to section 55.12 of the OCS rule, consistency reviews will occur (1) At least annually; (2) upon receipt of a Notice of Intent under section 40 CFR 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of a Notice of Intent on December 10, 2010 by Shell Offshore, Inc. Public comments received in writing within 30 days of publication of this proposed rule will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan ("SIP") guidance or certain requirements of the Act.

Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA's Evaluation

What criteria were used to evaluate rules to update 40 CFR part 55?

In updating 40 CFR part 55, EPA reviewed the current COA rules for consistency with part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget ("OMB") review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

This action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB Review. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have created an adverse material effect. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA.

B. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in 40 CFR part 55, and by extension this update to the rules, under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0249. The OMB Notice of Action is dated January 15, 2009. The approval expires January 31, 2012.

OMB's Notice of Action dated January 15, 2009 indicated that the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 112 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, as in Alaska, EPA will use its own administrative and procedural requirements to implement the substantive requirements. See 40 CFR 55.14 (c)(4).

unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant economic impact on a substantial number of small entities. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have had a significant economic impact on a substantial number of small entities. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million of more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have created an adverse material effect. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA.

E. Executive Order 13132: Federalism

Executive Orders 13132, entitled "Federalism" (64 FR 43255 (August 10, 1999)), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. This rule does not amend the existing provisions within 40 CFR part 55 enabling delegation of OCS regulations to a COA, and this rule does not require the COA to implement the OCS rules. 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 EPA and State and local governments, EPA specifically solicits comments on this proposed rule from State and local officials.

F. Executive Order 13175: Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249 (November 9, 2000)), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This rule 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 and thus does not have "tribal implications," within the meaning of Executive Order 13175. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In addition, this rule does not impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Consultation with Indian tribes is therefore not required under Executive Order 13175. Nonetheless, in the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribes, EPA specifically solicits comments on this proposed rule from tribal officials.

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

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885 (April 23, 1997)), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. In addition, the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportional risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" [66 FR 28355 (May 22, 2001)] because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable laws or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decided not to use available and applicable voluntary consensus standards.

As discussed above, this rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In the absence of a prior existing requirement for the state to use voluntary consensus standards and in light of the fact that EPA is required to make the OCS rules consistent with current COA requirements, it would be inconsistent with applicable law for EPA to use voluntary consensus standards in this action. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 2, 2011.

Dennis J. McLerran,

Regional Administrator, Region 10.

Title 40, chapter I of the Code of Federal Regulations, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended by revising paragraph (e)(2)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(A) State of Alaska Requirements Applicable to OCS Sources, December 9, 2010.

* * * * *

3. Appendix A to part 55 is amended by revising paragraph (a)(1) under the heading "Alaska" to read as follows:

Appendix A To Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

Alaska

(a) * * *

(1) The following State of Alaska requirements are applicable to OCS Sources, December 9, 2010, Alaska Administrative Code—Department of Environmental Conservation. The following sections of Title 18, Chapter 50:

Article 1. Ambient Air Quality Management

18 AAC 50.005. Purpose and Applicability of Chapter (effective 10/01/2004)
18 AAC 50.010. Ambient Air Quality Standards (effective 04/01/2010)
18 AAC 50.015. Air Quality Designations, Classification, and Control Regions (effective 12/09/2010) except (b)(1), (b)(3) and (d)(2)
Table 1. Air Quality Classifications
18 AAC 50.020. Baseline Dates and Maximum Allowable Increases (effective 07/25/2008)
Table 2. Baseline Dates
Table 3. Maximum Allowable Increases
18 AAC 50.025. Visibility and Other Special Protection Areas (effective 06/21/1998)
18 AAC 50.030. State Air Quality Control Plan (effective 10/29/2010)
18 AAC 50.035. Documents, Procedures, and Methods Adopted by Reference (effective 04/01/2010)
18 AAC 50.040. Federal Standards Adopted by Reference (effective12/09/2010) except (h)(2)
18 AAC 50.045. Prohibitions (effective 10/01/2004)
18 AAC 50.050. Incinerator Emissions Standards (effective 07/25/2008)
Table 4. Particulate Matter Standards for Incinerators
18 AAC 50.055. Industrial Processes and Fuel-Burning Equipment (effective 12/09/2010) except (a)(3) through (a)(9), (b)(2)(A), (b)(3) through (b)(6), (e) and (f)
18 AAC 50.065. Open Burning (effective 01/18/1997)
18 AAC 50.070. Marine Vessel Visible Emission Standards (effective 06/21/1998)
18 AAC 50.075. Wood-Fired Heating Device Visible Emission Standards (effective 05/06/2009)
18 AAC 50.080. Ice Fog Standards (effective 01/18/1997)
18 AAC 50.085. Volatile Liquid Storage Tank Emission Standards (effective 01/18/1997)
18 AAC 50.090. Volatile Liquid Loading Racks and Delivery Tank Emission Standards (effective 07/25/2008)
18 AAC 50.100. Nonroad Engines (effective 10/01/2004)
18 AAC 50.110. Air Pollution Prohibited (effective 05/26/1972)

Article 2. Program Administration

18 AAC 50.200. Information Requests (effective 10/01/2004)
18 AAC 50.201. Ambient Air Quality Investigation (effective 10/01/2004)

18 AAC 50.205. Certification (effective 10/01/2004) except (b)
18 AAC 50.215. Ambient Air Quality Analysis Methods (effective 10/29/2010)
Table 5. Significant Impact Levels (SILs)
18 AAC 50.220. Enforceable Test Methods (effective 10/01/2004)
18 AAC 50.225 Owner-Requested Limits (effective 12/09/2010) except (c) through (g)
18 AAC 50.230. Preapproved Emission Limits (effective 07/01/2010) except (d)
18 AAC 50.235. Unavoidable Emergencies and Malfunctions (effective 10/01/2004)
18 AAC 50.240. Excess Emissions (effective 10/01/2004)
18 AAC 50.245. Air Episodes and Advisories (effective 10/01/2004)
Table 6. Concentrations Triggering an Air Episode

Article 3. Major Stationary Source Permits

18 AAC 50.301. Permit Continuity (effective 10/01/2004) except (b)
18 AAC 50.302. Construction Permits (effective 12/09/2010)
18 AAC 50.306. Prevention of Significant Deterioration (PSD) Permits (effective 12/09/2010) except (c) and (e)
18 AAC 50.311. Nonattainment Area Major Stationary Source Permits (effective 10/01/2004) except (c)
18 AAC 50.316. Preconstruction Review for Construction or Reconstruction of a Major Source of Hazardous Air Pollutants (effective 12/01/2004) except (c)
18 AAC 50.321. Case-By-Case Maximum Achievable Control Technology (effective 12/01/04)
18 AAC 50.326. Title V Operating Permits (effective12/01/2004) except (c)(1), (h), (i)(3), (j)(5), (j)(6), (k)(1), (k)(3), (k)(5), and (k)(6)
18 AAC 50.345. Construction, Minor and Operating Permits: Standard Permit Conditions (effective 11/09/2008)
18 AAC 50.346. Construction and Operating Permits: Other Permit Conditions (effective 12/09/2010)
Table 7. Standard Operating Permit Condition

Article 4. User Fees

18 AAC 50.400. Permit Administration Fees (effective 07/01/2010) except (a)(2), (a)(5), (j)(2) through (j)(5), (j)(8), and (j)(13)
18 AAC 50.403. Negotiated Service Agreements (effective 07/01/2010)
18 AAC 50.410. Emission Fees (effective 07/10/2010)
18 AAC 50.499. Definition for User Fee Requirements (effective 01/29/2005)

Article 5. Minor Permits

18 AAC 50.502. Minor Permits for Air Quality Protection (effective 12/09/2010) except (b)(1) through (b)(3), (b)(5), (d)(1)(A) and (d)(2)(A)
18 AAC 50.508. Minor Permits Requested by the Owner or Operator (effective 12/07/2010)
18 AAC 50.510. Minor Permit—Title V Permit Interface (effective 12/09/2010)
18 AAC 50.540. Minor Permit: Application (effective 12/09/2010)
18 AAC 50.542. Minor Permit: Review and Issuance (effective 12/09/2010) except (a), (b), (c), and (d)
18 AAC 50.544. Minor Permits: Content (effective 12/09/2010)
18 AAC 50.560. General Minor Permits (effective 10/01/2004) except (b)

Article 9. General Provisions

18 AAC 50.990. Definitions (effective 12/09/2010)

* * * * *

[FR Doc. 2011–3004 Filed 2–9–11; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 24

[FAR Case 2009–004; Docket 2010–0089, Sequence 2]

RIN 9000–AL59

Federal Acquisition Regulation; Enhancing Contract Transparency

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Advance notice of proposed rulemaking; withdrawal.

SUMMARY: DoD, GSA, and NASA are issuing this document to summarize and respond to the comments received in response to the advance notice of proposed rulemaking published in the **Federal Register** at 75 FR 26916, May 13, 2010. This information was used to determine if the FAR should be amended to provide for further transparency in Government contracts.

DoD, GSA, and NASA acknowledge the comments and solutions provided and will take this information into account, at a later date, in determining if the FAR should be amended to further enhance transparency in Government contracting.

At this time, DoD, GSA, and NASA do not plan to amend the FAR because some of the existing acquisition systems at *http://www.acquisition.gov* provide certain information on Government contracts that is readily available to the public, and most of the content of a contract solicitation or contract action not already available on one of the acquisition systems at *http://www.acquisition.gov* is either standard FAR terms and conditions available at *https://www.acquisition.gov/far/index.html,* agency specific terms and conditions available from the contracting agency Web site, or sensitive information that may be releasable under FOIA.

DATES: The advance notice of proposed rulemaking published in the **Federal Register** at 75 FR 26916, May 13, 2010, is withdrawn as of February 10, 2011.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR Case 2009–004.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an advance notice of proposed rulemaking in the **Federal Register** (75 FR 26916, May 13, 2010) requesting information that would assist in determining how best to amend the FAR to enable public posting of contract actions, should such posting become a requirement in the future, without compromising (1) contractors' proprietary and confidential commercial or financial information or (2) Government-sensitive information. The transparency effort is intended to promote efficiency in Government contracting consistent with the Administration's memorandum entitled Transparency and Open Government (January 21, 2009, available at: *http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment/*).

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Discussion of Public Comments

In response to the May notice, 15 respondents, including Government agencies, industry associations, advocacy groups, and private individuals, submitted a total of 44 comments. The comments fall into nine categories, each of which is discussed in the following sections.

1. Public Meeting

Comments: Two respondents commented on the usefulness of a public meeting. The first respondent favored a public meeting so that the costs associated with publicly posting contracts could be addressed. Another respondent stated that holding a public meeting on the methods by which contracts will be made public and the types of information that should be

publicly accessible would allow various stakeholders to share different viewpoints on the topic. The respondent stated that, if such a meeting is held, it would like to be a presenter.

Response: Only two respondents addressed the issue of a public meeting, and both were only moderately supportive on the topic. Because there were only two respondents that recommended a public meeting, and in view of the overall comments about this transparency effort, a public meeting will not be held at this time.

2. Automatic Preference For/Against Disclosure

Comments: Respondents expressed a wide variety of preferences. One respondent stated that several agencies post an electronic copy of contract award documents in the agency Freedom of Information Act (FOIA) Reading Room (if the contract has been requested a minimum of three times and a redacted copy is available electronically). The same respondent also noted that some agencies post their contracts immediately because they are commercial purchases using published catalogs, which means that the prices are public information.

A second respondent noted that certain proposal information and source selection information must be protected. The respondent further stated that protections apply to information obtained to determine reasonableness of price; trade secrets; privileged or confidential manufacturing processes and techniques; commercial and financial information that is privileged or confidential, including unit pricing; names of individuals providing past performance information; and classified information relevant to national security.

A third respondent recommended that the Government provide open public access to information on the contracting process, including actual copies of contracts rather than coded summary data, as well as contracting officers' decisions and justifications. The respondent recommended making *USAspending.gov* the one-stop shop for public Federal contract spending information, by posting actual copies of contracts, task and delivery orders, modifications, amendments, other transaction agreements, grants, and leases, including price and cost information, proposals, solicitations, award decisions and justifications (including all documents related to contracts awarded with less than full and open competition and single-bid contract awards), audits, performance and responsibility data, and other related Government reports. The respondent conceded that the Government should protect classified information and other information that would potentially cause substantial harm to a contractor, but only when those exceptions are not outweighed by the public benefit that would be realized by this disclosure. The respondent believed that the burden should be placed on prospective contractors to justify withholding information from public view.

Response: DoD, GSA, and NASA note that the comments cover various perspectives on transparency in Government contracting—from publishing everything to publishing nothing without first undertaking a complete FOIA analysis. Specific issues associated with the recommendations summarized above have been addressed in the context of other public comments that follow.

3. Protect Unclassified Information

Comment: Three respondents expressed concern that any publication of contract documents would have a high likelihood of compromising proprietary information. Even if posting of contracts did not expose proprietary information, one respondent was concerned that it could expose military or other similar operations that could have national security implications, even though the published information, *per se,* was not classified. A third respondent noted that there is a significant body of unclassified Government information that also should be considered for protection; this respondent made reference to the advance notice of public rulemaking for Defense Federal Acquisition Regulation Supplement (DFARS) Case 2008–D028, Safeguarding Unclassified Information.

Response: DoD, GSA, and NASA understand the importance of protecting unclassified information. The processes for doing so and the identification of what must be protected are under consideration in FAR Case 2009–022, and DFARS Case 2008–D028.

4. Transparency or FOIA Analysis

Comments: The majority of respondents expressed concern about addressing transparency initiatives outside the context of the Freedom of Information Act. Concerns focused around whether there is a need to conduct a FOIA analysis prior to making a determination on the disclosure of protected information in an effort to meet transparency initiatives.

Response: DoD, GSA, and NASA understand that the FOIA regulations and procedures and the Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, must be closely examined by the FOIA experts and adequately addressed as consideration is being given to what contract documents to make available to the public.

5. A Transparency Requirement Would Reduce Competition

Comments: Two respondents stated that creating a mandate for companies to post their contracts to public sites would place these companies in the position of sometimes choosing not to bid on Government procurements to avoid the disclosure of their sensitive competitive and/or proprietary data. This would have the effect of limiting or reducing competition.

Response: DoD, GSA, and NASA take note of this concern but do not agree with this conclusion. Transparency could have the opposite effect and enhance competition.

6. A Posting Requirement Is an Administrative Burden and Will Increase Costs for Both Contractors and Government Agencies

Comments: Some respondents maintained that requiring public posting of all contract actions would result in significant cost and administrative burdens, both for contractors and for the Government, and in addition, would involve unnecessary duplication of effort.

Two respondents contended that the effort and expense in the redaction and posting process would be significant and challenging. One of these respondents noted that, "with more than 30 million transactions issued by the Government annually, the redaction process alone would be overwhelming." The other respondent stated that the review and defense of confidential information contained within each contract would be a major undertaking, assuming a process similar to that now required by FOIA. A third respondent commented on the administrative costs and burden of posting, but also added that the training and oversight necessary to implement such a process, and the likely surge in public inquiries as a result of public posting of actions, would further compound these challenges. The same respondent also predicted a great deal of "legal wrangling" over the posting of proprietary information, which could delay the award of, or initiation of work under, contracts.

A respondent predicted that the posting requirement would add work to an already overburdened acquisition workforce, and another respondent

contended that it would detract from the contracting officer's primary responsibility to award and manage contracts.

A respondent maintained that public posting of contract actions would be a duplicative administrative process because contract information is currently available through several venues, including FedBizOpps (FBO), *USASpending.gov,* and the Federal Procurement Data System (FPDS), and that these systems provide sufficient transparency while retaining the protection of information that should be considered in the contracting process. Another respondent commented that it finds it difficult to identify what would be made public with a mandatory public posting requirement that is not already publicly available. The respondent stated that the majority of information in a contract action is either located in the solicitation posted to FedBizOpps or is standard Federal Acquisition Regulation (FAR) contract language available for viewing at *https://www.acquisition.gov/far.* The respondent deemed the majority of information beyond what is in the solicitation and the FAR to be information that should be protected from disclosure. Two respondents took exception to the idea—as stated in the ANPR—that the transparency effort is intended "to promote efficiency in Government contracting." The respondents do not acknowledge any direct correlation between posting contracts online and improving efficiency and spending.

Response: DoD, GSA, and NASA take note of this concern. The cost increases mentioned will be considered in any determination concerning contract posting requirements. As mentioned, contract information is either located in the solicitation posted to FedBizOpps at *http://www.fedbizopps.gov* or is standard FAR contract language and terms and conditions are available at *https://www.acquisition.gov/far.* However, awarded contract documents such as the statement of work, detailed contract line item descriptions, terms and conditions, deliverables, contractor proposals from the awardee, or other information that resides with the awarding contract agency may be available under a FOIA request.

7. Governmentwide Integrated Electronic System

Comments: Three respondents supported a posting requirement. One of these recommended that only the total value of the contract be posted. Another respondent suggested posting a non-proprietary version of contracts "on the web" for at least one year after award. The same respondent believed that "all we need to do is write a line of code or a few lines of code into the existing contracting database that removes all of the proprietary information and allows the user to download or print a stripped version of it." In addition, a respondent suggested that, in order to store and provide access to this information, the Government must shift to a Governmentwide integrated electronic system that would create and store pre- and post-award contracting records. The expanded system should permit, according to the respondent, automatic redactions only of the most protected information or data fields, including classified information and other information that would potentially cause substantial harm to a contractor, but only when those exceptions are not outweighed by the public benefit that would be realized by the disclosure of such information.

Response: The respondents recommended a variety of information and solutions for posting the information. DoD, GSA, and NASA recognize the need for transparency in Government contracting information and believe these recommendations require additional thought by our system experts to determine the cost benefit analysis, capabilities analysis of existing systems, etc., to determine if the recommended solution can be implemented in the Government's current integrated acquisition environment. The Government is working to improve its collection of contracting information, *see* the new System for Award Management (SAM), at *http://www.acquisition.gov.*

8. Posting Poses Significant Risks to Federal Employees

Comments: Two respondents maintained that a mandatory requirement for public posting of contract actions would expose Government employees to risks of criminal fines or penalties.

One respondent contended that the safeguards suggested by DoD, GSA, and NASA in the ANPR fall short of applying FOIA procedures to the proposed posting requirements and, as a result, will cause Government employees to bear increased risks related to improper disclosure of protected information. The respondent quoted the Trade Secrets Act, 18 U.S.C. 1905, explaining that it prohibits the release of confidential information and imposes criminal fines and possible imprisonment, as well as termination of employment, for Government employees who disclose confidential information. The respondent suggested that a "FOIA-like review and redaction process," though burdensome to Government and industry, would be necessary to avoid risk to Government employees.

The other respondent contended that Government employees may remain at risk if alternatives to the FOIA exemption 4 analysis are not adopted for purposes of public posting. This is because exemption 4 of FOIA is co-extensive with the Trade Secrets Act, which prohibits Government personnel from releasing contractor trade secrets and making them personally liable if that information is released. The respondent noted that the responsible Government agency employee would be at risk if required to publicly post a contract without express contractor authorization.

Response: DoD, GSA, and NASA take note of this concern and will consider this issue if measures are taken to enhance transparency in Government contracting.

9. Alternatives Proposed

a. *Comments:* One respondent opposed the requirement to publicly post contracts. However, the respondent proposed two alternatives to diminish the level of effort required. The first alternative posed was to state plainly in the solicitation that every page of a successful offeror's proposal not marked as proprietary would be posted on the Web. This approach gives contractors notice prior to proposal submission. The respondent's second alternative was to ask the successful offeror, at the time of award, to submit a redacted copy of the contract for public posting. Central to this alternative is the recognition that the contractor need not submit a detailed justification for its redactions but merely a declaration that the contractor has in good faith provided a redacted copy according to the current FOIA law.

Response: DoD, GSA, and NASA take note of these alternatives and may consider each approach in determining how best to enhance transparency in this area.

b. *Comment:* Somewhat similar to the previous respondent's first alternative, a respondent suggested that a contracting officer could post contracts online if the Government established the solicitation in such a way that offerors were required, in their proposals, to segregate anything that the vendor deems proprietary, keeping it in a separate section or attachment of the proposal. This approach would enable the majority of the contract to be posted online immediately. Then, if a FOIA

request was made subsequently for the material not posted, the Government's review and redaction would be made simpler by looking over just the section or attachment not posted initially.

Response: DoD, GSA, and NASA take note of this approach, but believe it relies entirely on the successful offeror's judgment, and it does not address the Government's requirement to protect classified information or other, unclassified information that may require safeguarding.

c. *Comment:* Eight other respondents proposed specific alternatives in lieu of publishing contracts. One respondent opposed posting of any information because it would have the effect of releasing contractors' pricing information. Another respondent believed that the current posting requirement for contract/order award information (contract number, awardee information, total amount of award) was sufficient and that additional information should not be released. Another respondent would be more conservative and post only the total value of the contract.

One respondent suggested exempting entire classes of contracts from the posting requirement. This respondent suggested that contracts awarded using the sixth exemption from full and open competition should not be posted. A fifth respondent proposed that the Government must find a way to ensure the protection of an entity's information that supports pending patents in addition to protecting competition-sensitive pricing or technical information.

A respondent suggested that solicitations include a clear statement that every page not marked as proprietary will be posted on the Web or, in the alternative, ask the successful offeror, at the time of award, to submit a redacted copy of the contract for public posting. The seventh respondent recommended redacting (presumably by the Government) all confidential and proprietary information and any item associated with national security prior to posting contracts.

The eighth respondent stated its preference for avoiding a contract posting requirement entirely but suggested, if posting is inevitable, that the Government—

1. Add a module to FedBizOpps where the successful offeror could post a redacted contract, and enforce the posting requirement by withholding payment on the contractor's first invoice until the redacted contract has been posted;

2. Establish a threshold, *e.g.,* $10 million, below which contracts need not be posted; and

3. Require posting of only the statement of work (SOW)/performance work statement (PWS) and deliverable schedule, but give contracting officers authority to exempt a SOW/PWS from the posting requirement if it contained proprietary information.

Response: DoD, GSA, and NASA are appreciative of the respondents that provided specific alternatives for our consideration. Any contract-posting initiative must give consideration to the costs involved (in technology and software as well as the time of contractor and Government employees) and the risks associated with posting this information (*e.g.,* lawsuits against the Government for inadvertently releasing information that could be damaging to national security and/or the competitive positions of companies doing business with the Government). DoD, GSA, and NASA advocate a judicious approach to establishing contract-posting requirements, one that will appropriately conserve resources and identify information that should be protected from general release to the public. Our assessment is that any contract posting requirement, at a minimum, should involve each of the elements proposed by the eighth respondent above, *i.e.,* a high dollar threshold, a requirement for only the successful offeror to redact the contract and/or proposal that will be posted, and an incentive for the successful offeror to do so.

No posting requirement can be successful without protections for both contractor and Government employees. Necessary protections for information and personnel involve, at a minimum, a FOIA analysis, which is time consuming and requires senior analysts and attorneys. DoD, GSA, and NASA are concerned, too, that the on-going efforts to identify protections essential for safeguarding unclassified information are not yet sufficiently mature that such efforts can be bypassed to establish a contract-posting requirement prior to guidance on unclassified information. To avoid inadvertent disclosures, the Government would be required to review contractor-redacted documents before such items are posted to a public Web site. The contract or contractor's proposal may contain information that requires protection beyond trade secrets or proprietary information.

II. Review of Existing Databases

DoD, GSA, and NASA extensively researched existing contracting related databases, confining the search to those that are fully available to the general public, in order to determine the extent of information on Government contract actions that is currently available. While there are approximately nine acquisition systems available at *http://www.acquisition.gov* that capture contracting information, and some of the information in these systems is available to the public, DoD, GSA, and NASA focused on four such Web sites. These are—(1) FedBizOpps; (2) *USASpending.gov;* (3) GSA eLibrary; and (4) Federal Procurement Data System (FPDS).

1. *FedBizOpps.* This is a publicly available Web site at *http://www.fbo.gov* where many of the Government's solicitations are posted. There are several exceptions to the posting requirement; these are located at FAR 5.202, *e.g.,* disclosure would compromise the national security. Both active and archived solicitations are available. Each solicitation is identified with a procurement classification code, *e.g.,* 42 is fire-fighting, rescue, and safety equipment. In addition, FedBizOpps includes contract award information. This Web site is where agencies are required to post justifications for less than full-and-open competition (Justification and Approval, or J&A) and associated documentation, as well as sources-sought notices. Vendors are able to search for and retrieve posted J&As according to specific criteria, such as J&A authority, posted date range, and contract award date.

2. *USASpending.gov:* This Web site was established pursuant to the Federal Funding Accountability and Transparency Act of 2006 (FFATA). FFATA required a single searchable Web site, accessible to the public—at no cost to access—to include each Federal award. The specific information provided at *USASpending.gov* includes—

- The name of the award recipient.
- The amount of the award.
- The date the award was signed.
- The agency making the award.
- The location of the entity receiving the award.
- A unique identifier of the entity receiving the award.
- The product or service code for the supplies or services being purchased.
- A description of the award.
- If a modification to an existing award, the reason for the modification.

3. GSA eLibrary

GSA eLibrary (formerly "Schedules e-Library") is the online source for the latest contract award information for—

- GSA Schedules;

• Department of Veterans Affairs (VA) Schedules; and

• Technology Contracts, including Governmentwide Acquisition Contracts (GWACs), Network Services and Telecommunications Contracts, and Information Technology (IT) Schedule 70.

GSA eLibrary is available 24 hours a day, seven days a week to provide up-to-date information on which suppliers have contracts and what items are available, by using various search options, *i.e.*—

• Keywords;

• Contract number;

• Contractor/manufacturer name;

• Schedule name, Schedule number, category/sub-category name, or category number/special item number (SIN); or

• Technology contract name, contract number, or category name/number.

GSA eLibrary also provides an alphabetical listing of available contractors, allowing customers to easily locate all Schedule and technology contracts for a particular company. An updated category guide is designed to facilitate searches for specific groups of items. Other features include:

• Access to information on millions of supplies (products) and services;

• Information on the latest Schedule program changes, including a "News" area;

• Access to the complete list of all GSA and Veterans Affairs Schedules from the "View Schedule contracts" link;

• Links to technology contracts—IT Schedule 70, the complete list of GWACs, and network services and telecommunications contracts;

• Links to GSA Advantage!® Online Shopping for eBusiness and eBuy, GSA's electronic Request For Quotation (RFQ) system;

• Ability to download current PDF versions of Schedules;

• Ability to download contract award information in an Excel format by category;

• Links to contractor Web sites, email addresses, and text files containing contract terms and conditions; and

• Identification of Schedule contractors participating in cooperative purchasing and/or disaster recovery purchasing.

4. Federal Procurement Data System (FPDS)

FPDS is an online central repository containing a searchable collection of Federal contracts with a potential value of $3,000 or more, including all subsequent modifications. It is available at *http://www.fpds.gov.* FPDS provides public access to many standard and custom reports about these actions, products/services purchased, vendor socioeconomic information, dates of award and completion, and dollar values.

DoD, GSA, and NASA would also like to mention two other contracting databases—the Recovery Web site and the Federal Awardee Performance and Integrity Information System (FAPIIS).

FAPIIS was established under section 872 of the National Defense Authorization Act of 2009, and includes specific information on the integrity and performance of covered Government agency contractors and grantees information on defective cost or pricing contractor convictions, terminations for default, and administrative agreements reached in lieu of suspension or debarment. Section 3010 of Public Law 111–212, making supplemental appropriations for Fiscal Year 2010, requires the posting of FAPIIS information "on a publicly available Internet Web site."

Also, the Recovery Web site, at *http://www.Recovery.gov,* was established pursuant to the American Recovery and Reinvestment Act of 2009 (the Act), to foster greater accountability and transparency in the use of funds made available in the Act. The Web site has been operational since February 17, 2009. This Web site gives taxpayers user-friendly tools to track Recovery funds, showing how and where the funds are spent. In addition, the site offers the public an opportunity to report suspected fraud, waste, or abuse related to Recovery funding.

List of Subjects in 48 CFR Part 24

Government procurement.

Dated: February 3, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

[FR Doc. 2011–2900 Filed 2–9–11; 8:45 am]

BILLING CODE 6820–EP–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1834

RIN 2700–AD29

Major System Acquisition; Earned Value Management

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule with request for comments.

SUMMARY: NASA proposes to revise the requirements in the NASA FAR Supplement (NFS) for contractors to establish and maintain an Earned Value Management System (EVMS) for firm-fixed-price (FFP) contracts. The proposal recognizes the reduction in risk associated with FFP contracts and intends to relieve contractors of an unnecessary reporting burden.

DATES: Interested parties should submit comments on or before April 11, 2011 to be considered in formulation of the final rule.

ADDRESSES: Interested parties may submit comments, identified by RIN number 2700–AD29, via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments may also be submitted to Carl Weber (Mail stop 5K80), NASA Headquarters, Office of Procurement, Contract Management Division, Washington, DC 20546. Comments may also be submitted by e-mail to *carl.c.weber@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Carl Weber, NASA, Office of Procurement, Contract Management Division (Suite 5K80); (202) 358–1784; e-mail: *carl.c.weber@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Earned Value Management (EVM) is a performance-based tool that gives agency managers an early warning of potential cost overruns and schedule delays during the execution of their investments. EVM requires agencies to integrate information about the scope of work with cost, schedule, and performance information so that they may compare planned spending with actual spending, isolate the source of performance problems, and take corrective actions in a timely manner.

Federal Acquisition Regulation (FAR) Subpart 34.2 and Office of Management and Budget (OMB) Circular A–11 require agencies to measure the cost and schedule performance of major investments with development activity using EVM. These policies are implemented by NASA through NASA Procedural Requirement (NPR) 7120.5, which requires program managers to perform appropriate EVM analyses of their investments, and NASA FAR Supplement 1834.201, which requires contractors to have an Earned Value Management System (EVMS) for major acquisitions with development or production work, including development or production work for flight and ground support systems and components, prototypes, and institutional investments (facilities, IT infrastructure, etc.).

Under the current NASA policy, contractors executing a firm-fixed-price (FFP) contract meeting specified thresholds are required to have an EVMS that complies with the guidelines in ANSI/EIA Standard 748. However, since the cost incurred by the government is fixed the requirement for ANSI compliance for performance under FFP contracts creates an unnecessary burden on contractors that may increase their costs and those passed on to the government. Accordingly, this proposed rule provides an exception to the requirement for an EVMS for contractors who perform under a FFP contract. However, the proposed rule does not change the requirements in the NASA NPR to apply EVM principles at the program/project level; nor is it intended or expected to materially alter NASA's ability to obtain the data the agency needs from a contractor performing under an FFP contract for an effective program/project level EVM analysis—including the program/project level generation of the Integrated Master Schedule (IMS), the Work Breakdown Structure (WBS) and the time-phased budget, with cost variance and schedule variance calculated using the performance measurement baseline—that is required for sound program, project, and contract management.

Finally, for cost or fixed-price incentive contracts and subcontracts valued at less than $20 Million, the proposed rule makes application of EVM an optional, risk-based decision at the discretion of the program/project manager.

This is not a significant regulatory action and, therefore, is not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* because it relaxes previous requirements in the NASA FAR Supplement and does not impose a significant economic impact beyond that previously required. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. NASA will consider comments from small entities concerning the affected NFS Parts 1834 and 1852, in accordance with 5 U.S.C. 610. Interested parties should submit such comments separately and should cite 5 U.S.C. 601 in the correspondence.

C. Paperwork Reduction Act

This proposed rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 1834

Government procurement.

William P. McNally,

Assistant Administrator for Procurement.

Accordingly, 48 CFR part 1834 is proposed to be amended as follows:

PART 1834—MAJOR SYSTEM ACQUISITION

1. The authority citation for 48 CFR part 1834 continues to read as follows:

Authority: 42 U.S.C. 2455(a), 2473(c)(1).

2. Section 1834.003 is added to read as follows:

1834.003 Responsibilities.

(a) NASA's implementation of OMB Circular No. A–109, Major Systems Acquisition, and FAR Part 34 is contained in this Part and in NASA Procedures and Guidelines (NPR) 7120.5, "NASA Space Flight Program and Project Management Requirements."

3. Section 1834.201 is revised to read as follows:

1834.201 Policy.

(a)(1) NASA requires use of an Earned Value Management System (EVMS) on acquisitions for development or production work, including development or production work for flight and ground support systems and components, prototypes, and institutional investments (facilities, IT infrastructure, etc.) as specified in paragraphs (a)(1)(i) through (iii) of this section:

(i) For cost or fixed-price incentive contracts and subcontracts valued at $50 Million or more the contractor shall have an EVMS that has been determined by the cognizant Federal agency to be in compliance with the guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA–748).

(ii) For cost or fixed-price incentive contracts and subcontracts valued at $20 Million or more but less than $50 Million, the contractor shall have an EVMS that complies with the guidelines in ANSI/EIA–748, as determined by the cognizant Contracting Officer.

(iii) For cost or fixed-price incentive contracts and subcontracts valued at less than $20 Million the application of EVM is optional and is a risk-based decision at the discretion of the program/project manager.

(2) Requiring earned value management for firm-fixed-price (FFP) contracts and subcontracts of any dollar value is discouraged; however, a schedule management system and adequate reporting shall be required to plan and track schedule performance for development or production contracts valued at $20 Million or more. In addition, for FFP contracts that are part of a program/project of $50 Million or more, the contracting officer shall collaborate with the government's program/project manager to ensure the appropriate data can be obtained or generated to fulfill program management needs and comply with the Agency program management requirements of NPR 7120.5.

(3) An EVMS is not required on non-developmental contracts for engineering support services, steady state operations, basic and applied research, and routine services such as janitorial services or grounds maintenance services.

(4) Contracting officers shall request the assistance of the cognizant Defense Contract Management Agency (DCMA) office in determining the adequacy of proposed EVMS plans and procedures and system compliance.

(b) Notwithstanding the EVMS requirements above, if an offeror proposes to use a system that has not been determined to be in compliance with the American National Standards Institute/Electronics Industries Alliance (ANSI/EIA) Standard-748, Earned Value Management Systems, the offeror shall submit a comprehensive plan for compliance with these EVMS standards, as specified in 1852.234–1, Notice of Earned Value Management System. Offerors shall not be eliminated from consideration for contract award because they do not have an EVMS that complies with these standards.

4. In section 1834.203–70 revise the introductory text to read as follows:

1834.203–70 NASA solicitation provision and contract clause.

Except for firm-fixed price contracts and the contracts identified in 1834.201(a)(iii), the contracting officer shall insert—

* * * * *

[FR Doc. 2011–2756 Filed 2–9–11; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2010–0093; MO 92210–0–0009]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Revise Critical Habitat for Vernal Pool Fairy Shrimp and Vernal Pool Tadpole Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding to revise critical habitat.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to revise critical habitat for vernal pool fairy shrimp (*Branchinecta lynchi*) and vernal pool tadpole shrimp (*Lepidurus packardi*) under the Endangered Species Act of 1973, as amended (Act). Following a review of the petition, we find that the petition does not present substantial scientific information indicating that revision of the critical habitat for vernal pool fairy shrimp and vernal pool tadpole shrimp may be warranted. Therefore, with the publication of this notice, we have determined that a 12-month finding on this petition is not warranted and will not be conducted.

DATES: The finding announced in this document was made on February 10, 2011. You may submit new information concerning this species or its habitat for our consideration at any time.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number [FWS–R8–ES–2010–0093]. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, 2800 Cottage Way W–2605, Sacramento, CA 95825. New information, material, comments, or questions concerning this species or its habitat may be submitted to us at any time.

FOR FURTHER INFORMATION CONTACT: Susan Moore, Field Office Supervisor, or Karen Leyse, Listing Coordinator, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way W–2605, Sacramento, CA 95825, by telephone at 916–414–6600, or by facsimile at 916–414–6713. People who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(D) of the Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to revise critical habitat for a species presents substantial scientific information indicating that the revision may be warranted. In determining whether substantial information exists, we take into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in our files. Our listing regulations at 50 CFR 424.14(c)(2)(i) further require that, in making a finding on a petition to revise critical habitat, we consider whether the petition contains information indicating that areas petitioned to be added to critical habitat contain the physical and biological features essential to, and that may require special management to provide for, the conservation of the species.

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. The Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. If we find that a petition presents substantial information indicating that the revision may be warranted, we are required to determine how we intend to proceed with the requested revision within 12 months after receiving the petition and promptly publish notice of such intention in the **Federal Register**.

Petition History

On August 29, 2008, we received a petition dated August 28, 2008, from ECORP Consulting, Inc., on behalf of Conservation Resources, requesting that we revise critical habitat for vernal pool fairy shrimp (*Branchinecta lynchi*) and vernal pool tadpole shrimp (*Lepidurus packardi*). The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required in 50 CFR 424.14(a). The petitioners did not use the current unit numbers for the critical habitat units when referring to critical habitat units; however, the map and location description provided in the petition indicate that the critical habitat units referred to are critical habitat Unit 14A for the vernal pool fairy shrimp and Unit 9B for the vernal pool tadpole shrimp designated in the final rule published in the **Federal Register** on February 10, 2006 (71 FR 7119–7120, 7153, 7194). The petition requested that, pursuant to the Act, the Service modify the boundaries of these units to include the northern 2,800 acres (ac) (1,133 hectares (ha)) of the parcel referred to as Gill Ranch (ECORP 2008, p. 1).

Previous Federal Actions

The vernal pool fairy shrimp and the vernal pool tadpole shrimp were listed as threatened and endangered, respectively, on September 19, 1994 (59 FR 48136). Critical habitat for 4 vernal pool crustaceans and 11 vernal pool plant species in California and southern Oregon, including the vernal pool fairy shrimp and vernal pool tadpole shrimp, was originally designated in a final rule published in the **Federal Register** on August 6, 2003 (68 FR 46684).

The 2003 final critical habitat for the 4 vernal pool crustaceans and 11 vernal pool plant species in California and southern Oregon totaled approximately 744,070 ac (301,114 ha), and excluded 5 entire counties (Butte, Madera, Merced, Sacramento, and Solano Counties) from the designation of critical habitat due to economic reasons under section 4(b)(2) of the Act. In total, approximately 494,583 ac (200,151 ha) of critical habitat was identified within the five counties, but later excluded.

In January 2004, the Butte Environmental Council and several other organizations filed a complaint alleging that we violated the Act (*Butte Environmental Council et al.* v. *Norton. et al., Case No. CIV S–04–0096 WBS KJM (E.D. Cal.).*) On October 29, 2004, the court signed a Memorandum and Order in that case remanding the final designation to the Service. In particular, the court ordered us to: (1) Reconsider

the noneconomic exclusions from the final designation of critical habitat, and publish a new final determination as to those lands within 120 days; and (2) reconsider the economic exclusion of the five California counties based on potential economic impacts, and publish a new final determination no later than July 31, 2005.

A final rule for critical habitat reevaluating the noneconomic exclusions from the 2003 final rule was published in the **Federal Register** on March 8, 2005 (70 FR 11140), and a final rule evaluating economic exclusions from the 2003 final rule was published in the **Federal Register** on August 11, 2005 (70 FR 46924). A final rule containing administrative revisions with species-by-unit designations was published in the **Federal Register** on February 10, 2006 (71 FR 7118). This final rule provided 35 critical habitat units designated for the vernal pool fairy shrimp totaling 597,821 ac (241,930 ha), and 18 critical habitat units designated for the vernal pool tadpole shrimp totaling 228,785 ac (92,586 ha). The March 8, 2005, confirmation of the noneconomic exclusions (70 FR 11140) addressed the first requirement of the October 2004 court-ordered remand, while the August 11, 2005, final critical habitat rule (70 FR 46924) addressing the economic exclusions under section 4(b)(2) of the Act addressed the second requirement of the October 2004 court-ordered remand.

The August 11, 2005, final critical habitat rule identified two overlapping units for vernal pool tadpole shrimp and vernal pool fairy shrimp. These two overlapping units were specifically identified in the February 10, 2006, **Federal Register** (71 FR 7151–7153, 7192–7194) for each species as units 9A and 9B for vernal pool tadpole shrimp and units 14A and 14B for vernal pool fairy shrimp. Approximately 9,481 ac (3,837 ha) of habitat determined to contain the physical and biological features essential to the conservation of the vernal pool tadpole shrimp and vernal pool fairy shrimp within these overlapping units was excluded from the final designation based on economic impacts. See Application of Section 4(b)(2)—Economic Exclusion to 23 Census Tracts section of the August 11, 2005, **Federal Register** (70 FR 46949–46952), for our rationale on the exclusion of these areas.

On May 31, 2007, the Service published a clarification of the economic and noneconomic exclusions for the 2005 final rule designating critical habitat for 4 vernal pool crustaceans and 11 vernal pool plants in California and southern Oregon (72 FR 30279), resulting in a final judgment from the court in favor of the Service. The Home Builders Association of Northern California and other industry groups appealed the judgment; however, on August 9, 2010, the Ninth Circuit issued a decision in favor of the Service, upholding the critical habitat designations for 15 listed vernal pool species (*Home Builders Association of Northern California* v. *Norton. et al.* (Case No. CV–05–00629–WBS (E.D. Cal.))).

Species Information

For current information on the biology, status, and habitat needs of the vernal pool fairy shrimp and vernal pool tadpole shrimp, refer to the Service's 5-Year Review of the vernal pool fairy shrimp (Service 2007b), the 5-Year Review of the vernal pool tadpole shrimp (Service 2007c), and the *Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon* (Service 2005) available on the Internet at *http://www.fws.gov/sacramento/es/5_year_reviews.htm* and *http://www.fws.gov/sacramento/es/recovery_plans/vp_recovery_plan_links.htm.*

Evaluation of Information for This Finding

In making this 90-day finding, we evaluated whether information regarding the revision of critical habitat for the vernal pool fairy shrimp and vernal pool tadpole shrimp, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petition action may be warranted. Our evaluation of this information is presented below.

The petitioner seeks to revise the critical habitat designation by expanding unit 14A for vernal pool fairy shrimp and unit 9B for vernal pool tadpole shrimp to include approximately an additional 2,800 ac (1,133 ha), located within the Cosumnes/Rancho Seco Core Area (Sacramento County) in the Southeastern Sacramento Valley Vernal Pool Region (Service 2005). The 2,800-ac (1,133-ha) area is part of Gill Ranch, which is largely dedicated to the conservation of vernal pools and listed vernal pool species. The petition summarizes the primary constituent elements (PCEs) for vernal pool fairy shrimp and vernal pool tadpole shrimp as presented in the February 10, 2006, administrative revisions (71 FR 7142, 7183). The petition states that the 2,800 ac (1,133 ha) addressed in the petition contain the PCEs and support numerous wetland features that are essential for reproduction, germination [sic], hatching, maturation, feeding, shelter, and dispersal of vernal pool crustaceans (ECORP 2008, p. 4–5). The information in the petition is consistent with information in our files. We agree that this area contains the physical and biological features essential to the conservation of the species. However, the 2,800-ac (1,133-ha) parcel was originally designated as critical habitat in the August 6, 2003, final rule (68 FR 46684), but was later excluded from the critical habitat designation in the August 11, 2005, final rule (70 FR 46924), when the Secretary decided to exercise his discretion under section 4(b)(2) of the Act to exclude this parcel due to economic impacts. The petition does not contain any information suggesting that the exclusion due to economic impacts was done in error, or that the economic analysis was flawed.

Finding

In making this finding, we relied on information provided by the petitioners, sources cited by the petitioners, and information readily available in our files. We evaluated the information in accordance with 50 CFR 424.14(c). Our process for making this 90-day finding under section 4(b)(3)(D) of the Act and 50 CFR 424.14(c) of our regulations is limited to a determination of whether the information in the petition meets the "substantial scientific information" threshold.

We find that the petition does not present substantial information to indicate that revision of critical habitat to include the proposed property may be warranted. The Service agrees that the property contains the PCEs, and it was designated critical habitat in the 2003 final rule (68 FR 46684). However, the 2,800 ac (1,133 ha) were excluded for economic reasons in the 2005 final rule (70 FR 46924) under section 4(b)(2) of the Act; the petition presents no information indicating that the rule excluding this property from critical habitat requires revision or that the methodology used in determining potential economic impacts was invalid.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2010–0093 and upon request from the Sacramento Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the U.S. Fish and

Wildlife Service, Sacramento Fish and Wildlife 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: January 28, 2011.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–2882 Filed 2–9–11; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 76, No. 28
Thursday, February 10, 2011

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

Forest Service

Yavapai County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yavapai County Resource Advisory Committee (RAC) will meet in Prescott, Arizona. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to orientate new committee members to the Secural Rural Schools Act, roles of members, guidelines for Title II, and the Federal Advisory Committee Act.

DATES: The meeting will be held March 3, 2011; 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Prescott Fire Center, 2400 Melville Dr, Prescott, AZ 86301.

FOR FURTHER INFORMATION CONTACT: Debbie Maneely, RAC Coordinator, Prescott National Forest, 344 S. Cortez, Prescott, AZ 86301; (928) 443–8130 or *dmaneely@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Welcome and introductions; (2) update on funding and dollars spent to date; (3) review of projects submitted for Round 1; (4) next meeting agenda, location, and date.

Dated: February 4, 2011.

Thomas J. Klabunde,

Acting Forest Supervisor.

[FR Doc. 2011–3019 Filed 2–9–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on April 14, 2011 from 3 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport or Conference Room C.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA, Mendocino National Forest, Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–2361: E-mail *dmcintosh@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include:

(1) Roll Call/Establish Quorum; (2) Review Minutes from the May 13, 2010 Meeting; (3) Project Review and Discussion; (4) Recommend Projects/Vote; (5) Discuss Project Cost Accounting USFS/County of Lake; (6) Set Next Meeting Date; (7) Public Comment Period; Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time. (8) Adjourn.

Dated: January 25, 2011.

Lee D. Johnson,

Designated Federal Officer.

[FR Doc. 2011–2801 Filed 2–9–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Office of the Secretary, Office of Public Affairs.

Title: Commerce.Gov Web site User Survey.

OMB Control Number: None.

Form Number(s): N/A.

Type of Request: Regular submission (new information collection).

Number of Respondents: 36,000.

Average Hours per Response: 2 minutes.

Burden Hours: 1,200.

Needs and Uses: In order to better serve users of *Commerce.gov* and the Department of Commerce bureaus' Web sites, the individual Offices of Public Affairs (12) will collect information from users about their experience on the Web sites. A random number of users will be presented with a pop-up box asking if they would like to take the survey. If they answer no, the box disappears and the user continues on as normal. If they answer yes, then the box displays four (4) questions. As estimates of the number of respondents are determined for the bureaus' web sites, they will be added.

The results will be examined monthly and based upon the results, the Web sites may be tweaked to better help the visitors find what they are seeking.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Nicholas Fraser, (202) 395–5887.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nicholas Fraser, OMB Desk Officer, FAX number (202) 395–7285 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov.*

Dated: February 4, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–2905 Filed 2–9–11; 8:45 am]

BILLING CODE 3510–03–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Gear Identification Requirements.

OMB Control Number: 0648–0351.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 7,088.

Average Hours per Response: 1 minute to mark each piece of gear.

Burden Hours: 23,256.

Needs and Uses: This request is for extension of a current information collection.

As part of fishery management plans developed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), Federal fishing permit holders using specified fishing gear are required to mark that gear with specified information for the purposes of identification (*e.g.,* United States Coast Guard official vessel number, Federal permit number, or other methods identified in the regulations at 50 CFR 648–84 and others). The regulations specify how the gear is to be marked for the purposes of visibility (*e.g.,* buoys, radar reflectors, or other methods identified in the regulations). The display of the identifying characters on fishing gear aids in fishery law enforcement, and the marking of gear for visibility increases safety at sea.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: February 4, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–2906 Filed 2–9–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–905]

Certain Polyester Staple Fiber From the People's Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") is extending the time limit for the preliminary results of the administrative review of certain polyester staple fiber from the People's Republic of China ("PRC"). This review covers the period June 1, 2009, through May 31, 2010.

DATES: *Effective Date:* February 10, 2011.

FOR FURTHER INFORMATION CONTACT: Jerry Huang or Steven Hampton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4047 or (202) 482–0116, respectively.

Background

On July 28, 2010, the Department published in the **Federal Register** a notice of initiation of the administrative review of the antidumping duty order on certain polyester staple fiber from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 75 FR 44224 (July 28, 2010). The preliminary results of this review are currently due no later than March 2, 2011.

Statutory Time Limits

In antidumping duty administrative reviews, section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this administrative review within the original time limit because the Department requires additional time to analyze questionnaire responses, issue supplemental questionnaires, and conduct verification.

Therefore, the Department is extending the time limit for completion of the preliminary results of this administrative review by 90 days. The preliminary results will now be due no later than May 31, 2011. The final results continue to be due 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: February 4, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–3010 Filed 2–9–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–847]

1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 29, 2010, the Department of Commerce (Department) published the preliminary results of the first administrative review of the antidumping duty order on 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India. The review covers one manufacturer/exporter of the subject merchandise to the United States: Aquapharm Chemicals Pvt., Ltd. (Aquapharm). The period of review (POR) is April 23, 2009, through March 31, 2010. The final weighted-average dumping margin for the manufacturer/exporter is listed below in the "Final Results of Review" section of this notice.

DATES: *Effective Date:* February 10, 2011.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Brandon Custard, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–1823, respectively.

SUPPLEMENTARY INFORMATION:

Background

The review covers one manufacturer/exporter of the subject merchandise to the United States: Aquapharm.

On November 29, 2010, the Department published in the **Federal Register** the preliminary results of the first administrative review of the antidumping duty order on 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India (75 FR 73042).

We invited parties to comment on the preliminary results of the review. No interested party submitted comments. Therefore, the final results do not differ from the preliminary results. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by this order includes all grades of aqueous, acidic (non-neutralized) concentrations of 1-hydroxyethylidene-1, 1-diphosphonic acid [1] also referred to as hydroxethlylidenediphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The CAS (Chemical Abstract Service) registry number for HEDP is 2809–21–4. The merchandise subject to this order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2931.00.9043. It may also enter under HTSUS subheading 2811.19.6090. While HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of this order is dispositive.

Final Results of the Review

As a result of our review, we determined that the following weighted-average margin percentage applies for the period April 23, 2009, through March 31, 2010:

Manufacturer/exporter	Margin (percent)
Aquapharm Chemicals Pvt., Ltd	0.00

[1] $C_2H_8O_7P_2$ or $C(CH_3)(OH)(PO_3H_2)_2$

Assessment Rates

The Department shall determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department intends to issue appropriate appraisement instructions for the respondent subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

Where the respondent reported entered value for its U.S. sales, we have calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer.

Where the respondent did not report entered value for its U.S. sales, we have calculated importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer-specific *ad valorem* ratios based on the estimated entered value.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by the company included in these final results of review for which the reviewed company did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate effective during the POR if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the company listed above is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), and therefore the cash deposit rate is 0 percent; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.10 percent, the all-others rate established in the LTFV investigation. *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India: Notice of Final Determination of Sales at Less Than Fair Value,* 74 FR 10543 (March 11, 2009). These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: February 3, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–3018 Filed 2–9–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–506]

Porcelain-on-Steel Cooking Ware from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 1, 2010, the Department of Commerce ("Department") initiated a sunset review of the antidumping duty order on porcelain-on-steel cooking ware ("POS cookware") from the People's Republic of China ("PRC") pursuant to section 751(c) of the Tariff Act of 1930, as amended ("Act"). *See Initiation of Five-Year ("Sunset") Review,* 75 FR 60731 (October 1, 2010) ("*Sunset Initiation*"); *see also Antidumping Duty Order; Porcelain-on-Steel Cooking Ware from the People's Republic of China,* 51 FR 43414 (December 2, 1986) ("*Order*"). On October 18, 2010, Columbian Home Products, LLC (formerly General Housewares Corporation) ("Columbian"), the petitioner in the POS cookware investigation, notified the Department that it intended to participate in the sunset review. The Department did not receive a substantive response from any respondent party. Based on the notice of intent to participate and adequate response filed by the domestic interested party, and the lack of response from any respondent interested party, the Department conducted an expedited sunset review of the *Order* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of this sunset review, the Department finds that revocation of the *Order* would likely lead to continuation or recurrence of dumping, at the levels indicated in the "Final Results of Sunset Review" section of this notice, *infra.*

DATES: *Effective Date:* February 10, 2011.

FOR FURTHER INFORMATION CONTACT: Toni Dach; AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* 202–482–1655.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2010, the Department initiated a sunset review of the order on POS cookware pursuant to section 751(c) of the Act. *See Sunset Initiation,* 75 FR 60731. On October 18, 2010, the Department received a timely notice of intent to participate in the sunset review from Columbian, pursuant to 19 CFR 351.218(d)(1)(i). In accordance with 19 CFR 351.218(d)(1)(ii)(A), Columbian claimed interested party status under section 771(9)(C) of the Act as a producer of the domestic like product.

On November 1, 2010, Columbian filed a substantive response in the sunset review, within the 30-day deadline as specified in 19 CFR 351.218(d)(3)(i). The Department did not receive a substantive response from any respondent interested party in the sunset review. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of the *Order.*

Scope of the Order

The merchandise covered by this order is porcelain-on-steel cooking ware from the PRC, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. The merchandise is currently classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 7323.94.00. The HTSUS subheading is provided for convenience and customs purposes. The written description of the scope remains dispositive.

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review is addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. See the Department's memorandum entitled, "Issues and Decision Memorandum for the Final Results in the Expedited Sunset Review of the Antidumping Duty Order on Porcelain-on-Steel Cooking Ware from the People's Republic of China," dated January 27, 2011 ("I&D Memo"). The issues discussed in the accompanying I&D Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margin likely to prevail if the *Order* was revoked. Parties can obtain a public copy of the I&D Memo on file in the Central Records Unit, Room 7046, of the main Commerce building. In addition, a complete public copy of the I&D Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the I&D Memo are identical in content.

Final Results of Sunset Review

The Department determines that revocation of the *Order* on POS cookware would likely lead to continuation or recurrence of dumping. The Department also determines that the dumping margins likely to prevail if the order was revoked are as follows:

Manufacturers/exporters/ producers	Weighted-average margin (percent)
China National Light Industrial Products Import and Export Corporation	66.65
PRC-Wide Entity	66.65

Notification Regarding Administrative Protective Order

This notice also serves as the only 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. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 27, 2011.

Christian Marsh,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–3008 Filed 2–9–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on wooden bedroom furniture ("WBF") from the People's Republic of China ("PRC"). The period of review ("POR") is January 1, 2009 through December 31, 2009. This administrative review covers multiple exporters of the subject merchandise, one of which is being individually examined as a "mandatory respondent."

We have preliminarily determined that the mandatory respondent, Huafeng Furniture Group Co., Ltd. ("Huafeng"), made sales to the United States at prices below normal value ("NV"). Nine companies failed to provide separate rate information and thus did not demonstrate that they are entitled to a separate rate, and have been treated as part of the PRC-wide entity. Additionally, 31 separate rate applicants (including Huafeng) have demonstrated that they are entitled to a separate rate and have been assigned the dumping margin calculated for the mandatory respondent. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis.*

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument a statement of the issue and a brief summary of the argument. We intend to issue the final results of this review no later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* February 10, 2011.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen or Rebecca Pandolph, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2769 or (202) 482–3627, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2005, the Department published in the **Federal Register** the antidumping duty order on WBF from the PRC.[1] On January 11, 2010, the Department notified interested parties of their opportunity to request an administrative review of orders, findings, or suspended investigations with anniversaries in January 2010, including the antidumping duty order on WBF from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 75 FR 1333 (January 11, 2010) ("*Opportunity to Request Administrative Review*"). In January 2010, the petitioners, American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. ("AFMC/Vaughan-Bassett"), and the domestic interested parties, Kimball International, Inc., Kimball Furniture Group, Inc. and Kimball Hospitality Inc., American of Martinsville, and Ashley Furniture, and certain foreign exporters requested that the Department conduct an administrative review. In total, the Department received review requests covering 171 companies. On March 4, 2010, the Department published a notice initiating an antidumping duty administrative review of WBF from the PRC covering 171 companies and the period January 1, 2009 through December 31, 2009. *See Initiation of Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture From the People's Republic of China,* 75 FR 9869 (March 4, 2010) ("*Initiation Notice*").

In the *Initiation Notice* and *Opportunity to Request Administrative Review,* parties were notified that if the Department limited the number of respondents selected for individual examination, it would select respondents based on export/shipment data provided in response to the Department's quantity and value ("Q&V") questionnaire. The Department further stated its intention to limit the number of Q&V questionnaires issued in the review based on CBP data for U.S. imports classified under the Harmonized Tariff Schedule of the United States ("HTSUS") headings identified in the scope of the antidumping duty order on WBF from the PRC and to send Q&V questionnaires to the 20 companies for which a review was requested with the largest total values of subject merchandise imported into the United States during the POR according to CBP data. *See Initiation Notice,* 75 FR at 9870. The *Initiation Notice* also notified parties that they must timely submit separate rate applications or separate rate certifications in order to qualify for a separate rate. *See Initiation Notice,* 75 FR at 9870–71.

On March 2, 2010, the Department issued Q&V questionnaires to the 20 companies for which a review was requested with the largest shipments by value according to information gathered from CBP. These questionnaires requested that the companies report the Q&V of their POR exports and/or shipments of WBF to the United States for the purpose of respondent selection. The Department received 59 Q&V questionnaire responses during March 2010. In addition, from March through May 2010, the Department received separate rate certifications and applications as well as requests from seven companies to be treated as voluntary respondents.

On April 5, 2010, AFMC/Vaughan-Bassett submitted comments on the Department's process of selecting mandatory respondents. Given its limited resources, and the fact that an administrative review was requested for 171 companies/company groupings, on April 28, 2010, the Department decided to individually examine the following companies, based upon the Q&V data: (1) Huafeng and (2) the Dorbest Group, which consists of Rui Feng Woodwork Co. Ltd., Rui Feng Lumber Development Co., Ltd., Dorbest Ltd., Rui Feng Woodwork (Dongguan) Co., Ltd., and Rui Feng Lumber Development (Shenzhen) Co., Ltd.[2]

On April 28, 2010, the Department issued the antidumping questionnaire to Huafeng and the Dorbest Group, and made the questionnaire available to the voluntary respondents. After all parties withdrew their review requests for the Dorbest Group,[3] the Department issued an amendment to the Respondent Selection Memorandum on June 16, 2010, naming the company group Dongguan Sunrise Furniture Co., Taicang Sunrise Wood Industry Co., Ltd., and Huafeng Designs ("Fairmont") as an additional mandatory respondent.[4]

From March through August 2010, a number of interested parties withdrew

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China,* 70 FR 329 (January 4, 2005).

[2] *See* memorandum to Abdelali Elouaradia, Director, Office 4, AD/CVD Operations, regarding, "Respondent Selection in the 2009 Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China," dated April 28, 2010 ("Respondent Selection Memorandum").

[3] All review requests were withdrawn for the Dorbest Group prior to the due date for the group to respond to section A of the antidumping questionnaire.

[4] *See* memorandum to Abdelali Elouaradia, Director, Office 4, AD/CVD Operations, regarding, "Amendment to Respondent Selection in the Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China (PRC)," dated June 16, 2010.

their review requests, including all review requests of the mandatory respondent Fairmont. On September 9, 2010, the Department published a notice rescinding the review with respect to 119 entities for which all review requests had been withdrawn.[5]

Between June and November 2010, Huafeng responded to the Department's antidumping questionnaire and supplemental questionnaires and AFMC/Vaughan-Bassett commented on Huafeng's responses.

In response to the Department's September 2, 2010, letter providing parties with an opportunity to submit comments regarding surrogate country and surrogate value selection, AFMC/Vaughan Bassett and Huafeng filed surrogate value comments in September and November 2010.

On September 15, 2010, the Department extended the deadline for the issuance of the preliminary results of the administrative review until January 31, 2011.[6]

In November and December 2010, the Department verified the antidumping questionnaire and supplemental questionnaire responses of Huafeng by visiting its PRC headquarters and factory and its U.S. sales affiliate Great River Trading Co. ("GRT").[7]

On December 7, 2010, AFMC/Vaughan-Bassett withdrew the sole request for a review of Zhangjiagang Zheng Yan Decoration Co., Ltd. ("ZYD"). Although the withdrawal was submitted more than six months after the 90-day regulatory deadline for withdrawing review requests established in 19 CFR 351.213(d), AFMC/Vaughan-Bassett contend that the Department has not expended considerable resources and effort on this company and thus it should exercise its discretion to accept the withdrawal of the review request with respect to ZYD. The Department has decided it is not reasonable to extend the time for AFMC/Vaughan-Bassett's filing a withdrawal of its request for a review of ZYD because it was submitted at an advanced stage of the review.

[5] *See Wooden Bedroom Furniture From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 54854 (September 9, 2010).

[6] *See Wooden Bedroom Furniture From the People's Republic of China: Extension of Time Limits for the Preliminary Results of the Antidumping Duty Administrative Review,* 75 FR 56059 (September 15, 2010).

[7] *See* the separate January 31, 2010, memoranda regarding verification in the 5th Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China covering Dalian Huafeng Furniture Group Co., Ltd. and Great River Trading Co., Ltd. (collectively, the "5th Review Verification Reports").

Scope of the Order

The product covered by the order is WBF. WBF is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,[8] highboys,[9] lowboys,[10] chests of drawers,[11]chests,[12]door chests,[13] chiffoniers,[14] hutches,[15] and armoires;[16](6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate; [17] (9) jewelry armories; [18] (10) cheval

[8] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[9] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[10] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[11] A chest of drawers is typically a case containing drawers for storing clothing.

[12] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[13] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[14] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[15] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[16] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[17] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. See CBP's Headquarters Ruling Letter 043859, dated May 17, 1976.

[18] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24 inches in width, 18 inches in depth, and 49 inches in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. *See* Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, concerning "Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China," dated August 31, 2004. *See also Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review, and Determination To Revoke Order in Part,* 71 FR 38621 (July 7, 2006).

mirrors; [19] (11) certain metal parts; [20] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; (13) upholstered beds [21] and (14) toy boxes.[22]

Imports of subject merchandise are classified under subheadings 9403.50.9042 and 9403.50.9045 [23] of the HTSUS as "wooden * * * beds" and under subheading 9403.50.9080 of the HTSUS as "other * * * wooden furniture of a kind used in the bedroom." In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9042 or 9403.50.9045 of the HTSUS as "parts of wood." Subject merchandise may also be entered under subheading 9403.60.8081.[24] Further, framed glass mirrors may be entered under subheading 7009.92.1000 [25] or 7009.92.5000 of the HTSUS as "glass mirrors * * * framed." This order covers all WBF meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

[19] Cheval mirrors are any framed, tiltable mirror with a height in excess of 50 inches that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.*, a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet line with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review and Determination To Revoke Order in Part*, 72 FR 948 (January 9, 2007).

[20] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.*, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under HTSUS subheadings 9403.90.7005, 9403.90.7010, or 9403.90.7080.

[21] Upholstered beds that are completely upholstered, *i.e.*, containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part*, 72 FR 7013 (February 14, 2007).

[22] To be excluded the toy box must: (1) Be wider than it is tall; (2) have dimensions within 16 inches to 27 inches in height, 15 inches to 18 inches in depth, and 21 inches to 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials ("ASTM") standard F963–03. Toy boxes are boxes generally designed for the purpose of storing children's items such as toys, books, and playthings. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part*, 74 FR 8506 (February 25, 2009). Further, as determined in the scope ruling memorandum "Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling on a White Toy Box," dated July 6, 2009, the dimensional ranges used to identify the toy boxes that are excluded from the wooden bedroom furniture order apply to the box itself rather than the lid.

[23] These HTSUS numbers, as well as the numbers in footnote 19, reflect the HTSUS numbers currently in effect. These numbers differ from those used in the last completed antidumping duty administrative review of WBF from the PRC because the HTSUS has been revised.

[24] This HTSUS number has been added to the scope in this segment of the proceeding.

[25] *Id.*

[26] *See* memorandum to the file through Howard Smith, Program Manager, AD/CVD Operations, Office 4, entitled "Verification at Dalian Huafeng Furniture Group Co., Ltd. in the 5th Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China," dated January 31, 2011.

[27] *See* memorandum to the file through Howard Smith, Program Manager, AD/CVD Operations, Office 4, entitled "Verification at Great River Trading Co., Ltd. in the 5th Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China," ("CEP Verification Report") dated January 31, 2011.

[28] *See* memorandum to Abdelali Elouaradia, Director, Office 4, AD/CVD Operations, regarding "Intent to Rescind the Review of Respondents Claiming No Sales/Shipments" dated January 31, 2011.

[29] *Id.*

[30] Dongguan Huangsheng Furniture Co., Ltd.'s only sales made during the POR were covered by a new shipper review for the period January 1, 2009, through December 31, 2009. If the new shipper review of this company is completed, these shipments are not subject to this administrative review. *See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Reviews,* 75 FR 72794 (November 26, 2010); *see also* 19 CFR 351.214(j).

[31] Zhejiang Tianyi's only sales made during the POR were covered by a new shipper review covering the period January 1, 2009, through June 30, 2009 and thus are not subject to this review. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 75 FR 44764 (July 29, 2010).

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended ("the Act"), we have verified the information provided by Huafeng using standard verification procedures including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in the 5th Review PRC Verification Report [26] and 5th Review CEP Verification Report,[27] the public versions of which are available in the Central Records Unit, Room 7046 of the main Department building.

Intent To Rescind the 2009 Administrative Review, in Part

Among the companies still under review, 12 companies reported that they made no shipments of subject merchandise to the United States during the POR. To test these claims, the Department ran a CBP data query, issued no-shipment inquiries to CBP requesting that it provide any information that contradicted the no-shipment claims, and obtained entry documents from CBP.[28] After examining record information, we have preliminarily determined that three of the 12 companies, Nantong Yangzi Furniture Company ("Nantong Yangzi"), Zhongshan Gainwell Furniture Co., Ltd. ("Zhongshan Gainwell"), and Dongguan Landmark Furniture Products Ltd. ("Dongguan Landmark"), had shipments of subject merchandise that entered the United States during the POR.[29]

Since record evidence does not contradict the no-shipment claims of the following companies, the Department has preliminarily rescinded this administrative review with respect to these companies, pursuant to 19 CFR 351.213(d)(3):

- Clearwise Company Limited
- Dongguan Huangsheng Furniture Co., Ltd.[30]
- Dongguan Mu Si Furniture Co. Ltd.
- Fleetwood Fine Furniture LP
- Hainan Jong Bao Lumber Co. Ltd/ Jibbon Enterprise Co., Ltd.
- Shanghai Fangjia Industry Co., Ltd.
- Yeh Brothers World Trade Inc.
- Golden Well International (HK) Ltd.
- Zhejiang Tianyi Scientific and Educational Equipment Co., Ltd. ("Zhejiang Tianyi") [31]

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy ("NME") country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the

administering authority. None of the parties to this proceeding have contested NME treatment. Accordingly, the Department calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Selection of a Surrogate Country

When the Department conducts an antidumping duty administrative review of imports from an NME country, section 773(c)(1) of the Act directs the Department to base NV, in most cases, on the NME producer's factors of production ("FOP") valued in a surrogate market economy country or countries considered appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department will value FOP using "to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—(A) at a level of economic development comparable to that of the NME country, and (B) significant producers of comparable merchandise." Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value all FOP in a single country, except for labor.

In the instant review, the Department identified India, Indonesia, Peru, the Philippines, Thailand, and Ukraine as being at a level of economic development comparable to the PRC.[32] On September 14, 2010, AFMC/Vaughan-Bassett provided information regarding the selection of a surrogate country.[33] AFMC/Vaughan-Bassett asserted that the Philippines satisfies the statutory requirements for the selection of the surrogate country because it is at a level of economic development comparable to the PRC and is a significant producer of comparable merchandise.[34] AFMC/Vaughan-Bassett provided an October 2007 report entitled the *The Furniture Industry in the Philippines* published by the international research firm CSIL Milano that demonstrates the significance of Philippine production of wooden furniture.[35] Moreover, AFMC/Vaughan-Bassett noted that the Philippines has been selected as the surrogate country in the recent segments of this proceeding and provides readily available and reliable factor value data.[36] No other interested parties commented on the selection of a surrogate country.

Based on the information on the record, we find that the Philippines is a significant producer of comparable merchandise. Specifically, *The Furniture Industry in the Philippines* report indicates that in 2006, Philippine manufacturers produced furniture valued at $813 million and the Philippines exported furniture valued at $279 million.[37] In addition, *The Furniture Industry in the Philippines* describes the furniture sector as comprised of approximately 15,000 manufacturers and 800,000 workers.[38] Thus, record evidence shows that the Philippines is a significant producer of merchandise that is comparable to the merchandise under review.

With respect to data considerations in selecting a surrogate country, from September to December 2010, AFMC/Vaughan-Bassett and Huafeng submitted publicly-available Philippine data for valuing Huafeng's FOP. In addition, the Department used the Philippines as the primary surrogate country in the second, third, and fourth administrative reviews of this proceeding.[39] Therefore, based on parties' submissions on the instant record and its experience in this proceeding, the Department finds that reliable, publicly available data for valuing FOP are available from the Philippines.

However, for the input "railway freight," the Department has been unable to locate a suitable surrogate value from the Philippines. Therefore, we preliminary determine to use India as a secondary surrogate country because the record shows that India is at a level of economic development comparable to that of the PRC[40] and is a significant producer of merchandise comparable to the subject merchandise.[41] Moreover, India has publicly available, country-wide data that clearly identifies the relevant time period and prices for valuing railway freight.[42]

Thus, the Department has preliminarily selected the Philippines as the surrogate country because the record shows that the Philippines is at a level of economic development comparable to that of the PRC and is a significant producer of merchandise comparable to subject merchandise. Moreover, the record indicates that sufficient, contemporaneous, public Philippine data are readily-available.[43] Accordingly, we have selected the Philippines as the surrogate country and we have calculated NV using Philippine prices to value Huafeng's FOP.[44] In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly-available information to value FOP until 20 days after the date of publication of the preliminary results.[45]

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy

[32] *See* memorandum entitled, "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture ("WBF") from the People's Republic of China ("PRC")," dated April 26, 2010 ("Policy Memorandum"). The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC.

[33] *See* Letter from AFMC/Vaughan-Bassett regarding, "Wooden Bedroom Furniture From the People's Republic of China: Comments Concerning Surrogate Country And The April 26, 2010, Office Of Policy Memorandum," dated September 14, 2010 ("AFMC/Vaughan-Bassett's Surrogate Country Comments").

[34] *See* AFMC/Vaughan-Bassett's Surrogate Country Comments at 2.

[35] *See* AFMC/Vaughan-Bassett's Surrogate Country Comments at Attachment 1.

[36] *See* AFMC/Vaughan-Bassett's Surrogate Country Comments at 3.

[37] *See* AFMC/Vaughan-Bassett's' Surrogate Country Comments at Attachment 1.

[38] *Id.*

[39] *See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review,* 73 FR 8273, 8277–78 (February 13, 2008), unchanged in the final results, 73 FR 49162; *Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of Review,* 74 FR 6372, 6376 (February 9, 2009), unchanged in the final results, 74 FR 41374; and *Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part,* 75 FR 5952, 5956 (February 5, 2010), unchanged in the final results, 75 FR 50992.

[40] *See* Policy Memorandum.

[41] *See* memorandum to the File through Howard Smith, Program Manager, AD/CVD Operations, Office 4, entitled "Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China: Factor Valuation Memorandum," dated January 31, 2011 ("Factor Valuation Memorandum") at Attachments III and IV.

[42] *See* the *Factor Valuations* section below for further details.

[43] *See* Factor Valuation Memorandum.

[44] *Id.*

[45] In accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

to assign all exporters of subject merchandise in a NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. 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) ("*Sparklers*"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585, 22586–87 (May 2, 1994) ("*Silicon Carbide*"). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control. *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China,* 64 FR 71104, 71105 (December 20, 1999) (where the respondent was wholly foreign-owned and thus qualified for a separate rate). As part of our analysis we sent several supplemental questionnaires to certain separate rate respondents and received responses in September and October 2010.

A. Separate Rate Recipients

1. Wholly Foreign-Owned [46]

Certain companies reported that they are wholly owned by individuals or companies located in a market economy (collectively, "Foreign-owned SR Applicants"). The record indicates that these companies are wholly foreign-owned and the Department has no evidence indicating that they are under the control of the PRC government. Accordingly, the Department has preliminarily granted a separate rate to these Foreign-owned SR Applicants.

2. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies [47]

For all separate rate applicants that reported that they are either joint ventures between Chinese and foreign companies, or are wholly Chinese-owned companies (collectively "PRC SR Applicants"), the Department has analyzed whether each PRC SR Applicant has demonstrated the absence of *de jure* and *de facto* governmental control over its respective export activities.

a. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export license; (2) legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589.

The evidence provided by the PRC SR Applicants supports a preliminary finding of an absence of *de jure* governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) applicable legislative enactments decentralizing control of PRC companies; and (3) formal measures by the government decentralizing control of PRC companies.

b. Absence of *De Facto* Control

The Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The evidence provided by the PRC SR Applicants supports a preliminary finding of an absence of *de facto* governmental control based on the following: (1) An absence of restrictive governmental control on the PRC SR Applicants' export prices; (2) a showing of the PRC SR Applicants' authority to negotiate and sign contracts and other agreements; (3) a showing that the PRC SR Applicants maintain autonomy from the government in making decisions regarding the selection of management; and (4) a showing that the PRC SR Applicants retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.

The evidence placed on the record by the PRC SR Applicants demonstrates an absence of *de jure* and *de facto* governmental control, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* Accordingly, the Department has preliminarily granted a separate rate to the PRC SR Applicants.

B. Margins for Separate Rate Recipients Not Individually Examined

Consistent with our normal practice,[48] we based the weighted-average dumping margin for the separate rate recipients not individually examined on the weighted-average dumping margin calculated for Huafeng, the one mandatory respondent that participated in this review. The entities receiving this rate are identified by name in the *Preliminary Results of Review* section of this notice.

C. Companies Not Receiving a Separate Rate

The following nine companies and company groupings for which the Department initiated the instant review did not provide a separate rate certification or application:

- Dongguan Creation Furniture Co., Ltd., Creation Industries Co., Ltd.
- Foshan Guanqiu Furniture Co., Ltd.
- Jiangsu Weifu Group Fullhouse Furniture Mfg. Corp.
- Link Silver Ltd. (V.I.B.), Forward Win Enterprises Company Limited, Dongguan Haoshun Furniture Ltd.
- Nantong Yushi Furniture Co., Ltd.
- Shanghai Aosen Furniture Co., Ltd.
- Shenzhen Xiande Furniture Factory
- Tarzan Furniture Industries, Ltd., Samso Industries Ltd.
- Tianjin Master Home Furniture

The companies listed above, which were named in the *Initiation Notice,* were notified in that notice that they

[46] Wholly foreign-owned companies are identified in the *Preliminary Results of Review* section below by the symbol "*", while partially and wholly owned Chinese companies are identified by the symbol "#".

[47] *Id.*

[48] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006), unchanged in final determination, 72 FR 19690.

must timely submit separate rate applications or separate rate certifications in order to qualify for a separate rate. Additionally, the *Initiation Notice* identified the Web site address where the separate rate certification and the separate rate application could be found. Since each of the companies listed above did not provide separate rate information, they have failed to demonstrate their eligibility for separate rate status. As a result, the Department is treating these PRC exporters as part of the PRC-wide entity.

Also, we have preliminarily found that (1) Nantong Yangzi, (2) Zhongshan Gainwell, and (3) Dongguan Landmark shipped subject merchandise during the POR, despite their claims to the contrary.[49] Because these companies did not file a timely separate rate certification or application and thereby failed to provide separate rate information, they have failed to demonstrate their eligibility for separate rate status. As a result, the Department is treating these companies as part of the PRC-wide entity.

Use of Facts Available and Adverse Facts Available ("AFA")

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if: (1) Necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

A. Application of Total AFA to the PRC-Wide Entity

In the *Initiation Notice,* the Department stated that if one of the companies for which this review has been initiated "does not qualify for a separate rate, all other exporters of WBF from the PRC that have not qualified for a separate rate are deemed to be covered by this review as part of a single PRC entity * * *." As noted above, not all of the companies for which this review was initiated have qualified for a separate rate; as a result, the PRC-wide entity is now under review.

Certain companies which we are treating as part of the PRC-wide entity did not respond to the Department's request for Q&V data. We preliminarily determine that these companies withheld information requested by the Department.

Thus, pursuant to sections 776(a)(2)(A) (withholds requested information) and (C) (significantly impedes a proceeding) of the Act, the Department has preliminarily based the dumping margin of the PRC-wide entity on the facts otherwise available on the record. Furthermore, the PRC-wide entity's refusal to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown. *See Nippon Steel Corporation* v. *United States,* 337 F.3d 1373, 1383 (Fed. Cir. 2003) (*Nippon Steel*) where the Court of Appeals for the Federal Circuit ("CAFC") explained that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.,* information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown"). Hence, pursuant to section 776(b) of the Act, the Department has determined that, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-wide entity.

B. Application of Partial AFA for Huafeng

At verification, we discovered that Huafeng failed to report all constructed export price ("CEP") sales of subject merchandise that were shipped directly to unaffiliated U.S. customers. Specifically, Huafeng failed to report a number of sales where the date of sale occurred prior to the POR, but the merchandise entered the United States during the POR.[50] We further discovered at verification that Huafeng failed to report CEP sales that it considered to be sample sales, but for which it received payment. Finally, at verification we discovered that Huafeng failed to report CEP sales of four dressers made during the POR. Since Huafeng did not report these sales and the related sales adjustments and did not provide the control numbers for these products as requested by the Department, the information necessary to calculate dumping margins for these sales is not on the record. Thus, the Department has based the dumping margins for the unreported sales on facts available pursuant to section 776(a)(2)(A) (withholds requested information) of the Act.

Moreover, the Department finds that in not reporting these sales, Huafeng has failed to cooperate by not acting to the best of its ability to comply with requests for information and thus it is appropriate to use an inference that is adverse to Huafeng's interests in selecting from among the facts otherwise available in accordance with section 776(b) of the Act. The Department requested that Huafeng report U.S. sales of subject merchandise following the reporting methodology laid out in the questionnaire.[51] In preparing a response to a request from the Department, it is presumed that a respondent is familiar with its own records.[52] At verification, the verifiers readily identified the unreported sales

[49] *See* the January 31, 2011, memorandum from Drew Jackson to Abdelali Elouaradia entitled "Intent to Rescind the Review of Respondents Claiming No Sales/Shipments."

[50] *See* 5th Review CEP Verification Report at 12–13 and Exhibits 1 and 7.

[51] *See, e.g.,* the Department's antidumping questionnaire, dated April 28, 2010, at C–1 and D–1.

[52] *See Nippon Steel,* 337 F.3d at 1383.

described above in documents that Huafeng prepared for verification and in Huafeng's records.[53]

The Department's questionnaire instructs companies to "Report each U.S. sale of merchandise entered for consumption during the POR." In its questionnaire response, Huafeng stated that it had "reported its sales of the subject merchandise to the United States during the POR * * *."[54] To confirm that Huafeng had reported all sales consistent with the Department's questionnaire instructions, the Department again requested of Huafeng in a supplemental questionnaire: "All CEP sales where the date of sale occurs after the date of entry into the United States should be reported based on whether the date of sale occurred in the POR. All CEP sales where the date of sale occurred prior to the date of entry into the United States should be reported based on whether the date of entry was during the POR. Have you done so? If not, please do so at this time."[55] Huafeng responded that it "confirms that all CEP sales where the date of sale occurred prior to the date of entry into the U.S. were reported based on whether the date of entry was during the POR."[56] Contrary to these claims, however, Huafeng failed to report CEP sales where the date of sale occurred prior to the POR, but the merchandise entered the United States during the POR.

With regard to sample sales, the Department, in its questionnaire, requested certain information relating to sample sales, including quantity and gross unit price, and then instructed Huafeng to "Please report in your sales database all instances where you sold samples to customers in the United States." While Huafeng reported export price ("EP") sample sales in its submitted U.S. sales database, it did not report the CEP sample sales in the sales database, but only reported the total sales value of CEP sample sales in the narrative portion of its questionnaire response.[57] Thus, the Department did not know the product information, individual sales value, sales adjustments or almost any other information necessary to calculate the antidumping margin of the CEP sample sales. The Department also asked Huafeng in a supplemental questionnaire "Did you report all sales of subject merchandise for which you received consideration, including sample sales? If not, please do so at this time." Huafeng replied that it had "reported all sales of subject merchandise for which it received consideration, including sample sales," and that in the revised database it had created a field that identified sales of sample merchandise.[58] While Huafeng reported EP sample sales, it continually failed, despite specific requests, to report CEP sample sales in its U.S. sales database.[59]

Lastly, despite claiming in its questionnaire response that it had "reported its sales of the subject merchandise to the United States during the POR in this submission,"[60] at verification, the verifiers found that Huafeng failed to report four sales of dressers.[61]

When Huafeng officials were asked at verification why they failed to report all three types of unreported sales, they did not identify any impediments to reporting them.[62] This, in conjunction with its failure to accurately respond to the numerous requests cited above to report the three different types of unreported sales, indicates that Huafeng did not act to the best of its abilities in investigating its records for reportable sales of subject merchandise. Huafeng failed to act to the best of its ability to comply with the Department's repeated requests for information regarding all of its sales of subject merchandise. Therefore, the Department has preliminarily determined to apply AFA to these unreported sales, pursuant to section 776(b) of the Act.

C. Selection of AFA Rates

1. Total AFA Rate for the PRC-Wide Entity

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. The Department's practice is to select an AFA rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner" and that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[63] Specifically, the Department's practice in selecting a total AFA rate in administrative reviews is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated (assuming the rate is based on secondary information).[64] The Court of International Trade ("CIT") and the CAFC have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.[65] Therefore, as AFA, the Department has preliminarily assigned the PRC-wide entity a dumping margin of 216.01 percent. This margin, which is from the 2004–2005 new shipper reviews of WBF from the PRC, is the highest dumping margin on the record of any segment of this proceeding.[66]

2. Partial AFA for Huafeng's Unreported Sales

Consistent with the approach taken under the same circumstances in the 2008 antidumping duty administrative review of WBF from the PRC, we have

[53] *See* 5th Review CEP Verification Report at Exhibit 7.

[54] *See* Huafeng's July 6, 2010 submission at 2.

[55] *See* Huafeng's September 20, 2010 submission at 3.

[56] *See* Huafeng's September 20, 2010 submission at 3.

[57] *See* Huafeng's July 6, 2010 submission at 48, which contains both the Department's question and Huafeng's response.

[58] *See* Huafeng's October 27, 2010 response at 12, which contains both the Department's question and Huafeng's response.

[59] *Id.* at Exhibit S–66.

[60] *See* Huafeng's July 6, 2010 submission at 2.

[61] *See* CEP Verification Report at 11.

[62] *See* 5th Review CEP Verification Report at 12–14.

[63] *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8911 (February 23, 1998); *see also Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review,* 70 FR 69937, 69939 (November 18, 2005) and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103, 316, 838, 870 (1994).

[64] *See Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 15930, 15934 (April 8, 2009), unchanged in the final results, 74 FR 41121; *see also Fujian Lianfu Forestry Co., Ltd. v. United States,* 638 F. Supp. 2d 1325, 1336 (Ct. Int'l Trade 2009) ("Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.").

[65] *See, e.g., NSK Ltd.* v. *United States,* 346 F. Supp. 2d 1312, 1335 (Ct. Int'l Trade 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in the investigation); *Kompass Food Trading Int'l* v. *United States,* 24 CIT 678, 683–84 (2000) (affirming a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen Int'l Trading Co., Ltd.* v. *United States,* 360 F. Supp. 2d 1339, 1348 (Ct. Int'l Trade 2005) (affirming a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

[66] *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004–2005 Semi-Annual New Shipper Reviews,* 71 FR 70739, 70741 (December 6, 2006) ("*2004–2005 New Shipper Review*").

assigned as partial AFA for the unreported sales the PRC-wide rate of 216.01 percent cited above, which is from the 2004–2005 new shipper reviews of WBF from the PRC, and is the highest dumping margin on the record of any segment of this proceeding.[67]

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[68] Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.[69] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.[70] Independent sources used to corroborate such information may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[71]

The 216.01 AFA rate that the Department is using in this review is a company-specific rate calculated in the *2004–2005 New Shipper Review* of the WBF order.[72] No additional information has been presented in the current review which calls into question the reliability of the information. Thus, we have determined this information continues to be reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). Similarly, the Department does not apply a margin that has been discredited. *See D&L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997) (ruling that the Department will not use a margin that has been judicially invalidated).

To assess the relevancy of the rate used, the Department compared the transaction-specific margins calculated for Huafeng in the instant administrative review with the 216.01 percent rate calculated in the *2004–2005 New Shipper Review* and found that the 216.01 percent margin was within the range of the margins calculated on the record of the instant administrative review. Because the dumping margins used to corroborate the AFA rate do not reflect unusually high dumping margins relative to the calculated rates determined for the cooperating respondent, the Department is satisfied that the dumping margins used for corroborative purposes reflect commercial reality because they are based upon real transactions that occurred during the POR, were subject to verification by the Department, and were sufficient in number both in terms of the number of sales and as a percentage of total sales quantity.[73]

Since the 216.01 percent margin is within the range of Huafeng's transaction-specific margins on the record of this administrative review, the Department has determined that the 216.01 percent margin continues to be relevant for use as an AFA rate for the PRC-wide entity and for use as an AFA rate applied to Huafeng's unreported sales.

As the adverse margin is both reliable and relevant, the Department has determined that it has probative value. Accordingly, the Department has determined that this rate meets the corroboration criterion established in section 776(c) of the Act.

Fair Value Comparisons

In accordance with section 777A(d)(2) of the Act, to determine whether Huafeng sold WBF to the United States at less than NV, we compared the weighted-average export and constructed export price of the WBF to the NV of the WBF, as described in the "U.S. Price," and "Normal Value" sections of this notice.

Export Price

The Department considered the U.S. prices of certain sales by Huafeng to be EP sales in accordance with section 772(a) of the Act, because these were the prices at which the subject merchandise was first sold before the date of importation by the producer/exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States.

We calculated EPs based on prices to unaffiliated purchaser(s) in the United States. We deducted movement expenses from the gross unit U.S. sales price in accordance with section 772(c)(2)(A) of the Act. These movement expenses include foreign inland freight from the plant to the port of exportation, and foreign brokerage and handling. Where applicable, we reduced movement expenses by freight revenue. For a detailed description of all adjustments, *see* Huafeng Analysis Memorandum, dated concurrently with this notice.

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. We considered sales made by Huafeng's U.S. affiliate in the United States to be CEP sales.

We calculated CEP based on prices to unaffiliated purchasers in the United

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[67] *Id.*

[68] *See SAA* at 870.

[69] *Id.*

[70] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in the final results, 62 FR 11825; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[71] *See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan,* 68 FR 35627, 35629 (June 16, 2003), unchanged in final determination, 68 FR 62560; *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada,* 70 FR 12181, 12183–84 (March 11, 2005).

[72] *See 2004–2005 New Shipper Review,* 71 FR at 70741.

[73] *See* the January 31, 2010 Corroboration Memorandum.

States. In accordance with section 772(c)(2)(A) and 772(d)(1) and of the Act, where applicable, we made deductions from the starting price for billing adjustments, discounts and rebates, movement expenses, and commissions, credit expenses, inventory carrying costs, factoring expense, warranty expense, and indirect selling expenses which relate to commercial activity in the United States. Movement expenses included, where applicable, foreign inland freight from the plant to the port of exportation, foreign brokerage and handling, ocean freight, marine insurance, U.S. inland freight from the port to the warehouse, U.S. freight from the warehouse to the customer, U.S. customs duty, and other U.S. transportation costs. Where applicable, we reduced movement expenses by freight revenue. In addition, we deducted CEP profit from U.S. price in accordance with sections 772(d)(3) and 772(f) of the Act. As a CEP adjustment and in accordance with section 773(a) of the Act, we calculated Huafeng's credit expenses and inventory carrying costs based on short-term interest rates. Because Huafeng did not incur short-term U.S. dollar borrowings during the POR, we based its interest rate on the short-term interest rate from the Federal Reserve. For a detailed description of all adjustments, *see* Huafeng Analysis Memorandum, dated January 31, 2010.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(e) of the Act. When determining NV in an NME context, the Department will base NV on FOP, because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOP include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department based NV on consumption quantities reported by Huafeng for materials, energy, labor and packing.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly-available surrogates to value FOP, but when a producer sources an input from a market economy and pays for it in market economy currency, the Department will normally value the factor using the actual price paid for the input. However, when the Department has reason to believe or suspect that such prices may be distorted by subsidies, the Department will disregard the market economy purchase prices and use surrogate values ("SVs") to determine the NV.[74] Where the facts developed in either U.S. or third-country countervailing duty findings include the existence of subsidies that appear to be used generally (in particular, broadly available, non-industry specific export subsidies), the Department will have reason to believe or suspect that prices of the inputs from the country granting the subsidies may be subsidized.[75]

In accordance with the OTCA 1988 legislative history, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be subsidized.[76] In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[77] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOP reported by Huafeng for the POR. To calculate NV, the Department multiplied the reported per-unit factor quantities by publicly-available Philippine SVs (except as noted below). In selecting the SV, the Department considered the quality, specificity, and contemporaneity of the data. As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. Specifically, the Department added to Philippine import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory where appropriate (*i.e.,* where the sales terms for the market economy inputs were not delivered to the factory). This adjustment is in accordance with the decision of the CAFC in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). Due to the extensive number of SVs in this administrative review, we present only a brief discussion of the main FOP in this notice. For a detailed description of all SVs used to value Huafeng's reported FOP, *see* Factor Valuation Memorandum.

Huafeng reported that certain of its reported raw material inputs were sourced from market economy countries and paid for in market economy currencies. Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from a market economy supplier in meaningful quantities (*i.e.,* not insignificant quantities), we use the actual price paid by the respondents for those inputs, except when prices may have been distorted by findings of dumping by the PRC and/or subsidies.[78] Huafeng reported information demonstrating that the quantities of certain raw materials purchased from market economy suppliers are significant. Where we found market economy purchases of inputs to be in significant quantities, in accordance

[74] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of the 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part,* 66 FR 1953 (January 10, 2001) ("*TRBs 1998–1999*)," and accompanying Issues and Decision Memorandum at Comment 1.

[75] *See TRBs 1998–1999* at Comment 1; *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part,* 66 FR 57420 (November 15, 2001), and accompanying Issues and Decision Memorandum at Comment 1; *China National Machinery Imp. & Exp. Corp.* v. *United States,* 293 F. Supp. 2d 1334, 1338–39 (Ct. Int'l Trade 2003).

[76] *See* Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) ("OTCA 1988") at 590.

[77] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order,* 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at Comment 2; *Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review,* 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at page 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at pages 17, 19–20; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand,* 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at page 23.

[78] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27366 (May 19, 1997).

with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs,* we have used the actual purchases of these inputs to value the inputs.[79]

Where market economy purchases of inputs were not made in significant quantities, we used, in part, import values for the POR from the Philippines National Statistics Office ("Philippines NSO") reported in U.S. dollars on a cost, insurance, and freight ("CIF") basis to value the following inputs: processed woods (*e.g.,* particleboard, *etc.*), adhesives and finishing materials (*e.g.,* glue, paints, sealer, lacquer, *etc.*), hardware (*e.g.,* nails, staples, screws, bolts, knobs, pulls, drawer slides, hinges, clasps, *etc.*), other materials (*e.g.,* mirrors, glass, leather, cloth, sponge, *etc.*), and packing materials (*e.g.,* cardboard, cartons, plastic film, labels, tape, *etc.*). The Philippines NSO is the only data source on the record that provides data on a net weight basis, which is the same basis as reported by the respondent in reporting its FOP. For a complete listing of all the inputs and the valuation for each *see* Factor Valuation Memorandum.

Where we could only obtain SVs that were not contemporaneous with the POR, we inflated (or deflated) the surrogate values using the Philippine Wholesale Price Index as published in the *International Financial Statistics* of the International Monetary Fund.

On May 14, 2010, the CAFC in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (CAFC 2010) ("*Dorbest IV*"), found that the "{regression-based} method for calculating wage rates {as stipulated by 19 CFR 351.408(c)(3)} uses data not permitted by {the statutory requirements laid out in section 773 of the Act (i.e., 19 U.S.C. 1677b(c))}."

For the preliminary results of this review, the Department is valuing labor using a simple average industry-specific wage rate using earnings or wage data reported under Chapter 5B by the International Labor Organization ("ILO"). To achieve an industry-specific labor value, we relied on industry-specific labor data from the countries we determined to be both economically comparable to the PRC and significant producers of comparable merchandise. A full description of the industry-specific wage rate calculation methodology is provided in the Factor Valuation Memorandum. The Department calculated a simple average industry-specific wage rate of $1.20 for these preliminary results. Specifically, for this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 36 of the ISIC–Revision 3 standard by countries determined to be both economically comparable to the PRC and significant producers of comparable merchandise. The Department finds the two-digit description under International Standard Industrial Classification—Revision 3 ("Manufacture of furniture; manufacturing n.e.c.") to be the best available wage rate surrogate value on the record because it is specific and derived from industries that produce merchandise comparable to the subject merchandise. Consequently, we averaged the ILO industry-specific wage rate data or earnings data available from the following countries found to be economically comparable to the PRC and significant producers of comparable merchandise: Ecuador, Egypt, Indonesia, Jordan, Peru, the Philippines, Thailand, and Ukraine. For further information on the calculation of the wage rate, *see* Factor Valuation Memorandum.

We valued electricity using contemporaneous Philippine data from *The Cost of Doing Business in Camarines Sur* available at the Philippine government's Web site for the province: *http://www.camarinessur.gov.ph.*[80] This data pertained only to industrial consumption.

We calculated the value of domestic brokerage and handling and truck freight using Philippine data cited in a report compiled and released by the World Bank Group, entitled "Trading Across Borders" and available at *http://www.doingbusiness.org/data/exploreeconomies/philippines/trading-across-borders.*[81]

As noted above, the Department has been unable to locate a suitable surrogate value from the Philippines for the input "railway freight." Therefore, the Department has calculated the surrogate value for railway freight using data from Indian Railways available at: *http://www.Indianrailways.gov.in/.* While the Department normally does not use data from an alternative surrogate country, no such data is available for truck freight in the Philippines. Thus, the Department has determined that the Indian Railways data are the only data on the record that are contemporaneous, country-wide and clearly identify the relevant time period, exact prices, distances, and weights. We further note that the Department has relied on surrogate values from India when usable surrogate values from the Philippines are not on the record,[82] has relied on India as a surrogate country in a previous segment of the proceeding,[83] and listed India as a suitable surrogate country for this review.[84] For these reasons, in the final results we will value Huafeng's inland freight expenses using Indian Railways data.

We valued factory overhead, selling, general, and administrative ("SG&A") expenses, and profit, using the audited financial statements for the fiscal year ending December 31, 2009, from the following producers: APY Cane International; Berbenwood Industries; Clear Export Industries, Inc.; Heritage Meubles Mirabile Export, Inc.; Interior Crafts of the Islands, Incorporated; Wicker & Vine, Inc.; and Insular Rattan & Native Products Corp. These companies are the only Philippine producers of merchandise identical to subject merchandise which received no countervailable subsidies, and earned a before tax profit in 2009 for which we have financial information. From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy (ML&E) costs; SG&A as a percentage of ML&E plus overhead (*i.e.,* total cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A. For further discussion, *see* Factor Valuation Memorandum.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margins exist for the period January 1, 2009 through December 31, 2009:

[79] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717 (October 19, 2006) ("*Antidumping Methodologies: Market Economy Inputs*"); *see also* Huafeng Analysis Memorandum.

[80] For a copy of pages from this website, *see* the Factor Valuation Memorandum at 8.

[81] For a copy of pages from this website, *see* the Factor Valuation Memorandum at 9.

[82] *Id.; see also Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (August 20, 2008) and accompanying Issues and Decision Memorandum at Comment 1.

[83] *See Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture From the People's Republic of China*, 72 FR 46957, 46960 (August 22, 2007).

[84] *See* Policy Memorandum.

Exporter	Antidumping duty percent margin
Dalian Huafeng Furniture Co., Ltd./Dalian Huafeng Furniture Group Co., Ltd.#	16.24
Baigou Crafts Factory of Fengkai#	16.24
Cheng Meng Furniture (PTE) Ltd., Cheng Meng Decoration & Furniture (Suzhou) Co., Ltd.*	16.24
COE, Ltd.*	16.24
Dongguan Bon Ten Furniture Co., Ltd.#	16.24
Dongguan Hero Way Woodwork Co., Ltd., Dongguan Da Zhong Woodwork Co., Ltd., Hero Way Enterprises Ltd., Well Earth International Ltd.*	16.24
Dongguan Kin Feng Furniture Co., Ltd. #	16.24
Dongguan Liaobushangdun Huada Furniture Factory, Great Rich (HK) Enterprise Co., Ltd.*	16.24
Dongguan Singways Furniture Co., Ltd#	16.24
Dongguan Sunshine Furniture Co., Ltd.#	16.24
Eurosa (Kunshan) Co., Ltd., Eurosa Furniture Co., (PTE) Ltd. (Eurosa)*	16.24
Garri Furniture (Dong Guan) Co., Ltd., Molabile International, Inc. Weei Geo Enterprise Co., Ltd.*	16.24
Hong Kong Da Zhi Furniture Co., Ltd., Dongguan Grand Style Furniture Co., Ltd.#	16.24
Hualing Furniture (China) Co., Ltd., Tony House Manufacture (China) Co., Ltd., Buysell Investments Ltd., Tony House Industries Co., Ltd.*	16.24
Jardine Enterprise, Ltd.*	16.24
Longkou Huangshan Furniture Factory#	16.24
Meikangchi (Nantong) Furniture Company Ltd.*	16.24
Nanhai Baiyi Woodwork Co. Ltd.#	16.24
Nanjing Nanmu Furniture Co., Ltd.#	16.24
Season Furniture Manufacturing Co., Season Industrial Development Co.#	16.24
Shenyang Shining Dongxing Furniture Co., Ltd.#	16.24
Shenzhen Shen Long Hang Industry Co., Ltd.#	16.24
Wanhengtong Nueevder (Furniture) Manufacture Co., Ltd., Dongguan Wanengtong Industry Co., Ltd.#	16.24
Winny Overseas, Ltd.*	16.24
Xilinmen Furniture Co., Ltd.#	16.24
Zhangjiagang Zheng Yan Decoration Co. Ltd.#	16.24
Zhangjiang Sunwin Arts & Crafts Co., Ltd.#	16.24
Zhong Shan Fullwin Furniture Co., Ltd.*	16.24
PRC-Wide Entity	216.01

Disclosure

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Comments

Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal comments must be limited to the issues raised in the written comments and may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). Parties submitting written comments or rebuttal are requested to provide the Department with an additional copy of those comments on CD–ROM. Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, ordinarily will be held two days after the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d). Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

The Department will issue the final results of the administrative review, which will include the results of its analysis of issues raised in the briefs, within 120 days of publication of these preliminary results, in accordance with 19 CFR 351.213(h)(1) unless the time limit is extended.

Assessment Rates

Pursuant to 19 CFR 351.212, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, the Department calculated exporter/importer (or customer)-specific assessment rates for merchandise subject to this review. Where appropriate, the Department calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, the Department will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where an importer (or customer)-specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties. The Department intends to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate we determine in the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(1) and (a)(2)(C) of the Act: (1) For all respondents receiving a separate rate, the cash deposit rate will be that established in the final results of this review; (2) 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; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate established in the final results of this review; and (4) 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.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The Department is issuing and publishing these preliminary results of administrative review in accordance with section 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: January 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–3024 Filed 2–9–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–829]

Certain Hot-Rolled Carbon Steel Flat Products From Brazil: Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the countervailing duty order on certain hot-rolled carbon steel flat products (hot-rolled steel) from Brazil for the period January 1, 2009, through December 31, 2009. Since Nucor Corporation (Nucor) was the only party that requested a review of Usinas Siderurgicas de Minas Gerais, S.A. (USIMINAS) and Companhia Siderurgica Paulista, S.A. (COSIPA), the only producers/exporters subject to review, this notice also serves to rescind the entire administrative review. This rescission is based on Nucor's timely withdrawal of its request for review.

DATES: *Effective Date:* February 10, 2011.

FOR FURTHER INFORMATION CONTACT: Justin M. Neuman, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0486.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 2004, the Department published in the **Federal Register** the countervailing duty order on hot-rolled steel from Brazil. *See Agreement Suspending the Countervailing Duty Investigation on Hot-Rolled Flat-Rolled Carbon-Quality Steel From Brazil; Termination of Suspension Agreement and Notice of Countervailing Duty Order,* 69 FR 56040 (September 17, 2004). On September 1, 2010, the Department published a notice announcing the opportunity to request an administrative review of the countervailing duty order on hot-rolled steel from Brazil for the period January 1, 2009, through December 31, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 53635 (September 1, 2010). On September 30, 2010, in accordance with 19 CFR 351.213(b), the Department received a timely request from Nucor, a domestic producer of hot-rolled steel, to conduct an administrative review of USIMINAS and COSIPA.

In accordance with section 751(a)(1) of the Tariff Act of 1930 (the Act) and 19 CFR 351.221(c)(1)(i), on October 28, 2010, the Department published a notice initiating an administrative review of USIMINAS and COSIPA under the countervailing duty order. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 66349 (October 28, 2010). On January 6, 2011, Nucor withdrew its request for review.

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Nucor's January 6, 2011, withdrawal was within the 90-day period, and no other party requested a review. Therefore, pursuant to 19 CFR 351.213(d)(1), the Department is rescinding this administrative review.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties at the cash deposit rate in effect on the date of entry, for entries by USIMINAS and COSIPA during the period January 1, 2009, through December 31, 2009. The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice of rescission of administrative review.

Notification Regarding Administrative Protective Order

This notice serves as a final 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 written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: February 4, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–3007 Filed 2–9–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Prohibited Species Donation (PSD) Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 11, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586–7008 or *Patsy.Bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for renewal of a currently approved information collection.

A prohibited species donation (PSD) program for Pacific salmon and Pacific halibut has effectively reduced regulatory discard of salmon and halibut by allowing fish that would otherwise be discarded to be donated to needy individuals through tax-exempt organizations. Vessels and processing plants participating in the donation program voluntarily retain and process salmon and halibut bycatch. An authorized, tax-exempt distributor, chosen by NMFS, is responsible for monitoring the retention and processing of fish donated by vessels and processors. The authorized distributor also coordinates the processing, storage, transportation, and distribution of salmon and halibut.

The PSD program requires a collection-of-information so that NMFS can monitor the authorized distributors' ability to effectively supervise program participants and ensure that donated fish are properly processed, stored, and distributed.

II. Method of Collection

Respondents must submit the application to become an authorized distributor by mail or courier; no form exists for this application.

III. Data

OMB Control Number: 0648–0316.

Form Number: None.

Type of Review: Regular submission (renewal of a currently approved collection).

Affected Public: Non-profit institutions.

Estimated Number of Respondents: 21.

Estimated Time per Response: Application to become a NMFS Authorized Distributor, 40 hours; Distributor's List of PSD Program Participants, 12 minutes; Distributor's Tracking of Products & Retention of Records, 12 minutes; Processor product tracking requirements, 6 minutes; and PSD fish package labeling, 10 minutes.

Estimated Total Annual Burden Hours: 535.

Estimated Total Annual Cost to Public: $2 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 4, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–2911 Filed 2–9–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA198

Atlantic Highly Migratory Species; Meeting of the Atlantic Highly Migratory Species Advisory Panel

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

ACTION: Notice of public meeting.

SUMMARY: NMFS will hold a 3-day Atlantic Highly Migratory Species (HMS) Advisory Panel (AP) meeting in April 2011. The intent of the meeting is to consider options for the conservation and management of Atlantic HMS. The meeting is open to the public.

DATES: The AP meeting will be held on April 5, 2011, through April 7, 2011.

ADDRESSES: The meeting will be held in Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Brian Parker or Margo Schulze-Haugen at (301)–713–2347.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.,* as amended by the Sustainable Fisheries Act, Public Law 104–297, provided for the establishment of an AP to assist in the collection and evaluation of information relevant to the development of any Fishery Management Plan (FMP) or FMP amendment for Atlantic HMS. NMFS consults with and considers the comments and views of AP members when preparing and implementing FMPs or FMP amendments for Atlantic tunas, swordfish, billfish, and sharks.

The AP has previously consulted with NMFS on: Amendment 1 to the Billfish FMP (April 1999), the HMS FMP (April 1999), Amendment 1 to the HMS FMP (December 2003), the Consolidated HMS FMP (October 2006), Amendments 1, 2, and 3 to the Consolidated HMS FMP (April and October 2008, February and September 2009, and May 2010), and an Advanced Notice of the Proposed Rule (ANPR) for the future management of the shark fishery and the ANPR for Atlantic HMS published June 2009 (September 2010).

At the April 2011 AP meeting, NMFS plans to discuss Atlantic bluefin tuna management, implementation of 2010 ICCAT measures, an update on recreational monitoring methods for HMS fisheries, vessel monitoring systems and potential regulatory changes, a summary of the Future of the Shark Fishery workshops and other shark issues, and permitting and management options for swordfish and smoothhound in the trawl fisheries. The meeting may also continue discussions of other potential changes to the management of Atlantic HMS fisheries, including electronic dealer reporting, revitalizing the swordfish fishery, and items contained in the Advanced Notice of Proposed Rulemaking that published on June 1, 2009 (74 FR 26174). Information on the venue and agenda will be provided at a later date.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Brian Parker at (301) 713–2347 at least 7 days prior to the meeting.

Dated: February 7, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–2987 Filed 2–9–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA205

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee in March 2011 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, March 1, 2011, at 9 a.m.

ADDRESSES: This meeting will be held at the Hilton Garden Inn, One Thurber Street, Warwick, RI 02886; telephone: (401) 734–9600; fax: (401) 734–9700.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will begin developing alternatives for Framework 23 to the Scallop Fishery Management Plan (FMP). Framework 23 is considering alternatives to potentially require a turtle excluder dredge, revise the yellowtail flounder accountability measures (AMs) proposed in Amendment 15, and possibly modify the limited access general category management program for the Northern Gulf of Maine (NGOM) area. The action may also include measures to develop alternatives to modify the current vessel monitoring system (VMS) regulations to improve scallop fleet operations (*e.g.* how days-at-sea are charged and how a vessel declares into the fishery). The Committee may discuss other business at this meeting.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: February 4, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–2929 Filed 2–9–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA149

Taking and Importing Marine Mammals; Taking of Marine Mammals Incidental to Conducting Precision Strike Weapons Testing and Training by Eglin Air Force Base in the Gulf of Mexico

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

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that a Letter of Authorization (LOA) to take four species of marine mammals incidental to testing and training during Precision Strike Weapons (PSW) testing and training in the Gulf of Mexico (GOM), a military readiness activity, has been issued to Eglin Air Force Base (AFB).

DATES: This authorization is effective from April 1, 2011, through December 27, 2011.

ADDRESSES: The application and LOA are available for review in the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by contacting the individuals listed in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, NMFS, 301–713–2289.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS 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 by NMFS and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals. The National Defense Authorization Act of 2004 (Pub. L. 108–136) removed the "small numbers" and "specified geographical region" limitations and amended the definition of "harassment" as it applies to a "military readiness activity" to read as follows (Section 3(18)(B) of the MMPA):

> (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Authorization, in the form of annual LOAs, may be granted for periods of up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of marine mammals incidental to PSW testing and training within the Eglin Gulf Test and Training Range (EGTTR) in the GOM were published on November 24, 2006 (71 FR 67810), and remain in effect from December 26, 2006, through December 27, 2011. The

species that Eglin AFB may take during PSW testing and training are Atlantic bottlenose (*Tursiops truncatus*) and Atlantic spotted dolphins (*Stenella frontalis*) and dwarf (*Kogia simus*) and pygmy (*Kogia breviceps*) sperm whales.

Issuance of the annual LOA to Eglin AFB is based on findings made in the preamble to the final rule that the total takings by this project would result in no more than a negligible impact on the affected marine mammal stocks or habitats and would not have an unmitigable adverse impact on subsistence uses of marine mammals. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and LOA, including monitoring and reporting requirements. Without any mitigation measures, a small possibility exists for one bottlenose dolphin and one spotted dolphin to be exposed to blast levels from the PSW testing sufficient to cause mortality. Additionally, less than two cetaceans might be exposed to noise levels sufficient to induce Level A harassment (injury) annually, and as few as 31 or as many as 53 cetaceans (depending on the season and water depth) could potentially be exposed (annually) to noise levels sufficient to induce Level B harassment in the form of a temporary loss of hearing sensitivity (also referred to as a temporary threshold shift).

While none of these impact estimates consider the proposed mitigation measures that will be employed by Eglin AFB to minimize potential impacts to protected species, NMFS has authorized Eglin AFB a total of one mortality, two takes by Level A harassment, and 53 takes by Level B harassment (TTS) annually. However, the proposed mitigation measures described in the final rule (71 FR 67810, November 24, 2006) and the LOA are anticipated to both reduce the number of marine mammal takes and lessen the severity of the effects of the takes. These measures include a conservative safety range for marine mammal exclusion; incorporation of aerial and shipboard survey monitoring efforts in the program both prior to and after detonation of explosives; and a prohibition on detonations whenever marine mammals are detected within the safety zone, may enter the safety zone at the time of detonation, or if weather and sea conditions preclude adequate aerial surveillance.

Summary of Request

On December 16, 2010, NMFS received a request for an LOA renewal pursuant to the aforementioned regulations that would authorize, for a period not to exceed 1 year, take of marine mammals, by harassment, incidental to PSW testing and training in the GOM.

Summary of Activity and Monitoring Conducted During 2010

No PSW tests were conducted during calendar year 2010 and there are no planned activities between now and March 31, 2011, at which time the current LOA expires.

Authorization

The U.S. Air Force complied with the requirements of the 2010 LOA, and NMFS has determined that there was no take of marine mammals by the U.S. Air Force in 2010. Accordingly, NMFS has issued a LOA to Eglin AFB authorizing the take of marine mammals, by harassment, incidental to PSW testing and training in the EGTTR in the GOM. Issuance of this LOA is based on findings described in the preamble to the final rule (71 FR 67810, November 24, 2006) and supported by information contained in Eglin's December 2010 request for a new LOA that the activities described under this LOA will not result in more than the incidental harassment of certain marine mammal species and will have a negligible impact on the affected species or stocks. The provision requiring that the activities not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply for this action.

Dated: February 4, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–2980 Filed 2–9–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before March 14, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: February 4, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Innovation and Improvement

Type of Review: New.

Title of Collection: Charter School Authorizer Annual Update.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions; State, Local, and Tribal Government.

Total Estimated Number of Annual Responses: 900.

Total Estimated Annual Burden Hours: 2,025.

Abstract: The U.S. Department of Education has as one of its important policy goals expanding the number of high-quality public school choice options. Specifically, according to Part B section 5201 of the Elementary and Secondary Education Act, two of the established purposes of the Charter School Program office are: Evaluating the effects of charter schools, including

the effects on students, student academic achievement, staff and parents; and expanding the number of high-quality charter schools available to students across the nation.

Charter school authorization is the center of efforts to expand and ensure high-quality public school choice options through public charter schools. Charter school authorizers are the public entities primarily responsible for: Initial charter authorizations, on-going monitoring and oversight, and charter renewal and closure decisions. Currently there is not a comprehensive, fully-populated tool for tracking the activities of and evaluating the quality of authorizers nationwide based on their authorizing decisions in light of schools' performance. The charter authorizer survey will be the key tool by which the National Charter School Resource Center collects the following data elements from the nation's charter school authorizers: Authorizing agency; authorizing agency type (*e.g.,* school district, State Educational Agency, independent authorizer), basic school information, year the school opened, past renewal decision(s), reasons for nonrenewal (if applicable), year closed (if applicable), reason for closure (if applicable), and the next renewal decision year. The charter school authorizer survey will be administered once annually, in the spring. Respondents will be able to complete and return the survey in paper form or electronically, by visiting a link stated on the paper form.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4445. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–3011 Filed 2–9–11; 8:45 am]

BILLING CODE 4000–01–P

DEARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities

AGENCY: U.S. Department of Education, President's Board of Advisors on Historically Black Colleges and Universities (Board).

ACTION: Notice of an Open Meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. The notice also describes the functions of the Board. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and intended to notify the public of its opportunity to attend.

DATES: Tuesday, March 1, 2011.

TIME: 9 a.m.–2 p.m.

ADDRESSES: The Board will meet at the U.S. Department of Education, Lyndon Baines Johnson Building, in Washington, District of Columbia, Departmental Auditorium, 1st Floor, 400 Maryland Avenue, SW., Washington, DC 20202, 202–453–5634.

FOR FURTHER INFORMATION CONTACT: John Silvanus Wilson, Jr., Executive Director, White House Initiative on Historically Black Colleges and Universities, 400 Maryland Avenue, SW., Washington, DC 20204; *telephone:* (202) 453–5634, *fax:* (202) 453–5632.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities (the Board) is established by Executive Order 13532 (February 26, 2010). The Board is governed by the provisions of the Federal Advisory Committee Act (FACA), (Pub. L. 92–463; as amended, 5 U.S.C.A., Appendix 2) which sets forth standards for the formation and use of advisory committees. The purpose of the Board is to advise the President and the Secretary of Education (Secretary) on all matters pertaining to strengthening the educational capacity of Historically Black Colleges and Universities (HBCUs).

The Board shall advise the President and the Secretary in the following areas: (i) Improving the identity, visibility, and distinctive capabilities and overall competitiveness of HBCUs; (ii) engaging the philanthropic, business, government, military, homeland-security, and education communities in a national dialogue regarding new HBCU programs and initiatives; (iii) improving the ability of HBCUs to remain fiscally secure institutions that can assist the nation in reaching its goal of having the highest proportion of college graduates by 2020; (iv) elevating the public awareness of HBCUs; and encouraging public-private investments in HBCUs; and (v) encouraging public-private investments in HBCUs.

Agenda:

The Board will receive updates from the Chairman of the President's Board of Advisors on HBCUs and the Executive Director of the White House Initiative on HBCUs on their respective activities since the Board's last meeting, which was held on September 15, 2010. In addition, the Board will discuss possible strategies to meet its duties under its charter.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or material in alternative format) should notify John P. Brown, associate director, White House Initiative on HBCUs, at (202) 453–5645, no later than Thursday, February 24, 2011. We will attempt to meet requests for such accommodations after this date, but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available on Tuesday, March 1, 2011, from 1:30 p.m.–2 p.m. Individuals who wish to provide comments will be allowed three to five minutes to speak. Those members of the public interested in submitting written comments may do so by submitting them to the attention of John S. Wilson, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202, by Thursday, February 24, 2011.

Records are kept of all Board proceedings and are available for public inspection at the office of the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202, Monday through Friday (excluding Federal holidays) during the hours of 9 a.m. to 5 p.m.

Electronic Access to the Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/*

fedregister/index.html. To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1830; or in the Washington, DC, area at 202–512–0000.

Dated: February 4, 2011.

Martha Kanter,

Under Secretary, Department of Education.

[FR Doc. 2011–3016 Filed 2–9–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance: Hearing

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of an open meeting/public hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming open meeting/public hearing for the Advisory Committee on Student Financial Assistance (the Advisory Committee). This notice also describes the functions of the Advisory Committee. Notice of the meeting/hearing is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATE AND TIME: Thursday, March 17, 2011, beginning at 9:00 a.m. and ending at approximately 5 p.m.

ADDRESSES: Four Points by Sheraton, Franklin Room, 1201 K Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Alison Bane, Associate Director of Government Relations, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC 20202–7582, (202) 219–2099.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–800–8339.

SUPPLEMENTAL INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act, and to make recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students. In addition, Congress expanded the Advisory Committee's mission in the Higher Education Amendments of 1998 to include several important areas: access, Title IV modernization, distance education, and early information, and needs assessment. Specifically, the Advisory Committee is to review, monitor, and evaluate the Department of Education's progress in these areas and report recommended improvements to Congress and the Secretary.

The March 17 meeting/hearing in Washington, DC, will consist of two sessions. The first session will be a roundtable discussion among experts regarding issues associated with the design and use of the institutional net price calculators mandated by Congress in the Higher Education Opportunity Act of 2008. The second session will be a panel discussion among experts of the nontraditional student population and the barriers to access and persistence that they face today. The third session will consist of a public comment session: five minutes will be allotted to those who request the opportunity to comment on one or both of the topics above. To participate in session three, please send an e-mail to *ACSFA@ed.gov* noting your topic. We must receive your comments on or before March 9, 2011. Space is limited. Advisory Committee staff will contact presenters prior to the meeting/hearing.

Individuals who will need accommodations for a disability in order to attend the event *(i.e.,* interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Friday, March 4, 2011, by contacting Ms. Tracy Jones at (202) 219–2099 or via email at *tracy.deanna.jones@ed.gov.* We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The event site is accessible to individuals with disabilities.

Space for this event is limited and you are encouraged to register early if you plan to attend. You may register on the Advisory Committee's Web site, *http://www.ed.gov/ACSFA* or by sending an e-mail to the following address: *ACSFA@ed.gov* or *Tracy.Deanna.Jones@ed.gov.* Please include your name, title, affiliation, complete address (including internet and e-mail address, if available), and telephone and fax numbers. If you are unable to register electronically, you may fax your registration information to the Advisory Committee staff office at (202) 219–3032. You may also contact the Advisory Committee staff directly at (202) 219–2099. The registration deadline is Wednesday, March 9, 2011.

Records are kept for Advisory Committee proceedings, and are available for inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW.,—Suite 413, Washington, DC, from the hours of 9:00 a.m. to 5:30 p.m. Monday through Friday, except Federal holidays. Information regarding the Advisory Committee is available on the Committee's Web site, *http://www.ed.gov/ACSFA.*

Electronic Access to This Document: You may view this document, as well as other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

To view in PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1830, or in the Washington, DC, area at (202) 512–1800.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 3, 2011.

William J. Goggin,

Executive Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 2011–3030 Filed 2–9–11; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of EAC Standards Board Meeting.

DATE AND TIME: Thursday, February 24, 2011, 9 a.m.–5:15 p.m. CST and Friday, February 25, 2011, 9 a.m.–3 p.m. CST.

PLACE: Sheraton Oklahoma City Hotel, One North Broadway Avenue, Oklahoma City, OK 73102, *Phone Number:* (405) 235–2780.

AGENDA: The U.S. Election Assistance Commission (EAC) Standards Board

will meet to discuss cost savings with regards to elections, implementation of the Military and Overseas Voter Empowerment Act (MOVE), and working with local media outlets to effectively communicate election information to the public. The Standards Board will also participate in a briefing on Commercial Off the Shelf hardware and software; and a discussion of election administration issues in the 112th Congress with a bipartisan panel of Congressional staff. The Standards Board will hear committee reports and have an opportunity to formulate recommendations to the EAC regarding presentation topics, receive updates on EAC activities, and consider other administrative matters. Finally, the Standards Board will elect the Executive Board of the Standards Board.

Members of the public may observe but not participate in EAC meetings unless this notice provides otherwise. Members of the public may use small electronic audio recording devices to record the proceedings. The use of other recording equipment and cameras requires advance notice to and coordination with the Commission's Communications Office.

This meeting will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, *Telephone:* (202) 566–3100.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 2011–3137 Filed 2–8–11; 4:15 pm]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14067–000]

Charles River Energy LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications

On January 26, 2011, Charles River Energy LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Moody Street Dam Hydroelectric Project (Moody Street Dam Project or project) to be located on the Charles River, in the City of Waltham, in Middlesex County, Massachusetts. 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 run-of-the river, low-hydraulic-head (approximately 10 to 12 feet) project would consist of the following: (1) The existing 169-foot-long earthen, gravity Moody Street Dam, owned and operated by the Commonwealth of Massachusetts; (2) an existing reservoir having a total storage capacity of 2,950 acre-feet; (3) a new 66-inch-diameter, siphon-fed penstock constructed over the dam and housing a 6-blade Gorlov Helical Turbine (GHT) turbine-generator unit with a nameplate capacity of 45 kilowatts (kW); (4) a new 25 kW floating turbine-generator unit situated at the end of a floating chute in the river approximately 500 feet downstream of the dam; (5) switchgear, controls, and ancillary systems housed on shore adjacent to the dam; and (6) a short transmission line connected to the NStar regional grid adjacent to the proposed project site. The estimated annual generation of the Moody Street Dam Project would be 615 megawatt-hours.

Applicant Contact: Mr. James Berk, Managing Member, Charles River Energy LLC, 27 Skinner's Path, Marblehead, Massachusetts 01945; phone: (781) 760–1600.

FERC Contact: John Ramer; phone: (202) 502–8969.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14067–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: February 3, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2946 Filed 2–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–31–001]

DCP Guadalupe Pipeline, LLC; Notice of Baseline Filing

Take notice that on February 3, 2011, DCP Guadalupe Pipeline, LLC submitted a revised baseline filing of their Statement of Operating Conditions for services provided under section 311 of the Natural Gas Policy Act of 1978 ("NGPA").

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, February 11, 2011.

Dated: February 3, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2945 Filed 2–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–51–000.

Applicants: CPV Batesville, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of CPV Batesville, LLC.

Filed Date: 01/31/2011.

Accession Number: 20110131–5252.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–1988–002.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35: Counterparty Compliance Filing to be effective 1/1/2011.

Filed Date: 01/31/2011.

Accession Number: 20110131–5258.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2087–003.

Applicants: FC Landfill Energy, LLC.

Description: FC Landfill Energy, LLC submits tariff filing per 35: Refund Report Supplemental Information to be effective N/A.

Filed Date: 01/31/2011.

Accession Number: 20110131–5278.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2192–002.

Applicants: Red Mesa Wind, LLC.

Description: Red Mesa Wind, LLC submits tariff filing per 35.17(b): Red Mesa Revisions to Limitations and Exceptions Tariff Language to be effective 11/25/2010.

Filed Date: 01/31/2011.

Accession Number: 20110131–5260.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2209–001.

Applicants: Alta Wind II, LLC.

Description: Notice of Non-Material Change in Status of Alta Wind II, LLC.

Filed Date: 01/28/2011.

Accession Number: 20110128–5152.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2211–001.

Applicants: Alta Wind I, LLC.

Description: Notice of Non-Material Change in Status of Alta Wind I, LLC.

Filed Date: 01/31/2011.

Accession Number: 20110131–5215.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2719–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.17(b): Amendment to 2141 Buffalo Point Wind LLC GIA to be effective 12/22/2010.

Filed Date: 01/31/2011.

Accession Number: 20110131–5274.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2801–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Non-substantive revisions to Attachment Hs conforming PJM's baseline filing to be effective 9/17/2010.

Filed Date: 01/31/2011.

Accession Number: 20110131–5232.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2802–000.

Applicants: New England Power Pool Participants Committee.

Description: New England Power Pool Participants Committee submits tariff filing per 35.13(a)(2)(iii): February 2011 Membership Filing to be effective 2/1/2011.

Filed Date: 01/31/2011.

Accession Number: 20110131–5256.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2803–000.

Applicants: Central Maine Power Company.

Description: Central Maine Power Company submits tariff filing per 35.13(a)(2)(iii): Central Main Power Company—Gallop Power Greenville Interconnection Agreement to be effective 1/1/2011.

Filed Date: 01/31/2011.

Accession Number: 20110131–5268.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2804–000.

Applicants: GenOn Florida, LP.

Description: GenOn Florida, LP submits tariff filing per 35.13(a)(2)(iii): Notice of Succession to be effective 9/27/2010.

Filed Date: 01/31/2011.

Accession Number: 20110131–5270.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2805–000.

Applicants: RRI Energy Services, LLC.

Description: RRI Energy Services, LLC submits tariff filing per 35.13(a)(2)(iii): Notice of Succession—MBR Tariff to be effective 9/27/2010.

Filed Date: 01/31/2011.

Accession Number: 20110131–5271.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2806–000.

Applicants: NV Energy, Inc.

Description: NV Energy, Inc. submits tariff filing per 35.13(a)(2)(iii): Service Agreement No. 10–00979 Amendment 1 LGIA to be effective 1/7/2011.

Filed Date: 01/31/2011.

Accession Number: 20110131–5275.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2807–000.

Applicants: Central Maine Power Company.

Description: Central Maine Power Company submits tariff filing per 35.13(a)(2)(iii): Central Maine Power Company—Rocky Gorge Corporation Interconnection Agreement to be effective 1/1/2011.

Filed Date: 01/31/2011.

Accession Number: 20110131–5276.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that

document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 1, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2935 Filed 2–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2589–002.

Applicants: Evraz Claymont Steel, Inc.

Description: Evraz Claymont Steel, Inc. submits tariff filing per 35.17(b): MBRA Tariff to be effective 2/23/2011.

Filed Date: 02/02/2011.

Accession Number: 20110202–5067.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 23, 2011.

Docket Numbers: ER11–2822–000.

Applicants: Allegheny Energy Supply Company, LLC.

Description: Allegheny Energy Supply Company, LLC submits tariff filing per 35: AE Supply Compliance ER10–2259 to be effective 6/1/2011.

Filed Date: 02/02/2011.

Accession Number: 20110202–5078.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 23, 2011.

Docket Numbers: ER11–2823–000.

Applicants: Allegheny Energy Supply Company, LLC.

Description: Allegheny Energy Supply Company, LLC submits tariff filing per 35: AE Supply Compliance Filing ER11–2110 to be effective 1/1/2011.

Filed Date: 02/02/2011.

Accession Number: 20110202–5079.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 23, 2011.

Docket Numbers: ER11–2824–000.

Applicants: Allegheny Energy Supply Company, LLC.

Description: Allegheny Energy Supply Company, LLC submits tariff filing per 35: AE Supply Compliance ER11–2111 to be effective 1/1/2011.

Filed Date: 02/02/2011.

Accession Number: 20110202–5090.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 23, 2011.

Docket Numbers: ER11–2825–000.

Applicants: GBC Metals LLC.

Description: GBC Metals LLC submits tariff filing per 35.12: GBC_Metals_MBRA_Application to be effective 4/1/2011.

Filed Date: 02/02/2011.

Accession Number: 20110202–5091.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 23, 2011.

Docket Numbers: ER11–2826–000

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): ATC-Oconto D–T to be effective 1/6/2011.

Filed Date: 02/03/2011.

Accession Number: 20110203–5014.

Comment Date: 5 p.m. Eastern Time on Thursday, February 24, 2011.

Docket Numbers: ER11–2827–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): G870 FCA to be effective 2/4/2011.

Filed Date: 02/03/2011

Accession Number: 20110203–5034.

Comment Date: 5 p.m. Eastern Time on Thursday, February 24, 2011.

Docket Numbers: ER11–2828–000.

Applicants: Southwest Power Pool, Inc.

Description: Notice of Cancellation of Large Generator Interconnection Agreement of Southwest Power Pool, Inc.

Filed Date: 02/03/2011.

Accession Number: 20110203–5063.

Comment Date: 5 p.m. Eastern Time on Thursday, February 24, 2011.

Docket Numbers: ER11–2829–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii): Roseburg Forest Products Facilities Maintenance Agreement to be effective 1/19/2011.

Filed Date: 02/03/2011.

Accession Number: 20110203–5075.

Comment Date: 5 p.m. Eastern Time on Thursday, February 24, 2011.

Docket Numbers: ER11–2830–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii): Letter Agreement with NRG Solar for Alta Vista SunTower Project SA 99 to be effective 1/4/2011.

Filed Date: 02/03/2011

Accession Number: 20110203–5087

Comment Date: 5 p.m. Eastern Time on Thursday, February 24, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

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Dated: February 3, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2938 Filed 2–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–39–000.

Applicants: EFS Southeast PowerGen, LLC, Utility Corporation, AL Sandersville, LLC, Effingham County Power, LLC, MPC Generating, LLC, Walton County Power, LLC, Washington County Power, LLC.

Description: Joint Application for Authorization of Disposition of Facilities Under Section 203 of the FPA and Request for Confidential Treatment, Expedited Consideration and Waivers of EFS Southeast PowerGen, LLC, *et al.*

Filed Date: 02/01/2011.

Accession Number: 20110201–5080.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER94–1384–040; ER99–2329–011; ER00–1803–010; ER01–457–011; ER03–1108–013; ER03–1109–013; ER04–733–009; ER08–1432–007; ER09–621–005.

Applicants: Morgan Stanley Capitol Group Inc., Naniwa Energy LLC, Utility Contract Funding II, LLC, Power Contract Financing II, L.L.C., Power Contract Financing II, Inc., TAQA Gen X LLC, South Eastern Electric Development Corp., South Eastern Generating Corp., MS Solar Solutions Corp.

Description: Notice of Change in Status of Morgan Stanley Capital Group Inc., *et al.*

Filed Date: 01/31/2011.

Accession Number: 20110131–5375.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER03–329–010; ER07–597–005.

Applicants: NorthWestern Corporation; Montana Generation, LLC.

Description: North Western Corporation submits response to Data Request for Market-Based Rate Authorization.

Filed Date: 01/21/2011.

Accession Number: 20110126–0029.

Comment Date: 5 p.m. Eastern Time on Friday, February 11, 2011.

Docket Numbers: ER10–2011–002; ER10–2008–001; ER10–2009–001; ER10–2016–001.

Applicants: PPL Montana, LLC, PPL Colstrip I, LLC, PPL Colstrip II, LLC, PPL EnergyPlus, LLC.

Description: Triennial Market-Based Rate Update of the PPL Northwest Companies.

Filed Date: 01/31/2011.

Accession Number: 20110131–5369.

Comment Date: 5 p.m. Eastern Time on Monday, April 04, 2011.

Docket Numbers: ER10–2172–002; ER10–2174–002; ER10–2176–002; ER10–2178–002; ER10–2180–002; ER10–2183–001; ER10–2184–002; ER10–3308–002; ER11–2383–001

Applicants: Constellation Energy Commodities Group, Baltimore Gas and Electric Company, Constellation Pwr Source Generation LLC, Constellation NewEnergy, Inc., CER Generation II, LLC, Safe Harbor Water Power Corporation, Handsome Lake Energy, LLC, Constellation Energy Commodities Group M, CER Generation, LLC, Criterion Power Partners, LLC.

Description: Notice of Change in Status of Baltimore Gas and Electric Company, *et al.*

Filed Date: 01/31/2011.

Accession Number: 20110131–5288.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER10–2179–003; ER10–2181–003; ER10–2182–003.

Applicants: R.E. Ginna Nuclear Power Plant, LLC, Calvert Cliffs Nuclear Power Plant, LLC, Nine Mile Point Nuclear Station, LLC.

Description: Notice of Change in Status of Calvert Cliffs Nuclear Power Plant, LLC, *et al.*

Filed Date: 01/31/2011.

Accession Number: 20110131–5287.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER10–2570–002; ER10–2578–003; ER10–2633–002; ER10–2717–002; ER10–2718–002; ER10–2719–002; ER10–3140–002.

Applicants: Shady Hills Power Company LLC; Fox Energy Company, LLC; Birchwood Power Partners, L.P.; EFS Parlin Holdings, L.L.C.; Cogen Technologies Linden Venture, L.P.; East Coast Power Linden Holding, L.L.C.; Inland Empire Energy Center, LLC.

Description: Notice of Non-Material Change in Status of GE COMPANIES, *et al.*

Filed Date: 01/31/2011.

Accession Number: 20110131–5366.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER10–3096–001.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits tariff filing per 35: WestConnect Experimental Tariff Compliance Filing to be effective 9/28/2010.

Filed Date: 02/01/2011.

Accession Number: 20110201–5002.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2354–001.

Applicants: Sustainable Star.

Description: Sustainable Star submits tariff filing per 35.17(b): Market Based Initial Application to be effective 12/14/2010.

Filed Date: 02/01/2011.

Accession Number: 20110201–5074.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2808–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 1166R12 Oklahoma Municipal Power Authority NITSA and NOA to be effective 1/1/2011.

Filed Date: 01/31/2011.

Accession Number: 20110131–5277.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2809–000.

Applicants: Kansas City Power & Light Company.

Description: Kansas City Power & Light Company submits tariff filing per 35.1: KCP&L Iatan 2 Filing to be effective 12/31/9998.

Filed Date: 01/31/2011.

Accession Number: 20110131–5280.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2810–000.

Applicants: The Empire District Electric Company.

Description: The Empire District Electric Company submits tariff filing

per 35.12: Single Tariff Sheet for KCPL Iatan Unit 2 & Common Facilities Ownership Agmt to be effective 9/17/2010.

Filed Date: 01/31/2011.

Accession Number: 20110131–5281.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2811–000.

Applicants: KCP&L Greater Missouri Operations Company.

Description: KCP&L Greater Missouri Operations Company submits tariff filing per 35.1: GMO Iatan 2 Filing to be effective 12/31/9998.

Filed Date: 01/31/2011.

Accession Number: 20110131–5282.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2812–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 607R12 Westar Energy, Inc. NITSA and NOA to be effective 1/1/2011.

Filed Date: 01/31/2011.

Accession Number: 20110131–5284.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2813–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company Submits Cancellation of Letter Agreement with Brea Power II Service Agreement 214.

Filed Date: 01/31/2011.

Accession Number: 20110131–5147.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2814–000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: American Transmission Systems, Incorporated submits tariff filing per 35.13(a)(2)(iii: Revisions to the TOA Sections 7.3.5 and Attach A re the ATSI Integration to be effective 6/1/2011.

Filed Date: 02/01/2011.

Accession Number: 20110201–5123.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2815–000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: American Transmission Systems, Incorporated submits tariff filing per 35.13(a)(2)(iii: Revisions to the OATT, OA and RAA sections for the ATSI Integration to be effective 6/1/2011.

Filed Date: 02/01/2011

Accession Number: 20110201–5125.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–17–000.

Applicants: FirstEnergy Service Company, Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, Trans-Allegheny Interstate Line Company.

Description: Application of FirstEnergy Service Company, *et al.* for authorization for Monongahela Power Company, Potomac Edison Company, West Penn Power Company, and Trans-Allegheny Interstate Line Company to engage in short-term borrowing.

Filed Date: 01/31/2011.

Accession Number: 20110131–5373.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA10–4–000.

Applicants: Arlington Valley, LLC; Bluegrass Generation Company, L.L.C.; Bridgeport Energy LLC; DeSoto County Generating Company, LLC; Griffith Energy LLC; Las Vegas Power Company, LLC; LSP Safe Harbor Holdings, LLC; LS Power Marketing, LLC; Renaissance Power, L.L.C.; Riverside Generating Company, L.L.C.; Rocky Road Power, LLC; Tilton Energy LLC.

Description: Quarterly Land Acquisition Report of Arlington Valley, LLC, *et al.*

Filed Date: 01/31/2011.

Accession Number: 20110131–5352.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: LA10–4–000.

Applicants: CinCap IV, LLC; CinCap V, LLC; Duke Energy Business Services, LLC; Duke Energy Carolinas, LLC; Duke Energy Commercial Asset Management, Inc.; Duke Energy Commercial Enterprises, Inc.; Duke Energy Fayette II, LLC; Duke Energy Hanging Rock II, LLC; Duke Energy Indiana, Inc.; Duke Energy Lee II, LLC; Duke Energy Ohio, Inc.; Duke Energy Retail Sales, LLC; Duke Energy Trading and Marketing, LLC; Duke Energy Vermillion II, LLC; Duke Energy Washington II, LLC; Happy Jack Windpower, LLC; Kit Carson Windpower, LLC; North Allegheny Wind, LLC; Silver Sage Windpower, LLC; St. Paul Cogeneration, LLC; Three Buttes Windpower, LLC; Top of the World Energy, LLC .

Description: Report/Form of Duke Energy Corporation under LA10–4.

Filed Date: 01/31/2011.

Accession Number: 20110131–5162.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: LA10–4–000.

Applicants: BP Energy Company; BP West Coast Products LLC; Cedar Creek Wind Energy, LLC; Cedar Creek II, LLC; Flat Ridge Wind Energy, LLC; Fowler Ridge II Wind Farm LLC; Fowler Ridge III Wind Farm LLC; Fowler Ridge Wind Farm LLC; Goshen Phase II LLC; Rolling Thunder I Power Partners, LLC; Watson Cogeneration Company; Whiting Clean Energy, Inc.

Description: Quarterly Land Acquisition Report of BP Energy Company, *et al.*

Filed Date: 01/31/2011.

Accession Number: 20110131–5163.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: LA10–4–000.

Applicants: PPL Electric Utilities Corporation; Lower Mount Bethel Energy, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL Susquehanna, LLC; PPL University Park, LLC; PPL EnergyPLus, LLC; PPL Great Works, LLC; PPL Maine, LLC; PPL Wallingford Energy LLC; PPL New Jersey Solar, LLC; PPL New Jersey Biogas, LLC; PPL Renewable Energy, LLC; PPL Montana, LLC; PPL Colstrip I, LLC; PPL Colstrip II, LLC; Louisville Gas and Electric Company; Kentucky Utilities Company; LG&E Energy Marketing, Inc.

Description: 4th Quarter 2010 Site Acquisition Report of the PPL Companies.

Filed Date: 01/31/2011.

Accession Number: 20110131–5212.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: LA10–4–000.

Applicants: Niagara Generation LLC.

Description: Land Acquisition Report (4Q 2010) of Niagara Generation LLC.

Filed Date: 01/31/2011.

Accession Number: 20110131–5259.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: LA10–4–000.

Applicants: Lost Creek Wind, LLC.

Description: Land Acquisition Report (4Q 2010).

Filed Date: 01/31/2011.

Accession Number: 20110131–5371.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene

again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 1, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2937 Filed 2–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER09–1521–001.

Applicants: Pacific Gas and Electric Company.

Description: Compliance Refund Report of Pacific Gas & Electric Company.

Filed Date: 02/01/2011.

Accession Number: 20110201–5200.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER10–2179–003; ER10–2181–003; ER10–2182–003.

Applicants: R.E. Ginna Nuclear Power Plant, LLC, Calvert Cliffs Nuclear Power Plant, LLC, Nine Mile Point Nuclear Station, LLC

Description: Notice of Change in Status of Calvert Cliffs Nuclear Power Plant, LLC, *et. al.*

Filed Date: 01/31/2011.

Accession Number: 20110131–5287.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2816–000.

Applicants: RMKG, LLC.

Description: RMKG LLC submits notice of cancellation of FERC Electric Tariff, Original Volume 1 effective 2/1/11.

Filed Date: 02/01/2011.

Accession Number: 20110201–0203.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2817–000.

Applicants: Allegheny Energy Supply Company, LLC.

Description: Allegheny Energy Supply Company, LLC submits request for authorization to make wholesale power sales to its affiliate.

Filed Date: 02/01/2011.

Accession Number: 20110201–0204.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2818–000.

Applicants: Georgia Power Company.

Description: Georgia Power Company submits tariff filing per 35.13(a)(2)(iii): Oglethorpe & GSOC Control Area Compact Filing to be effective 4/2/2011.

Filed Date: 02/01/2011.

Accession Number: 20110201–5160.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2819–000.

Applicants: California Independent System Operator Corporation

Description: California Independent System Operator Corporation submits tariff filing per 35: 2011–02–01 CAISO's Petition for Tarriff Waiver of Section 37.5.2.1 to be effective N/A.

Filed Date: 02/01/2011.

Accession Number: 20110201–5161.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2820–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Revision to Attachment AE to Establish an Offer Curve Price Floor to be effective 4/4/2011.

Filed Date: 02/02/2011.

Accession Number: 20110202–5044.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 23, 2011.

Docket Numbers: ER11–2821–000.

Applicants: Otter Tail Power Company.

Description: Otter Tail Power Company submits tariff filing per 35.13(a)(2)(iii): Submission of Facilities Service Agreement with Rugby Wind LLC to be effective 2/1/2011.

Filed Date: 02/02/2011.

Accession Number: 20110202–5046.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 23, 2011.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD11–3–000.

Applicants: North American Electric Reliability Corporation.

Description: Petition of the North American Electric Reliability Corporation for Approval of a Facilities Design, Connections, and Maintenance Reliability Standard.

Filed Date: 01/28/2011.

Accession Number: 20110128–5103.

Comment Date: 5 p.m. Eastern Time on Monday, February 28, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do

not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 02, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2936 Filed 2–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–83–000]

Enogex, LLC; Notice of Filing

February 2, 2011.

Take notice that on January 28, 2011, Enogex, LLC (Enogex) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval of rates. Enogex is proposing to implement a new firm section 311 transportation service on the West Zone of its transmission system at a rate of $0.0954 per MMBtu. Additionally, Enogex proposes a rate reduction to $0.1005 per MMBtu for interruptible service furnished in the West Zone and to maintain its currently proposed rate of $0.1655 per MMBtu for firm service and $0.1523 per MMBtu for interruptible service furnished in the East Zone.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: Comments and requests for intervention must be filed by 5 p.m. Eastern Time on Monday, February 14, 2011. Protests in this proceeding must be filed by 5 p.m. Eastern Time on Monday, April 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2811 Filed 2–8–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2825–000]

GBC Metals LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of GBC Metals LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 23, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail

FERCOnlineSupport@ferc.gov or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 3, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2939 Filed 2–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP11–1566–000]

Tennessee Gas Pipeline Company; Notice of Technical Conference

On November 30, 2010, pursuant to section 4 of the Natural Gas Act (NGA), Tennessee Gas Pipeline Company (Tennessee) filed revised tariff records proposing a rate increase for existing services and changes to certain terms and conditions of service, including elimination of certain rate schedules. On December 29, 2010 the Commission accepted and suspended the primary tariff records proposed to be effective June 1, 2011, subject to refund and to the outcome of a hearing and technical conference. *Tennessee Gas Pipeline Company,* 133 FERC ¶ 61,266 (2010). This technical conference was originally noticed to take place February 2 and 3, 2011, but was postponed due to inclement weather.

Take notice that a technical conference to discuss non-rate issues raised by Tennessee's filing will be held on, Tuesday, February 15, 2011 at 10 a.m.(EST) and Wednesday, February 16, 2011 at 10 a.m. (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Federal Energy Regulatory Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

All interested persons, parties, and staff are permitted to attend. For further information please contact Robert D. McLean (202) 502–8156.

Dated: February 3, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2934 Filed 2–9–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9265–2]

Access in Litigation to Confidential Business Information; Transfer of Information Claimed as Confidential Business Information to the United States Department of Justice and Parties to Certain Litigation

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice.

SUMMARY: EPA has authorized the United States Department of Justice ("DOJ") to disclose, in response to discovery requests received by the United States in the litigation styled, *Tronox Incorporated, et al.,* v. *Anadarko Petroleum Corp., et al.,* Adv. Proc. No. 09–01198 (ALG), pending in the United States Bankruptcy Court for the Southern District of New York (the "Anadarko Litigation"), and in response to discovery requests received by defendants Kerr-McGee Corporation and Anadarko Petroleum Corporation (the "Anadarko Securities Litigation Defendants") in the litigation styled, *In re Tronox, Inc., Securities Litigation* 09–cv–06220 (SAS), pending in the United States District Court for the Southern District of New York (the "Tronox Securities Litigation"), information which has been submitted to EPA by its contractors that is claimed to be, or has been determined to be, confidential business information ("CBI"). On October 21, 2010, EPA provided notice in the **Federal Register,** 75 FR 65013 (the "Anadarko Litigation FRN"), of past disclosure and of ongoing and contemplated future disclosure in the Anadarko Litigation. EPA is providing notice of contemplated future disclosure in the Tronox Securities Litigation. Interested persons may submit comments on this Notice to the address noted below.

DATES: Access by DOJ and/or the parties to the Tronox Securities Litigation to material discussed in this Notice that has been either claimed or determined to be CBI is ongoing, and is expected to continue in the future during the pendency of the Tronox Securities Litigation. EPA will accept comments on this Notice through February 22, 2011.

ADDRESSES: For further information contact Craig Kaufman, Attorney-Advisor, Office of Site Remediation Enforcement, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (Mail Code 2272A), Washington, DC 20460; telephone number: (202) 564–4284; e-mail address: *kaufman.craig@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 40 CFR 2.209(c)(1), EPA has disclosed information, including CBI, to DOJ in response to a written request for information from DOJ and/or on the initiative of EPA because such disclosure was necessary to enable DOJ to carry out a litigation function on behalf of EPA. DOJ has been served with discovery requests seeking, among other things, documentation supporting the proofs of claim filed by the United States of America in the bankruptcy styled, *In re Tronox Incorporated, et al.,* Case No. 09–10156 (ALG) (Chapter 11), pending in the United Stated Bankruptcy Court for the Southern District of New York (the "Bankruptcy"). Those proofs of claim were filed on behalf of, *inter alia,* EPA regarding the debtors' environmental liabilities, including liabilities at sites at which EPA's contractors may have provided services.

The parties to the Anadarko Litigation have entered into an Agreed Protective Order, *see* Document No. 248 in the Bankruptcy docket, as amended on August 12, 2009, *see* Document No. 622 (together, the "AGP"), that will govern the treatment of information, including CBI, that is designated "Confidential" pursuant to the AGP. The AGP provides for limited dissemination of confidential information and for the return or destruction of confidential information at the conclusion of the Litigation. *See, e.g.,* AGP, at ¶¶1, 10, 12–16, 21. In accordance with 40 CFR 2.209(d), and pursuant to the Anadarko Litigation FRN, EPA authorized DOJ to disclose information that originated from EPA to the extent required to comply with the discovery obligations of the United States in the Anadarko Litigation, including its obligations under the AGP.

The lead plaintiffs in the Tronox Securities Litigation have served the Anadarko Securities Litigation Defendants with document requests seeking, *inter alia,* the production of documents that have been produced to the Anadarko Securities Litigation Defendants in the Anadarko Litigation. The Anadarko Securities Litigation Defendants are seeking to produce documents to the lead plaintiffs in the Tronox Securities Litigation, which will include documents the United States produced to the Anadarko Securities Litigation Defendants in the Anadarko Litigation, some of which was designated "Confidential" (the "USA Confidential Documents") pursuant to the AGP.

On December 28, 2010, the parties to the Tronox Securities Litigation entered into an Agreed Protective Order, *see* Document No. 113 in the District Court docket (the "Tronox Securities Litigation AGP"), that will govern the treatment of information that is designated "Confidential" pursuant to the Tronox Securities Litigation AGP. The Tronox Securities Litigation AGP provides for limited dissemination of confidential information and for the return or destruction of confidential information at the conclusion of the Litigation. *See, e.g.,* Tronox Securities Litigation AGP, at ¶¶1, 9–10, 12–17, 21.

In accordance with 40 CFR 2.209(d), EPA is hereby giving notice that it has authorized DOJ to consent to the production of the USA Confidential Documents by the Anadarko Securities Litigation Defendants to the lead plaintiffs in the Tronox Securities Litigation, so long as the USA Confidential Documents may be re-designated as "Confidential" pursuant to the Tronox Securities Litigation AGP. Accordingly, business information that is ordinarily entitled to confidential treatment under existing Agency regulations (40 CFR Part 2) may be included in the information that the Anadarko Securities Litigation Defendants will release to parties in the Tronox Securities Litigation pursuant to the Tronox Securities Litigation AGP.

As explained by EPA's Office of General Counsel at its Web site, *http://www.epa.gov/ogc/documents.htm,* the CBI that may be disclosed in the Tronox Securities Litigation could include, but is not limited to, business information submitted by contractors and prospective contractors, *see generally* Class Determination 1–95; business information submitted in technical and cost proposals, *see generally* Class Determination 2–78; and business information submitted in contract proposals and related documents, *see generally* Class Determination 2–79. CBI may also include information obtained by EPA under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), including information provided to EPA, directly or indirectly, pursuant to section 104 of CERCLA. All CBI that is disclosed in the Tronox Securities Litigation will be designated "Confidential" pursuant to the AGP.

Information, including CBI, discussed in this Notice may relate to certain companies and agencies that have provided services for EPA at sites involved in the Anadarko Litigation, including but not limited to the companies and agencies set forth in the Anadarko Litigation FRN.

Dated: February 3, 2011.

Elliott Gilberg,

Director, Office of Site Remediation Enforcement.

[FR Doc. 2011–2991 Filed 2–9–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0269; FRL–9265–5]

Agency Information Collection Activities; Proposed Collection; Comment Request; Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on May 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 11, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0269, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Air Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Air Docket, Environmental Protection Agency: EPA West Building, EPA Docket Center (Room 3334), 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OAR–2007–0269. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0269. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Astrid Larsen, State Measures and Conformity Group, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4812; fax number: (734) 214–4052; e-mail address: *larsen.astrid@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2007–0269, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone

number for the Air Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES.**

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are metropolitan planning organizations, local transit agencies, state departments of transportation, and State and local air quality agencies. Federal agencies potentially affected by this action include the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and EPA.

Title: Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects

ICR numbers: EPA ICR No. 2130.04, OMB Control No. 2060–051.

ICR status: This ICR is currently scheduled to expire on May 31, 2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported transportation activities are consistent with ("conform to") the purpose of the state air quality implementation plan (SIP). Transportation activities include transportation plans, transportation improvement programs (TIPs), and federally funded or approved highway or transit projects. Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS or "standards") or interim milestones.

Transportation conformity applies under EPA's conformity regulations at 40 CFR Part 93, subpart A, to areas that are designated nonattainment, and those redesignated to attainment after 1990 ("maintenance areas" with plans developed under Clean Air Act section 175A) for the following transportation related criteria pollutants: Ozone, particulate matter (PM2.5 and PM10), carbon monoxide (CO), and nitrogen dioxide (NO2). The EPA published the original transportation conformity rule on November 24, 1993 (58 FR 62188), and subsequently published several revisions. EPA develops the conformity regulations in coordination with FHWA and FTA.

Transportation conformity determinations are required before Federal approval or funding is given to certain types of transportation planning documents as well as non-exempt highway and transit projects.[1]

EPA considered the following in renewing the existing ICR:

- Burden estimates for transportation conformity determinations in current nonattainment and maintenance areas for the ozone, $PM_{2.5}$, PM_{10}, CO, and NO_2 NAAQS, which made up EPA's previous ICR (ICR # 2130.03);
- Federal burden associated with EPA's adequacy review process for submitted SIP budgets that are to be used in conformity determinations;
- New start-up burden associated with learning to perform quantitative hot-spot analyses;
- New burden associated with using the MOVES model for conformity analyses;
- Efficiencies in areas doing conformity for multiple NAAQS; and,
- Differences in conformity resource needs in large and small metropolitan areas and isolated rural areas.

This ICR does not include burden associated with the general development of transportation planning and air quality planning documents for meeting other Federal requirements.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently

[1] Some projects are exempt from all or certain conformity requirements *see* 40 CFR 93.126, 93.127, and 93.128.

changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: This ICR estimates that approximately 174 Metropolitan Planning Organizations will incur burden associated with transportation conformity requirements.

Frequency of response: The information collections described in this ICR must be completed before a transportation plan, TIP, or project conformity determination is made. Per SAFETEA–LU and DOT's planning regulations, transportation plans and TIPs must be updated at least every 4 years. Conformity determinations on projects in metropolitan and isolated rural areas are required on an as-needed basis.

Estimated total average number of responses for each respondent: 392.

Estimated total annual burden hours: 68,282 hours.

Estimated total annual costs: $4,014,663. This includes an estimated burden cost of $4,014,663 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Are there changes in the estimates from the last approval?

There is an increase of 19,043 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects EPA's adjustments associated with the actual number of 2006 $PM_{2.5}$ NAAQS nonattainment areas versus the estimated number in the previous ICR, adjustment for increased burden associated with quantitative hot-spot analyses and an adjustment for increased burden associated with the transition from the MOBILE6.2 to MOVES model.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: February 7, 2011.

Sarah Dunham,

Director, Transportation and Regional Programs Division, Office of Transportation and Air Quality.

[FR Doc. 2011–3002 Filed 2–9–11; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Wednesday, February 16, 2011, 9:30 a.m. Eastern Time.

PLACE: Commission Meeting Room on the First Floor of the EEOC Office Building, 131 "M" Street, NE., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and

2. Out of work, out of luck? Denying employment opportunities to unemployed job seekers.

NOTE: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. Seating is limited and it is suggested that visitors arrive 30 minutes before the meeting in order to be processed through security and escorted to the meeting room. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides information about Commission meetings on its Web site, *eeoc.gov.,* and provides a recorded announcement a week in advance on future Commission sessions).

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation and Communication Access Realtime Translation (CART) services at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above. CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Executive Officer on (202) 663–4070.

Dated: February 8, 2011.

Stephen Llewellyn,

Executive Officer, Executive Secretariat.

[FR Doc. 2011–3124 Filed 2–8–11; 4:15 pm]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget.

February 4, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), Public Law 104–13. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written comments should be submitted on or before March 14, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *NicholasA.Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Leslie F. Smith, Federal Communications Commission, Room 1–C216, 445 12th Street, SW., Washington, DC or via Internet at *Leslie.Smith@fcc.gov* or *PRA@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page

called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR."

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Leslie F. Smith via e-mail at *PRA@fcc.gov* or call (202) 418–0217.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0589.

Title: FCC Remittance Advice Forms.

Form Number(s): Form 159, Remittance Advice; Form 159–C, Remittance Advice Continuation Sheet; Form 159–B, Remittance Advice Bill for Collection; Form 159–E, Remittance Voucher; and Form 159–W, Interstate Telephone Service Provider Worksheet.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal government; and State, local, or tribal government.

Number of Respondents: 156,000; 156,000 responses.

Estimated Time per Response: 0.25 hours (15 minutes).

Frequency of Response: On occasion and annual reporting requirements; Third party disclosure.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in the Communications Act of 1934, as amended; Section 8 (47 U.S.C. 158) for Application Fees; Section 9 (47 U.S.C. 159) for Regulatory Fees; Section 309(j) for Auction Fees; and the Debt Collection Improvement Act of 1996, Public Law 104–134, Chapter 10, Section 31001.

Total Annual Burden: 39,000 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impacts.

Nature and Extent of Confidentiality: The FCC has a system of records, FCC/OMD–9, "Commission Registration System (CORES)," to cover the collection, purpose(s), storage, safeguards, and disposal of the personally identifiable information (PII) that individual respondents may submit on one or more of these forms. FCC Form 159 series instructions includes a Privacy Act Statement. Furthermore, while the Commission is not requesting that the respondents submit confidential information to the FCC, respondents may request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The FCC supports a series of remittance advice forms and a remittance voucher form that may be submitted in lieu of a remittance advice form when entities or individuals electronically file a payment. A remittance advice form (or a remittance voucher form in lieu of an advice form) must accompany any payment to the Federal Communications Commission (*e.g.* payments for regulatory fees, application filing fees, auctions, fines, forfeitures, Freedom of Information Act (FOIA) billings, or any other debt due to the FCC). Information is collected on these forms to ensure credit for full payment, to ensure entities and individuals receive any refunds due, to service public inquiries, and to comply with the Debt Collection Improvement Act of 1996.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–3022 Filed 2–9–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

February 3, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 14, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information or copies of the information collection(s), contact Judith B. Herman, OMD, 202–418–0214 or e-mail *judith-b.herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0057.

Title: Application for Equipment Authorization.

Form Number: FCC Form 731.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 600 respondents; 10,000 responses.

Estimated Time per Response: 25 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 154(i), 301, 302, 303(e), 303(f) and 303(r).

Total Annual Burden: 250,000 hours.

Total Annual Cost: $11,017,500.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Minimal exemption from the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4) and 47 CFR 0.457(d) of the Commission's rules is granted for trade secrets which may be submitted as attachments to the application FCC Form 731. No other assurances of confidentiality are provided to respondents.

Needs and Uses: The Commission will submit this expiring information collection during this comment period to the Office of Management and Budget (OMB) to obtain the three-year clearance from them. The Commission is requesting OMB approval for an extension (no change in the reporting and/or third party disclosure requirements). There is no change in the Commission's burden estimates.

Commission rules require that manufacturers of radio frequency (RF) equipment file FCC Form 731 to obtain approval prior to marketing their equipment. A completed application, including FCC Form 731, combined with descriptive information, test data, and occasionally a test sample, provide information to determine compliance of the subject equipment to the FCC rules, thereby controlling interference to radio communications. This data may also be used to aid in enforcement of the FCC rules.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–2954 Filed 2–9–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

February 2, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected;
(d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 14, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review", (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information or copies of the information collection(s), contact Judith B. Herman, OMD, 202–418–0214 or e-mail *judith-b.herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0823.

Title: Part 64, Pay Telephone Reclassification.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 400 respondents; 16,820 responses.

Estimated Time per Response: 2.66 hours (average).

Frequency of Response: On occasion, quarterly and monthly reporting requirements and third party disclosure requirements.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154, 201–205, 218, 226 and 276.

Total Annual Burden: 44,700 hours.

Total Annual Cost: $652,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Confidentiality concerns are not relevant to these types of disclosures. The Commission is not requesting carriers or providers to submit confidential information to the Commission. If the Commission requests that carriers or providers submit information which they believe is confidential, the carriers or providers may request confidential treatment of their information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) during this comment period. The Commission is not changing any of the reporting and/or third party disclosure requirements. The Commission is reporting no change in the hourly burden estimate. However,

we are reporting a $32,000 increase in annual costs. This adjustment increase is due to an increase in the tariff filing fee from $775 to $815.

The Commission established a plan to ensure that payphone service providers (PSPs) were compensated for certain non-coin calls originated from their payphones.

As part of this plan, the Commission required that by October 7, 1997, local exchange carriers were to provide payphone-specific coding digits to PSPs, and that PSPs were to provide those digits from their payphones to interexchange carriers.

The provision of payphone-specific coding digits was a prerequisite to payphone per-call compensation payments by IXCs to PSPs for subscriber 800 and access code calls. The Commission's Wireline Competition Bureau subsequently provided a waiver until March 9, 1998, for those payphones for which the necessary coding digits were not provided to identify calls. The Bureau also on that date clarified the requirements established in the Payphone Orders for the provision of payphone-specific coding digits and for tariffs that LECs must file pursuant to the Payphone Orders.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–2956 Filed 2–9–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 4, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 11, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via e-mail to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or e-mail *judith-b.herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0470.

Title: Sections 64.901 and 64.903, Allocation of Cost, Cost Allocation Manuals; and RAO Letters 19 and 26.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 1 respondent; 2 responses.

Estimated Time per Response: 200 hours.

Frequency of Response: On occasion and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 154, 201–205, 215 and 218–220.

Total Annual Burden: 400 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The information requested is not of a confidential nature. Respondents who believe certain information to be of a proprietary nature may solicit confidential treatment in accordance with 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection as a revision to the Office of Management and Budget (OMB) to get the full, three year clearance from them. The Commission is reporting a 2,000 hour decrease in the total annual burden.

Section 64.901 requires carriers to separate their regulated costs from nonregulated costs using the attributable cost method of cost allocation, per the principles described in Section 64.901.

Section 64.903(a) requires LECs with annual operating revenues equal to or above the indexed revenue threshold as defined in 47 CFR 32.9000 to file a cost allocation manual (CAM) containing the information specified in Section 64.903(a)(1)–(6).

Section 64.903(b) requires that carriers update their CAMs at least annually, except changes to the cost apportionment table and the description of time reporting procedures must be filed at time implementation. The decrease in burden is due to an Order, FCC 08–12, which granted numerous carriers forbearance from rule compliance.

The Cost Allocation Manual (CAM) is reviewed by the Commission to ensure that all costs are properly classified between regulated and nonregulated activity. Uniformity in the CAMs helps improve the joint cost allocation process. In addition, this uniformity gives the Commission greater reliability in financial data submitted by the carriers through the Automated Reporting Management Information System (ARMIS).

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–2958 Filed 2–9–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 4, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of

information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 11, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via e-mail to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or e-mail *judith-b.herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1046.

Title: Part 64, Pay Telephone Reclassification and Compensation Provision of the Telecommunications Act of 1996.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 924 respondents, 8,080 responses.

Estimated Time per Response: 19.82 hours (average).

Frequency of Response: Annual and quarterly reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 CFR sections 151, 154 and 276.

Total Annual Burden: 160,184 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may request confidential treatment of their information that they believe is confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period to obtain the full, three year clearance from them. The Commission is reporting no change in the reporting, recordkeeping and/or third party disclosure requirements. The Commission is reporting an 18,208 hour reduction in the total annual burden. This adjustment is due to fewer respondents and therefore the estimates have been recalculated.

The payphone compensation rules place liability to compensate PSPs for payphone-originated calls on the facilities-based long distance carriers from whose switches such calls are completed.

The payphone compensation rules define these responsible carriers as "completing carriers" and require them to develop their own system of tracking calls to completion, the accuracy of which must be confirmed and attested to by a third-party auditor.

Completing carriers must file with PSPs a quarterly report that must also submit an attestation by the chief financial officer (CFO) that the payment amount for that quarter is accurate and is based on 100% of all completed calls.

The rules also require reporting obligations for other facilities-based long distance carriers in the call path, if any, and define these carriers as "Intermediate Carriers."

Additionally, the rules give parties flexibility to agree to alternative compensation arrangements (ACA) so that small Completing Carriers may avoid the expense of instituting a tracking system and undergoing an audit.

The payphone compensation rules satisfy section 276 by identifying the party liable for compensation and establishing a mechanism for PSPs to be paid.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–2957 Filed 2–9–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

February 3, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 14, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow

in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information or copies of the information collection(s), contact Judith B. Herman, OMD, 202–418–0214 or e-mail *judith-b.herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Wireless E911 Location Accuracy Requirements.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit and State, local or tribal government.

Number of Respondents and Responses: 6,000 responses; 13,700 responses.

Estimated Time per Response: 11.85 hours (average).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation To Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 154, and 332.

Total Annual Burden: 71,100 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: No questions of a confidential nature are asked.

Needs and Uses: The Commission will submit this new collection to the Office of Management and Budget (OMB) during this comment period to obtain the full, three-year clearance from them.

The FCC adopted FCC 10–176, PS Docket No. 07–114, *Second Report and Order,* requires both handset-based and network-based carriers to file a list of the specific counties or portions of counties where they are utilizing their respective exclusions within 90 days following approval from the OMB for the related information collection. The lists must be submitted electronically into PS Docket No. 07–114, and copies must be sent to the National Emergency Number Association, the Association of Public-Safety Communications Officials–International, and the National Association of State 9–1–1 Administrators. For network-based carriers, the exclusion will sunset on (8 years after effective date) of the rule provide for the exclusion.

The Commission needs the new collection and reporting requirement for these exclusions to keep the Commission, public safety organizations, and state and local jurisdictions informed of the specific counties and areas in those counties where wireless carriers are unable to comply with the Commission's amended location accuracy requirements. The information sought in this information collection is also needed to enable the Commission to ensure that all wireless licenses are compliant with the amended location accuracy standards by the end of newly adopted benchmark periods.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–2955 Filed 2–9–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the PRA. On December 3, 2010 (75 FR 75468), the FDIC solicited public comment for a 60-day period on renewal of the following information collection: Community Reinvestment Act (OMB No. 3064–0092). No comments were received. Therefore, the FDIC hereby gives notice of submission of its requests for renewal to OMB for review.

DATES: Comments must be submitted on or before March 14, 2011.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*
- *E-mail:* comments@fdic.gov Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room F–1084, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION: *Proposal to renew the following currently approved collection of information:*

Title: Community Reinvestment Act.

OMB Control No.: 3064–0092.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks.

Estimated Number of Respondents: 4,781.

Estimated Average Time per Response: 44.6 hours.

Estimated Annual Burden: 213,266 hours.

General Description of Collection: This information collection permits the FDIC to fulfill its obligations under the Community Reinvestment Act to evaluate and assign ratings to the performance of institutions, in connection with helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices. The FDIC uses the information in the examination process and in evaluating applications for mergers, branches, and certain other corporate activities. Financial institutions maintain and provide the information to the Agencies.

Request for Comment

Comments are invited on: (a) Whether the collection of information is

necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 4th day of February 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–2901 Filed 2–9–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

February 3, 2011.

TIME AND DATE: 10 a.m., Thursday, February 17, 2011.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Secretary of Labor* v. *North American Drillers, Inc.,* Docket Nos. LAKE 2008–2–R *et al.* (Issues include whether the judge erred in failing to grant the operator's request for declaratory relief in a case where the Secretary had vacated the citation in question.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2011–3087 Filed 2–8–11; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

February 3, 2011.

TIME AND DATE: 10 a.m., Thursday, February 24, 2011.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *North American Drillers, Inc.,* Docket Nos. LAKE 2008–2–R *et al.* (Issues include whether the judge erred in failing to grant the operator's request for declaratory relief in a case where the Secretary had vacated the citation in question.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2011–3088 Filed 2–8–11; 4:15 pm]

BILLING CODE 6735–01–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 February 25. 2011.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566

1. David E. Snyder; Sandra J. Snyder; Louella Snyder; Dennis C. Snyder; Kathy S. Snyder; Mark A. Snyder; Carolyn P. Snyder; Elizabeth K. Snyder; Benjamin T. Snyder; Michael D. Snyder; Sally A. Snyder; Charles R. Snyder Smith; Clayton R. Snyder Smith; Cameron R. Snyder Smith; Mark A. Karenchak; and Lisa M. Karenchak, all of Kittanning, Pennsylvania; Richard G. Snyder; Thomas C. Snyder; Debra L. Snyder; Andrew J. Snyder; and Meghan A. Snyder Kolbe, all of Cowansville, Pennsylvania; Roger H. Claypoole; Barbara L. Claypoole; Julie B.C. Doverspike; Brian H. Claypoole; and Angelique N. Claypoole, of Worthington, Pennsylvania; Alisha C. Snyder, Nevillewood, Pennsylvania; Gretchen L. Snyder, Templeton, Pennsylvania; Marsha L. Snyder, and Richard J. Krauland, both of Pittsburgh, Pennsylvania; Bryan K. Snyder; Sydney B. Snyder; Skylar A. Snyder; Brayden G. Snyder; and Alexis N. Snyder, all of Bradford, Pennsylvania; Kelly J. Holmberg, and Hailey J. Holmberg, both of Naples, Florida; and Charles H. Snyder, Jr., Ft. Myers, Florida; to acquire voting shares of Nextier, Inc., Butler, Pennsylvania, and thereby indirectly acquire voting shares of Nextier Bank N.A., Evans City, Pennsylvania.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528

1. *Richard T. Spurzem,* individually, and Sandbox, LLC, both of Charlottesville, Virginia; to retain voting shares of Pioneer Bankshares, Inc., and thereby indirectly retain voting shares of Pioneer Bank, both of Stanley, Virginia.

Board of Governors of the Federal Reserve System, February 7, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–2953 Filed 2–9–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI)

has taken final action in the following case:

Meleik Goodwill, Ph.D., Wadsworth Center, N.Y.S. Department of Health: Based on the Wadsworth Center report and the oversight review conducted by the Office of Research Integrity (ORI), the U.S. Public Health Service (PHS) found that Meleik Goodwill, Ph.D., former postdoctoral fellow, Wadsworth Center, N.Y.S. Department of Health, engaged in research misconduct in research supported by National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH), grant R21 ES013269–02.

Specifically, PHS found that the Respondent engaged in research misconduct by the fabrication of data for growth curves presented in Figure 1 in the 2007 *Journal of Neuroimmunology* article (Goodwill, M.K., Lawrence, D.A., & Seegal, R.F. "Polychlorinated biphenyls induce proinflammatory cytokine release and dopaminergic dysfunction: Protection in interleukin-6 knockout mice." *Journal of Neuroimmunology* 183(1–2):125–132, 2007), and by the use of composite images of Western-blot bands from unrelated experiments done in 2005 that were falsely labeled as if from different experiments to construct Figure 4A in the 2007 *Journal of Neuroimmunology* article. Figure 4B of the article also was falsified by use of identical sets of number for different treatments. The 2007 *Journal of Neuroimmunology* article was retracted in *J. Neuroimmunol.* 197(1):197, 2008.

Dr. Goodwill has entered into a Voluntary Settlement Agreement in which she has voluntarily agreed, for a period of three (3) years, beginning on January 21, 2011:

(1) That any institution that submits an application for PHS support for a research project on which the Respondent's participation is proposed or that uses her in any capacity on PHS-supported research, or that submits a report of PHS-funded research in which she is involved, must concurrently submit a plan for supervision of her duties to ORI for approval; the supervisory plan must be designed to ensure the scientific integrity of her research contribution; Respondent agrees that she will not participate in any PHS-supported research until such a supervisory plan is submitted to ORI;

(2) That any institution employing her submits, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-funded research in which she was involved, a certification to ORI that the data provided are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application or report; and

(3) To exclude herself voluntarily from service in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. 2011–2975 Filed 2–9–11; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation; Medicare Program; Meeting of the Technical Advisory Panel on Medicare Trustee Reports

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces public meetings of the Technical Advisory Panel on Medicare Trustee Reports (Panel). Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Panel will discuss the long-term rate of change in health spending and may make recommendations to the Medicare Trustees on how the Trustees might more accurately estimate health spending in the long run. The Panel's discussion is expected to be very technical in nature and will focus on the actuarial and economic assumptions and methods by which Trustees might more accurately measure health spending. Although panelists are not limited in the topics they may discuss, the Panel is not expected to discuss or recommend changes in current or future Medicare provider payment rates or coverage policy.

Meeting Date: February 17, 2011, 9 a.m. to 6 p.m. e.t.

ADDRESSES: The meetings will be held at HHS headquarters at 200 Independence Ave., SW., Washington, DC, 20201, Room TBA.

Comments: The meeting will allocate time on the agenda to hear public comments. In lieu of oral comments, formal written comments may be submitted for the record to Donald T. Oellerich, OASPE, 200 Independence Ave., SW., 20201, Room 405F. Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Donald T Oellerich (202) 690–8410, *Don.oellerich@hhs.gov*. **Note:** Although the meeting is open to the public, procedures governing security procedures and the entrance to Federal buildings may change without notice. Those wishing to attend the meeting must call or e-mail Dr. Oellerich by Tuesday February 15, 2011, so that their name may be put on a list of expected attendees and forwarded to the security officers at HHS Headquarters.

SUPPLEMENTARY INFORMATION: Topics of the Meeting: The Panel is specifically charged with discussing and possibly making recommendations to the Medicare Trustees on how the Trustees might more accurately estimate the long term rate of health spending in the United States. The discussion is expected to focus on highly technical aspects of estimation involving economics and actuarial science. Panelists are not restricted, however, in the topics that they choose to discuss.

Procedure and Agenda: This meeting is open to the public. The Panel will likely hear presentations by HHS staff presentations regarding long range growth. After any presentations, the Panel will deliberate openly on the topic. Interested persons may observe the deliberations, but the Panel will not hear public comments during this time. The Panel will also allow an open public session for any attendee to address issues specific to the topic.

Authority: 42 U.S.C. 217a; Section 222 of the Public Health Services Act, as amended. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: February 3, 2011.

Sherry Glied,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 2011–3009 Filed 2–9–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the Presidential Commission for the Study of Bioethical Issues

AGENCY: The Presidential Commission for the Study of Bioethical Issues, Office of the Assistant Secretary for Health, Department of Health and Human Services.

ACTION: Notice of Meeting.

SUMMARY: The Presidential Commission for the Study of Bioethical Issues will conduct its fourth meeting. At this meeting, the Commission will discuss genetics, neuroscience, and neuroimaging for testing, research, diagnosis, risk identification, and health promotion. The Commission will also begin a review of human subjects protection.

DATES: The meeting will take place Monday, February 28, 2011, from 9 a.m. to approximately 4:30 p.m., and Tuesday, March 1, 2011, from 9 a.m. to approximately 12:30 p.m.

ADDRESSES: The St. Regis Hotel, Washington, DC, 923 16th and K Streets, NW., Washington, DC 20006. Phone 202–638–2626.

FOR FURTHER INFORMATION CONTACT: Hillary Wicai Viers, Communications Director, The Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue, NW., Suite C–100, Washington, DC 20005. Telephone: 202–233–3963. E-mail: *Hillary.Viers@bioethics.gov.* Additional information may be obtained at *http://www.bioethics.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act of 1972, Public Law 92–463, 5 U.S.C. app. 2, notice is hereby given of the fourth meeting of the Presidential Commission for the Study of Bioethical Issues (PCSBI). The meeting will be held from 9 a.m. to approximately 4:30 p.m. on Monday, February 28, 2011, and from 9 a.m. to approximately 12:30 p.m. on Tuesday, March 1, 2011, at the St. Regis Hotel, Washington, DC. The meeting will be open to the public with attendance limited to space available. The meeting will also be webcast at *http://www.bioethics.gov.*

Under authority of Executive Order 13521, dated November 24, 2009, the President established PCSBI to serve as a public forum and advise him on bioethical issues generated by novel and emerging research in biomedicine and related areas of science and technology. The Commission is charged to identify and promote policies and practices that assure ethically responsible conduct of scientific research, healthcare delivery, and technological innovation. In undertaking these duties, the Commission will examine specific bioethical, legal, and social issues related to potential scientific and technological advances; examine diverse perspectives and possibilities for useful international collaboration on these issues; and recommend legal, regulatory, or policy actions as appropriate.

The main agenda items for this fourth meeting involve genetics, neuroscience, and neuroimaging; and a review of human subjects protection. Specifically, the Commission is interested in exploring social and ethical issues involving genetics, neuroscience, and neuroimaging used for research, diagnosis, risk identification, and prevention. The Commission will also begin its review of human subjects protection as requested by President Obama on November 24, 2010.

The draft meeting agenda and other information about PCSBI, including information about access to the webcast, will be available at *http://www.bioethics.gov.*

The Commission welcomes input from anyone wishing to provide public comment on any issue before it. The Commission's goal, time permitting, is to invite brief public comment during each meeting session. Individuals who would like to provide public comment at the meeting should notify Esther Yoo by telephone at 202–233–3960, or e-mail at *Esther.Yoo@bioethics.gov.* To accommodate as many speakers as possible the time for public comments may be limited. If the number of individuals wishing to speak is greater than can reasonably be accommodated during the scheduled meeting, the Commission may randomly select speakers from among those who register to speak.

Anyone planning to attend the meeting who needs special assistance, such as sign language interpretation or other reasonable accommodations, should also notify Esther Yoo (contact information above) in advance of the meeting. The Commission will make every effort to accommodate persons who need special assistance.

Written comments will also be accepted and are especially welcome. Please address written comments by e-mail to *info@bioethics.gov,* or by mail to the following address: Public Commentary, The Presidential Commission for the Study of Bioethical Issues, 1425 New York Ave., NW., Suite C–100, Washington, DC 20005. Comments will be publicly available, including any personally identifiable or confidential business information that they contain. Trade secrets should not be submitted.

Dated: February 2, 2011.

Valerie H. Bonham,

Executive Director, The Presidential Commission for the Study of Bioethical Issues.

[FR Doc. 2011–3023 Filed 2–9–11; 8:45 am]

BILLING CODE 4154–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; National Institutes of Health Loan Repayment Programs

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 Division of Loan Repayment, National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: National Institutes of Health Loan Repayment Programs. *Type of Information Collection Request:* Extension of a currently approved collection (OMB No. 0925–0361, expiration date 06/30/11). *Form Numbers:* NIH 2674–1, NIH 2674–2, NIH 2674–3, NIH 2674–4, NIH 2674–5, NIH 2674–6, NIH 2674–7, NIH 2674–8, NIH 2674–9, NIH 2674–10, NIH 2674–11, NIH 2674–12, NIH 2674–13, NIH 2674–14, NIH 2674–15, NIH 2674–16, NIH 2674–17, NIH 2674–18, and NIH 2674–19. *Need and Use of Information Collection:* The NIH makes available financial assistance, in the form of educational loan repayment, to M.D., PhD, Pharm.D., D.D.S., D.M.D., D.P.M., D.C., and N.D. degree holders, or the equivalent, who perform biomedical or behavioral research in NIH intramural laboratories or as extramural grantees or scientists funded by domestic nonprofit organizations for a minimum of 2 years (3 years for the General Research Loan Repayment Program (LRP)) in research areas supporting the mission and priorities of the NIH.

The AIDS Research LRP (AIDS–LRP) is authorized by section 487A of the Public Health Service Act (PHS Act) (42 U.S.C. 288–1), and the Clinical Research LRP for Individuals from Disadvantaged Backgrounds (CR–LRP) is authorized by section 487E (42 U.S.C. 288–5). The General Research LRP (GR–LRP) is authorized by section 487C of the PHS Act (42 U.S.C. 288–3), and the Clinical Research LRP (LRP–CR) is authorized by section 487F (42 U.S.C. 288–5a). The Pediatric Research LRP (PR–LRP) is authorized by section 487F of the PHS Act (42 U.S.C. 288–6), and the Extramural Clinical Research LRP for Individuals from Disadvantaged Backgrounds (ECR–LRP) is authorized by an amendment to section 487E (42 U.S.C. 288–5). The Contraception and

Infertility Research LRP (CIR–LRP) is authorized by section 487B of the PHS Act (42 U.S.C. 288–2), and the Health Disparities Research LRP (HD–LRP) is authorized by section 485G (42 U.S.C. 287c–33).

The Loan Repayment Programs can repay up to $35,000 per year toward a participant's extant eligible educational loans, directly to financial institutions. The information proposed for collection will be used by the Division of Loan Repayment to determine an applicant's eligibility for participation in the program. *Frequency of Response:* Initial application and one- or two-year renewal application. *Affected Public:* Individuals or households, nonprofits, and businesses or other for-profit. *Type of Respondents:* Physicians, other scientific or medical personnel, and institutional representatives. The annual reporting burden is as follows:

Type of respondents	Number of respondents	Estimated number of responses per respondent	Average burden hours per response	Annual burden hours requested
Intramural LRPs:				
Initial Applicants	50	1	10.11	505.50
Advisors/Supervisors	50	1	1	50.00
Recommenders	140	1	.5	70.00
Financial Institutions	10	1	.25	2.50
Subtotal	250			628.00
Extramural LRPs:				
Initial Applicants	2,050	1	10.75	22,037.50
Advisors/Supervisors	1,840	1	1	1,840.00
Recommenders	6,150	1	.5	3,075.00
Financial Institutions	100	1	.25	25.00
Subtotal	10,140			26,977.50
Intramural LRPs:				
Renewal Applicants	50	1	7.42	371.00
Advisors/Supervisors	50	1	2.2	110.00
Subtotal	100			481.00
Extramural LRPS:				
Renewal Applicants	1,200	1	8.58	10,296.00
Advisors/Supervisors	900	1	1.7	1,530.00
Recommenders	3,500	1	.5	1,750.00
Subtotal	5,600			13,576.00
Total	16,090			41,662.50

The annualized cost to respondents is estimated at $1,701,641.69. The annualized cost to the Federal Government for administering the Loan Repayment Programs is expected to be $1,448,100. This cost includes administrative support by the Division of Loan Repayment and $800,000 for the continuing development and maintenance of the LRP Management Information System/Online Application System (MIS/OAS).

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address 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.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Milton Hernandez, PhD, Director, Division of Loan Repayment, National Institutes of Health, 6011 Executive Blvd., Room 206 (MSC 7650), Bethesda, Maryland 20892–7650. Dr. Hernandez may be contacted via e-mail at *mh35c.@nih.gov* or by calling 301–496–0180.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: February 4, 2011.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2011–2995 Filed 2–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 USC, as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable materials,

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 on Drug Abuse Special Emphasis Panel; Multiplexed Sensitive Testing for Drugs of Abuse (2220).

Date: February 15, 2011.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 435–1439, *lf33c.@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.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 4, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2988 Filed 2–9–11; 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: Vascular Biology.

Date: February 16–17, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Larry Pinkus, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@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; Member Conflict: Clinical and Integrative Cardiovascular Sciences.

Date: February 16, 2011.

Time: 12 p.m. to 2 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: Olga A. Tjurmina, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 451–1375, *ot3d@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; Biology of Host Response to Oral Microbial Infections.

Date: February 17, 2011.

Time: 11 a.m. to 2 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: Yi-Hsin Liu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@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: February 4, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2998 Filed 2–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Interagency Breast Cancer and Environmental Research Coordinating Committee Research Translation, Dissemination, and Policy Implications Subcommittee.

These meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance or reasonable accommodations, should inform the Contact Person listed below at least 10 days in advance of the meeting.

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) Research Translation, Dissemination, and Policy Implications Subcommittee.

Date: March 18, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: The purpose of the meeting is to continue the work of the Research Translation, Dissemination, and Policy Implications Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: increasing public participation in decisions relating to breast cancer research by increasing the involvement of patient advocacy and community organizations representing a broad geographical area and creating models for dissemination of information regarding the progress of breast cancer research. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) Research Translation, Dissemination, and Policy Implications Subcommittee.

Date: April 15, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: The purpose of the meeting is to continue the work of the Research Translation, Dissemination, and Policy Implications Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: increasing

public participation in decisions relating to breast cancer research by increasing the involvement of patient advocacy and community organizations representing a broad geographical area and creating models for dissemination of information regarding the progress of breast cancer research. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/*.

Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov*.

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) Research Translation, Dissemination, and Policy Implications Subcommittee.

Date: May 2, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: The purpose of the meeting is to continue the work of the Research Translation, Dissemination, and Policy Implications Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: increasing public participation in decisions relating to breast cancer research by increasing the involvement of patient advocacy and community organizations representing a broad geographical area and creating models for dissemination of information regarding the progress of breast cancer research. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Any member of the public interested in presenting oral comments to the committee should submit their remarks in writing at least 10 days in advance of the meeting. Comments in document format (*i.e.* WORD, Rich Text, PDF) may be submitted via e-mail to *ibcercc@niehs.nih.gov* or mailed to the Contact Person listed on this notice. You do not need to attend the meeting in order to submit comments.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 4, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–3001 Filed 2–9–11; 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Education in HIV Prevention.

Date: March 4, 2011.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Dharmendar Rathore, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Rm 3134, Bethesda, MD 20892–7616, 301–435–2766, *rathored@mail.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: February 4, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2999 Filed 2–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; MBRS Chemistry.

Date: March 7, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John J. Laffan, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301–594–2773, *laffanjo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 3, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2997 Filed 2–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Interagency Breast Cancer and Environmental Research Coordinating Committee State of the Science Subcommittee.

These meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance or reasonable accommodations, should inform the Contact Person listed below at least 10 days in advance of the meeting.

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) State of the Science Subcommittee.

Date: March 29, 2011.

Time: 4 p.m. to 6 p.m.

Agenda: The purpose of the meeting is to continue the work of the State of the Science Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: summarizing the state of the literature (both animal and human research) and identifying research gaps. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) State of the Science Subcommittee.

Date: April 5, 2011.

Time: 2 p.m. to 4 p.m.

Agenda: The purpose of the meeting is to continue the work of the State of the Science Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: summarizing the state of the literature (both animal and human research) and identifying research gaps. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) State of the Science Subcommittee.

Date: May 10, 2011.

Time: 12 p.m. to 2 p.m.

Agenda: The purpose of the meeting is to continue the work of the State of the Science Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: summarizing the state of the literature (both animal and human research) and identifying research gaps. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Any member of the public interested in presenting oral comments to the committee should submit their remarks in writing at least 10 days in advance of the meeting. Comments in document format (*i.e.* WORD, Rich Text, PDF) may be submitted via e-mail to ibcercc@niehs.nih.gov or mailed to the Contact Person listed on this notice. You do not need to attend the meeting in order to submit comments.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 4, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2996 Filed 2–9–11; 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; Modeling of Biological Systems.

Date: February 23–24, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Malgorzata Klosek, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435–2211, *klosekm@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; Clinical Hematology.

Date: February 24–25, 2011.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Delia Tang, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, 301–435–2506, *tangd@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: February 4, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2990 Filed 2–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: March 1, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: Director's Report: Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentations; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conf. Rm. 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, PhD, Executive Secretary, Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Rm. 8001, Bethesda, MD 20892, 301–496–5147, *grayp@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/bsa.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 3, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2992 Filed 2–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Time Sensitive Review.

Date: February 25, 2011.

Time: 12:30 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4238, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; R13 Conference Grant.

Date: March 3, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Minna Liang, PhD, Scientific Review Officer, Grants Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, Room 4226, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–435–1432, *liangm@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA Cutting-Edge Basic Research Awards (CEBRA) (R21).

Date: March 17, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Scott A Chen, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4234, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–443–9511, *chensc@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Loan Repayment.

Date: March 22, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 435–1439, *lf33c.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 4, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2994 Filed 2–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0058]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0013; Exemption of State-Owned Properties Under Self-Insurance Plan

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; extension, without change, of a currently approved

information collection; OMB No. 1660–0013; No Form.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the abstracted information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before March 14, 2011.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number 202–646–3347, or e-mail address *FEMA–Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Exemption of State-Owned Properties Under Self-Insurance Plan.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0013.

Form Titles and Numbers: No Forms.

Abstract: States can request an exemption to the requirement of purchasing flood insurance on State-owned properties through the submission of sufficient supporting documentation certifying that the plan of self-insurance upon which the application for exemption is based meets or exceed the standards of coverage required for flood and flood-related hazards.

Affected Public: State, local, or Tribal Government.

Estimated Number of Respondents: 20.

Frequency of Response: Once.

Estimated Average Hour Burden per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 100 hours.

Estimated Cost: There is no capital, start-up, operation or maintenance cost associated with this collection.

Dated: February 4, 2011.

Lesia M. Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–3028 Filed 2–9–11; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0059]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0004; Application for Participation in the National Flood Insurance Program (NFIP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0004; FEMA Form 086–0–30 (currently FEMA Form 81–64), Application for Participation in the National Flood Insurance Program.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the abstracted information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before March 14, 2011.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number 202–646–3347, or e-mail address *FEMA–Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Application for Participation in the National Flood Insurance Program (NFIP).

Type of information collection: Revision of a currently approved information collection.

OMB Number: 1660–0004.

Form Titles and Numbers: FEMA Form 086–0–30 (currently FEMA Form 81–64), Application for Participation in the National Flood Insurance Program.

Abstract: The National Flood Insurance Program (NFIP) provides flood insurance to the communities that apply for participation and make a commitment to adopt and enforce land use control measures that are to protect development from future flood damages. The application form will enable FEMA to continue to rapidly process new community applications and to thereby more quickly provide flood insurance protection to the residents in the communities.

Affected Public: State, local, or Tribal Government.

Estimated Number of Respondents: 237.

Frequency of Response: On occasion.

Estimated Average Hour Burden per Respondent: FEMA Form 086–0–30, 4 hours.

Estimated Total Annual Burden Hours: 948 hours.

Estimated Cost: There is no capital, start-up, operation or maintenance cost associated with this collection.

Dated: February 4, 2011.

Lesia M. Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–3015 Filed 2–9–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0060]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0011; Debt Collection Financial Statement

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0011; FEMA Form 127–0–1 (currently FEMA Form 22–13), Debt Collection Financial Statement.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the abstracted information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before March 14, 2011.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number 202–646–3347, or e-mail address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Debt Collection Financial Statement.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0011.

Form Titles and Numbers: FEMA Form 127–0–1 (currently FEMA Form 22–13), Debt Collection Financial Statement.

Abstract: FEMA may request debtors to provide personal financial information on FEMA Form 127–0–1 concerning their current financial position. With this information, FEMA evaluates whether to allow its debtors to pay their FEMA debts under installment repayment agreements and if so, under what terms. FEMA also uses this data to determine whether to compromise, suspend, or completely terminate collection efforts on respondents' debts. This data is also used to locate the debtors' assets if the debts are sent for judicial enforcement.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,600.

Frequency of Response: Once.

Estimated Average Hour Burden per Respondent: FEMA Form 127–0–1; 45 minutes.

Estimated Total Annual Burden Hours: 1,200 hours.

Estimated Cost: There is no capital, start-up, operation or maintenance cost associated with this collection.

Dated: February 4, 2011.

Lesia M. Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–3020 Filed 2–9–11; 8:45 am]

BILLING CODE 9110–49–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2010–N012; 20124–1113–0000–F5]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

SUMMARY: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under the Endangered Species Act of 1973, as amended (Act). The Act requires that we invite public comment on these permit applications.

DATES: To ensure consideration, written comments must be received on or before March 14, 2011.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 6034, Albuquerque, NM 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW., Room 6034, Albuquerque, NM. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Endangered Species Division, P.O. Box 1306, Albuquerque, NM 87103; (505) 248–6920.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail 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.

Permit TE–28576A

Applicant: University of New Mexico, Albuquerque, New Mexico.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for Pecos gambusia (*Gambusia nobilis*) within New Mexico and Texas.

Permit TE–28891A

Applicant: Timothy Tristan, Corpus Christi, Texas.

Applicant requests a new permit to receive, rehabilitate, and release green sea turtles (*Chelonia mydas*), hawksbill sea turtles (*Eretmochelys imbricate*), Kemps ridley sea turtles (*Lepidochelys kempii*), and leatherback sea turtles (*Dermochelys coriacea*) that are found sick, injured, or cold-stunned on land in Texas and the adjacent Texas bays, estuaries, and Gulf of Mexico.

Permit TE–064431

Applicant: Aztec Engineering Group, Inc., Phoenix, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/

absence surveys of black-footed ferret (*Mustela nigripes*) and Yuma clapper rail (*Rallus longirostris yumanensis*) within Arizona.

Permit TE–048579

Applicant: Kathlene Meadows, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for Pima pineapple cactus (*Coryphantha scheeri* var. *robustispina*) within Arizona.

Permit TE–219536

Applicant: Texas Tech University, Lubbock, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to collect and transport Roswell springsnail (*Pyrgulopsis roswellensis*) and Koster's springsnail (*Juturnia kosteri*) from Bitter Lakes National Wildlife Refuge in New Mexico to Texas Tech University.

Permit TE–826091

Applicant: Bureau of Land Management, Phoenix, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for Yuma clapper rail (*Ralus longirostrus yumanensis*), lesser long-nosed bat (*Leptonycteris yerbabuenae curasoae*), and Sonoran pronghorn (*Antilocarpa americana sonoriensis*) within Arizona.

Permit TE–022190

Applicant: Arizona—Sonora Desert Museum, Tucson, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to hold in captivity, perform husbandry duties, and create educational displays for the following species: woundfin (*Plagopterus agentissimus*), Yaqui chub (*Gila purpea*), and Yaqui topminnow (*Poeciliopsis occidentalis sonoriensis*) at the museum.

Permit TE–31412A

Applicant: John Kuba, Buffalo Gap, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for golden-cheeked warbler (*Dendroica chrysoparia*), black-capped vireo (*Vireo atricapilla*), and interior least tern (*Sterna antillarum anthalassos*) within Texas.

Permit TE–841353

Applicant: Loomis Partners, Austin, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for the following species: Texas blind salamander (*Typhlomolge rathbuni*), Barton Springs salamander (*Eurycea sosorum*), Mexican long-nosed bat (*Leptonycteris nivalis*), American burying beetle (*Nicrophorus americanus*), Comal Spring riffle beetle (*Stygoparnus comalensis*), Comal Springs dryopid beetle (*Heterelmis comalensis*), whooping crane (*Grus americana*), Attwater's greater prairie-chicken (*Tympanuchus cupido attwateri*), and fountain darter (*Etheostoma fonticola*) within Texas.

Permit TE–814933

Applicant: Texas Parks and Wildlife Department, Austin, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species within Texas:

(Unnamed) ground beetle (*Rhadine infernalis*)
(Unnamed) ground beetle (*Rhadine exilis*)
American burying beetle (*Nicrophorus americanus*)
Ashy dogweed (*Thymophylla tephroleuca*)
Attwater's greater prairie-chicken (*Tympanuchus cupido attwateri*)
Barton Springs salamander (*Eurycea sosorum*)
Bee Creek Cave harvestman (*Texella reddelli*)
Big Bend gambusia (*Gambusia gaigei*)
Black-footed ferret (*Mustela nigripes*)
Black lace cactus (*Echinocereus reichenbachii* var. *albertii*)
Black-capped vireo (*Vireo atricapilla*)
Bone Cave harvestman (*Texella reyesi*)
Braken Bat Cave meshweaver (*Circurina venii*)
Clear Creek gambusia (*Gambusia heterochir*)
Coffin Cave mold beetle (*Batrisodes texanus*)
Cokendolpher Cave harvestman (*Texella cokendolpheri*)
Comal Springs dryopid beetle (*Stygoparnus comalensis*)
Comal Springs riffle beetle (*Heterelmis comalensis*)
Comanche Springs pupfish (*Cyprinodon elegans*)
Davis' green pitaya (*Echinocereus viridiflorus* var. *davisii*)
Eskimo curlew (*Numenius borealis*)
Fountain darter (*Etheostoma fonticola*)
Golden-cheeked warbler (*Dendroica chrysoparia*)
Government Canyon Bat Cave meshweaver (*Cicurina vespera*)
Government Canyon Bat Cave spider (*Neoleptoneta microps*)
Gulf Coast jaguarondi (*Herpailurus yagouaroundi cacomitli*)
Helotes mold beetle (*Batrisodes venyivi*)
Houston toad (*Bufo houstonensis*)
Johnston's frankenia (*Frankenia johnstonii*)
Kemp's ridley sea turtle (*Lepidochelys kempii*)
Kretschmarr Cave mold beetle (*Texamaurops reddelli*)
Large-fruit sand-verbana (*Abronia macrocarpa*)
Least tern (*Sterna antillarum*)
Leatherback sea turtle (*Dermchelys coriacea*)
Leon Springs pupfish (*Cyprinodon bovines*)
Little Aguja pondweed (*Potamogeton clystocarpus*)
Madla's Cave meshweaver (*Cicurina madla*)
Mexican long-nosed bat (*Leptonycteris nivalis*)
Navasota ladies'-tresses (*Spiranthes parksii*)
Nellie cory cactus (*Coryphantha minima*)
Northern aplomado falcon (*Falco femeralis spetentrionalis*)
Ocelot (*Leopardus pardalis*)
Peck's Cave amphipod (*Sygobromus pecki*)
Pecos assiminiea snail (*Assiminea pecos*)
Pecos gambusia (*Gambusia nobilis*)
Red-cockaded woodpecker (*Picoides borealis*)
Rio Grande silvery minnow (*Hybognathus amarus*)
Robber Baron Cave meshweaver (*Cicurina baronia*)
San Marcos gambusia (*Gambusia georgei*)
Slender rush-pea (*Hoffmannseggia tenella*)
Sneed's pincushion cactus (*Coryphantha sneedii* var. *sneedii*)
South Texas ambrosia (*Ambrosia cheiranthifolia*)
Southwestern willow flycatcher (*Empidonax traillii extimus*)
Star cactus (*Astrophytum asterias*)
Terlingua Creek cat's-eye (*Cryptantha crassipes*)
Texas ayenia (*Ayenia limitaris*)
Texas blind salamander (*Typholmolge rathbuni*)
Texas poppy-mallow (*Callirhoe scabriuscula*)
Texas prairie dawn-flower (*Hymenoxys texana*)
Texas snowbells (*Styrax texanus*)
Texas trailing phlox (*Phlox nivalis* spp. *texensis*)
Texas wild-rice (*Zizania texana*)
Tobusch fishhook cactus (*Ancistrocactus tobushii*)
Tooth cave ground beetle (*Rhadine persephone*)
Tooth Cave pseudoscorpion (*Tartarocreagris texana*)
Tooth Cave spider (*Leptoneta myopica*)
Walker's manioc (*Manihot walkerae*)
White bladderpod (*Lesquerella pallid*)
Whooping crane (*Grus americana*)
Zapata bladderpod (*Lesquerella thamnophila*)

Permit TE–150338

Applicant: Crouch Environmental, Houston, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for the following species: Houston toad (*Bufo houstonensis*), golden-cheeked warbler (*Dendroica chrysoparia*), southwestern willow flycatcher (*Empidonax traillii extimus*), Yuma clapper rail (*Rallus longirostris yumanensis),* hawksbill sea turtle (*Eretmochelys imbricate*), Kemp's ridley sea turtle (*Lepidochelys kempii*), and Johnson's seagrass (*Halophila*

johnsonii) within Florida, Mississippi, Alabama, Louisiana, Arkansas, Texas, and Oklahoma.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: February 1, 2011.

Joy E. Nicholopoulos,

Regional Director, Southwest Region, Fish and Wildlife Service.

[FR Doc. 2011–3021 Filed 2–9–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–EA–2011–N004; 6012PBD01 68]

U.S. Coral Reef Task Force Public Meeting and Public Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public meeting; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a public business meeting of the U.S. Coral Reef Task Force (USCRTF) on February 24, 2011, and a request for written comments. This meeting, the 25th biannual meeting of the USCRTF, provides a forum for coordinated planning and action among Federal agencies, State and territorial governments, and nongovernmental partners. Please register in advance by visiting the Web site under **SUPPLEMENTARY INFORMATION**. Advance public comment must be submitted by February 19, 2011, to Liza Johnson at the e-mail, fax, or mailing address listed below. This meeting has time allotted for sharing of in-person public comments, which must be submitted in written format by March 12, 2011.

ADDRESSES: The meeting will take place at the Department of Interior, Main Interior Building Auditorium, 1849 C Street, NW., Washington, DC 20240.

DATES: Please be aware of the following dates:

- *Advance public comments:* Submit to Liza Johnson at the e-mail, fax, or mailing address listed below by February 19, 2011.
- *Registration for Meeting:* Registration is required for the business meeting. Registration online prior to the meeting date is recommended.
- *Business Meeting:* The business meeting is scheduled to take place on Thursday, February 24, 2011.
- *Public Comments to be given at meeting:* Submit in writing to Liza Johnson at the e-mail, fax, or mailing address listed below by March 12, 2011.

FOR FURTHER INFORMATION CONTACT: Andrew Gude, DOI (FWS) USCRTF Steering Committee Point of Contact, U.S. Department of the Interior, MS–3530–MIB, 1849 C Street, NW., Washington, DC 20240 (phone: 202–208–6211; fax: 202–208–4867; e-mail: *Andrew_Gude@fws.gov*); or Liza Johnson, U.S. Coral Reef Task Force Department of the Interior Liaison, U.S. Department of the Interior, MS–3530–MIB, 1849 C Street, NW., Washington, DC 20240 (phone: 202–208–1378; fax: 202–208–4867; e-mail: *Liza_M_Johnson@ios.doi.gov*); or visit the USCRTF Web site at *http://www.coralreef.gov.*

SUPPLEMENTARY INFORMATION: Established by Presidential Executive Order 13089 in 1998, the USCRTF has a mission to lead, coordinate, and strengthen U.S. government actions to better preserve and protect coral reef ecosystems. The Departments of Commerce and the Interior co-chair the USCRTF, whose members include leaders of 12 Federal agencies, 7 U.S. States and territories, and 3 freely associated States. For more information about the meeting, draft agendas, and how to register, go to *http://www.coralreef.gov.* A written summary of the meeting will be posted on the Web site within 2 months after the meeting.

Public Comments

Comments may address the meeting, the role of the USCRTF, or general coral reef conservation issues.

Public Availability of Comments

Before including your address, phone number, e-mail 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.

Tom Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–3014 Filed 2–9–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–EA–2011–N015]

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public meeting of the Sport Fishing and Boating Partnership Council (Council).

DATES: The meeting will be held on Thursday, March 3, 2011, from 1 p.m. to 5 p.m., and Friday, March 4, 2011, from 11 a.m. to 4 p.m. (Eastern time). Members of the public wishing to participate in the meeting must notify Douglas Hobbs by close of business on Tuesday, February 22, 2011, per instructions under **SUPPLEMENTARY INFORMATION**. Written statements must be received by Monday, February 28, 2011.

ADDRESSES: The meeting will be held at the Department of the Interior, 1849 C Street, NW., Room 5160, Washington, DC 20240; telephone (703) 358–2336.

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, VA 22203; telephone (703) 358–2336; fax (703) 358–2548; or via e-mail at *doug_hobbs@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Sport Fishing and Boating Partnership Council will hold a meeting on Thursday, March 3, 2011, from 1 p.m. to 5 p.m., and Friday, March 4, 2011, from 11 a.m. to 4 p.m. (Eastern time).

Background

The Council was formed in January 1993 to advise the Secretary of the Interior, through the Director, U.S. Fish and Wildlife Service, on nationally significant recreational fishing, boating, and aquatic resource conservation issues. The Council represents the interests of the public and private sectors of the sport fishing, boating, and conservation communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council, appointed by the Secretary of the Interior, includes the Director of the Service and the president of the Association of Fish and Wildlife Agencies, who both serve in ex officio

capacities. Other Council members are Directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, Native American tribes, aquatic resource outreach and education, and tourism. Background information on the Council is available at *http://www.fws.gov/sfbpc*.

Meeting Agenda

The Council will convene to consider: (1) The Council's 2010 to 2012 Strategic Work Plan; (2) progress in implementing the Council's assessment of the Sport Fish Restoration Boating Access Program; (3) progress in implementing the Council's assessment of the Fish and Wildlife Service Fisheries Program; (4) progress in implementing the Council's assessment of the activities of the Recreational Boating and Fishing Foundation; (5) issues related to Marine Protected Areas and implementation of the National Ocean Policy; (6) updates on activities of the Service's Wildlife and Sport Fish Restoration Program and Fisheries Program; and (7) other Council business. The final agenda will be posted on the Internet at *http://www.fws.gov/sfbpc*.

Procedures for Public Input

Interested members of the public may submit relevant written or oral information for the Council to consider during the public meeting. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements or those who had wished to speak but could not be accommodated on the agenda are invited to submit written statements to the Council.

Individuals or groups requesting an oral presentation at the public Council meeting will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact Douglas Hobbs, Council Coordinator, in writing (preferably via e-mail; *see* **FOR FURTHER INFORMATION CONTACT**), by Tuesday, February 22, 2011, to be placed on the public speaker list for this meeting. Written statements must be received by Monday, February 28, 2011, so that the information may be made available to the Council for their consideration prior to this meeting. Written statements must be supplied to the Council Coordinator in both of the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

In order to attend this meeting, you must register by close of business Tuesday, February 22, 2011. Because entry to Federal buildings is restricted, all visitors are required to pre-register to be admitted. Please submit your name, time of arrival, e-mail address, and phone number to Douglas Hobbs. Mr. Hobbs' e-mail address is *doug_hobbs@fws.gov,* and his phone number is (703) 358–2336.

Summary minutes of the conference will be maintained by the Council Coordinator at 4401 N. Fairfax Drive, MS–3103–AEA, Arlington, VA 22203, and will be available for public inspection during regular business hours within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

Dated: January 26, 2011.

Jeffrey L. Underwood,

Acting Deputy Director.

[FR Doc. 2011–3017 Filed 2–9–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N023; 96300–1671–0000–P5]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. Both laws require that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents on or before March 14, 2011. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by March 14, 2011.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, e-mail 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.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 18 require that we invite public comment before final action on these permit applications. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: 777 Ranch, Inc. Hondo TX; PRT–013008

The applicant requests renewal of their permit authorizing interstate and foreign commerce, export and cull of excess male barasingha (*Cervus duvauceli*), Eld's deer (*Cervus eldi*), Arabian oryx (*Oryx leucoryx*), and red lechwe (*Kobus leche*) from their captive herd for the purpose of enhancement of the survival of the species. This notification covers activities conducted by the applicant over a 5-year period.

Applicant: Lincoln Park Zoological Gardens, Chicago, IL; PRT–090113

The applicant requests renewal of their permit to import biological samples from ill and dead chimpanzees (*Pan troglodytes*) from the Gombe Stream Reserve, Tanzania for enhancement of the species through scientific research and veterinary diagnosis. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Robert Amon, New Gretna, NJ; PRT–32570A

Applicant: Jerry Brenner, West Olive, MI; PRT–33348A

Applicant: Alan Smith, Sheridan, WY; PRT–33990A

Applicant: Lawrence Gill, Sheridan, WY; PRT–33992A

Applicant: David Hubbard, Stedman, NC; PRT–31720A

B. Endangered Marine Mammals and Marine Mammals

Applicant: U.S. Geological Survey, Alaska Science Center, Anchorage, AK; PRT–690038

The applicant requests an amendment to the permit to increase in the number of takes of polar bears (*Ursus maritimus*) via aerial biopsy darting and paint marking for the purpose of scientific research. This notification covers activities to be conducted by the applicant over the remainder of the 5-year period for which the permit would be valid. Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: February 4, 2011.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–3029 Filed 2–9–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT01000–09–L51010000–ER0000–24–1A00]

Notice of Availability of the Record of Decision for the Approved Pony Express Resource Management Plan Amendment/Mona to Oquirrh Transmission Corridor Project Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Approved Pony Express Resource Management Plan (RMP) Amendment and the Mona to Oquirrh Transmission Corridor Project located in Juab, Salt Lake, Tooele, and Utah counties in Utah. The Utah State Director signed the ROD on February 4, 2011, which constitutes the final decision of the BLM. The Approved Pony Express RMP Amendment is effective immediately.

ADDRESSES: Copies of the ROD/Approved Pony Express RMP Amendment are available for public inspection at the Salt Lake Field Office, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119, and the Fillmore Field Office, Bureau of Land Management, 35 East 500 North, Fillmore, Utah 84631, or via the internet at: *http://www.blm.gov/ut/st/en/fo/salt_lake/planning/mona_to_oquirrh_transmission.html.*

FOR FURTHER INFORMATION CONTACT: For further information contact Cindy Ledbetter, NEPA/Planning Coordinator, by telephone at (801) 977–4300; or by mail at 2370 South 2300 West, Salt Lake City, UT, 84119.

SUPPLEMENTARY INFORMATION: After extensive environmental analysis, consideration of public comments, and application of pertinent Federal laws and policies, it is the decision of the BLM to issue a right-of-way grant to Rocky Mountain Power for the construction, operation, and maintenance of approximately 35 miles of single-circuit 500 kilovolt (kV) and 0.25 mile of double-circuit 345kV transmission line, one new 500/345/138kV substation, ancillary facilities, and access roads for the construction of the project across public lands administered by the BLM West Desert District; and to amend the Pony Express RMP. The right-of-way grant will authorize the use of public lands for the project for a term of 30 years, which is subject to renewal. The Approved Pony Express RMP Amendment allows for the issuance of a major right-of-way outside of a designated corridor on public lands administered by the BLM Salt Lake Field Office in Salt Lake, Tooele, and Utah counties, Utah.

The BLM and Environmental Protection Agency (EPA) each published a Notice of Availability (NOA) of the Draft Environmental Impact Statement (EIS)/Draft Pony Express RMP Amendment for public review and comment in the **Federal Register** on May 15, 2009, which initiated a 90-day public comment period. The comment period ended on August 12, 2009. The BLM received 235 submittals containing comments from Federal, State, and local governments; public and private organizations; and private citizens. The comments in each submittal were identified, analyzed, and addressed in the Final EIS.

The Final EIS analyzed 14 transmission line route alternatives and

disclosed impacts associated with these alternatives, including the BLM's Preferred Alternative on Federal Lands, the Environmentally Preferred Alternative, the Proponent's Proposed Action, and the No Action Alternative. The BLM's decision authorizes issuance of a right-of-way grant to Rocky Mountain Power for the BLM's Preferred Alternative on BLM administered lands, as analyzed in the Final EIS. Updated wilderness characteristics inventories were used during the planning process for this amendment. Land with wilderness characteristics is not present along the right-of-way approved in this ROD.

The BLM published an NOA of the Final EIS/Proposed Pony Express RMP Amendment for public review and comment in the **Federal Register** on April 23, 2010, and the EPA published the NOA in the **Federal Register** on April 26, 2010.

After publication of the Final EIS/Proposed Pony Express RMP Amendment, 14 protests on the Proposed Pony Express RMP Amendment were received during the 30-day protest period beginning April 26, 2010, and ending on May 25, 2010, pursuant to 43 CFR 1610.5–2. Each of the 14 protests were either dismissed or denied by the BLM Director.

The Utah Governor's Office did not identify any inconsistencies between the project Final EIS/Proposed Pony Express RMP Amendment and state or local plans, policies, and programs during the 60-day Governor's Consistency Review, initiated April 28, 2010, in accordance with planning regulations at 43 CFR 1610.3–2(e). As a result of the Governor's Consistency Review, only minor editorial modifications were made in preparing the Approved Pony Express RMP Amendment. These modifications provided further clarification on some of the decisions.

Any party adversely affected by the decision on the right-of-way application may appeal within 30 days of publication of this NOA, pursuant to 43 CFR Part 4 subpart E., and 43 CFR 2801.10. If you wish to file a petition for a stay of effectiveness of the right-of-way decision during the time your appeal is being reviewed by the Interior Board of Appeals, the petition for a stay must accompany your Notice of Appeal (43 CFR 4.21 or 43 CFR 2801.10). The appeal and petition for a stay (if requested) must be filed with the Utah State Director at BLM, Utah State Office, P.O. Box 45155, Salt Lake City, Utah, 84145–0155, within 30 days of publication of this NOA. The appeal should state the specific decision(s) in the ROD which is being appealed. Please consult the appropriate regulations (43 CFR part 4, subpart E) for further appeal requirements.

Juan Palma,

State Director.

[FR Doc. 2011–2993 Filed 2–9–11; 8:45 am]

BILLING CODE 4310–DQ–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Electronics Devices Having a Blu-Ray Disc Player and Components Thereof,* DN 2786; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of LG Electronics, Inc. on February 4, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronics devices having a blu-ray disc player and components thereof. The complaint names as respondents Sony Corporation of Tokyo, Japan; Sony Corporation of America of New York, NY; Sony Electronics, Inc. of San Diego, CA; Sony Computer Entertainment, Inc. of Tokyo, Japan; and Sony Computer Entertainment America LLC of Foster City, CA.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2786") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (*see* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/*

documents/handbook_on_electronic_filing.pdf). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. 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 of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: February 7, 2011.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2011–2961 Filed 2–9–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Digital Televisions and Components Thereof,* DN 2785; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of LG Electronics, Inc. on February 4, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital televisions and components thereof. The complaint names as respondents Sony Corporation of Tokyo, Japan; Sony Corporation of America of New York, NY; Sony Electronics, Inc. of San Diego, CA.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2785") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (*see* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. 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 of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: February 7, 2011.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2011–2962 Filed 2–9–11; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[USITC SE–11–003]

Sunshine Act Meeting Notice

ACTION: Change of date of Government in the Sunshine Meeting.

AGENCY HOLDING THE MEETING: United States International Trade Commission.

ORIGINAL DATE AND TIME: February 9, 2011 at 11 a.m.

NEW DATE AND TIME: February 10, 2011 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–2000.

In accordance with 19 CFR 201.35(d)(1), the Commission has determined to change the date for the meeting which was scheduled for February 9, 2011 at 11 a.m. to February 10, 2011 at 11 a.m. to vote on Inv. Nos. 731–TA–1071 and 1072 (Review) (Magnesium from China and Russia). Earlier announcement of this change was not possible.

Issued: February 7, 2011.

By order of the Commission.

William R. Bishop,

Hearings and Meeting Coordinator.

[FR Doc. 2011–3033 Filed 2–8–11; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–687]

Certain Video Displays, Components Thereof, and Products Containing Same; Notice of Commission Determination To Terminate the Investigation Based on Settlement and Licensing Agreements

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the above-captioned investigation based on settlement and licensing agreements.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3116. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on September 16, 2009, based on a complaint filed by LG Electronics, Inc., alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain video displays, components thereof, or products containing same that infringe one or more of claims 24 and 25 of U.S. Patent No. 5,790,096; claims 1–9 of U.S. Patent No. 5,537,612 ("the '612 patent"); claim 1 of U.S. Patent No. 5,459,522; claims 1–5 and 7–16 of U.S. Patent No. 7,154,564 ("the '564 patent"). 74 FR 47616 (2009) Complainant named Funai Electric Company, Ltd. of Osaka, Japan, Funai Corporation, Inc. of Rutherford, New Jersey, P&F USA, Inc. of Alpharetta, Georgia (collectively, "Funai"), and Vizio, Inc. of Irvine, California as respondents. On January 8, 2010, the presiding ALJ issued an ID granting Complainant's motion for leave to file a second amended complaint and amend the notice of investigation to, *inter alia,* add AmTran Technology Co. Ltd. and AmTran Logistics, Inc. as respondents to the investigation. Subsequently, the Funai respondents were terminated from the investigation based on a settlement agreement.

The evidentiary hearing on violation of Section 337 was held from June 9, 2010 through June 21, 2010. On September 17, 2010, the ALJ issued his final ID finding a violation of section 337 with respect to one of the four asserted patents.

On November 19, 2010, the Commission determined to review the final ID with respect to certain matters relating to the '612 and '564 patents, and issued a notice, in which the Commission specified the issues under review and the questions pertaining to such issues. 75 FR 73126 (November 29, 2010).

On January 18, 2011, the private parties filed a joint motion to terminate the investigation based upon settlement and licensing agreements.

On the same day, the Commission determined to extend the target date for completion of this investigation by 21 days, i.e., from January 18, 2011, to February 8, 2011. On January 21, 2011, the Commission investigative attorney filed a response in support of the motion to terminate.

The Commission has determined to grant the motion and thus terminate the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: February 4, 2011.

By order of the Commission.

William R. Bishop,

Hearings and Meeting Coordinator.

[FR Doc. 2011–2960 Filed 2–9–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,953]

Matthews International Corporation, Bronze Division, Kingwood, WV; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated July 15, 2010, by a state workforce official requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Matthews International Corporation, Bronze Division, Kingwood, West Virginia (subject firm). The negative determination was issued on June 1, 2010. The Department's Notice of Determination was published in the **Federal Register** on June 16, 2010 (75 FR 34177). The workers are engaged in activities related to the production of bronze burial markers and memorial products.

In the request for reconsideration, the petitioner supplied new information regarding an alleged shift in production to Mexico and increased imports by the subject firm's customers of like or directly competitive articles.

The Department has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the petitioning workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 28th day of January, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–2965 Filed 2–9–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,851]

General Motors Corporation Milford Proving Grounds Including On-Site Leased Workers From Adroit Software & Consulting, Inc., Aerotek Professional Services, Inc., Aerotek, Inc., Ajilon Consulting (IS&S), Altair Engineering, Inc., Applied Computer Solutions, Inc., The Bartech Group, CDI Professional Services, Engineering Labs, Inc., Global Technology Associates, LTD., IAV Automotive Engineering, Inc., Infotrieve, Inc., Kelly Service, Inc., Populus Group, RCO Engineering, Inc., TEK Systems, Teledata Technology Solutions, WIPRO, Inc. and Hewlett Packard (HP) FKA EDS, Global Product Development, Non-IT Business Development and Engineering Application Support Teams Milford, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 23, 2010, applicable to workers of General Motors Corporation, Milford Proving Grounds, Milford, Michigan. The notice was published in the **Federal Register** on July 7, 2010 (75 FR 39046).

The workers supply support services related to the production of automobiles, such as quality, reliability, and durability testing. The subject worker group includes on-site leased workers from various temporary staffing agencies.

New information provided in another investigation shows that workers of the Non-IT Business Development Team and the Engineering Applications Support Team of the Global Product Development division of Hewlett Packard, formerly known as EDS, were employed on-site at General Motors Corporation, Milford Proving Grounds, Milford, Michigan during the relevant period. Based on this new information, the Department reviewed the certification of TA–W–72,851.

The intent of the Department's certification is to include all workers at the subject firm who were adversely affected by increased U.S. aggregate imports of articles like or directly competitive with automobiles produced by General Motors Corporation, Milford, Michigan.

The Department has determined that the workers of Hewlett Packard formerly known as EDS, Global Product Development, Non-IT Business Development Team and Engineering Applications Support Team, were sufficiently under the control of General Motors, Milford Proving Grounds, Milford, Michigan, during the relevant period and are, therefore, part of the subject worker group.

Based on these findings, the Department is amending this certification to include on-site leased workers from Hewlett Packard, formerly known as EDS, Global Product Development, Non-IT Business Development Team and Engineering Applications Support Team, Milford, Michigan.

The amended notice applicable to TA–W–72,851 is hereby issued as follows:

All workers of General Motors Corporation, Milford Proving Grounds, including on-site leased workers from Adroit Software & Consulting, Inc., Aerotek Professional Services, Inc., Aerotek, Inc., Ajilon Consulting (IS&S), Altair Engineering, Inc., Applied Computer Solutions, Inc., The Bartech Group, CDI Professional Services, Engineering Labs, Inc., Global Technology Associates, LTD., IAV Automotive Engineering, Inc., Infotrieve, Inc., Kelly Service, Inc., Populus Group, RCO Engineering, Inc., Tek Systems, Teledata Technology Solutions, Wipro, Inc. and Hewlett Packard formerly known as EDS, Global Product Development, Non-IT Business Development Team and Engineering Applications Support Team, Milford, Michigan, who became totally or partially separated from employment on or after October 20, 2008 through June 23, 2012, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 2nd day of February, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–2968 Filed 2–9–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of January 24, 2011 through January 28, 2011.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially

separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,169	Teco-Westinghouse Motor Company, Teco Holdings USA, Inc.; Leased Workers from HT Staffing, Manpower, etc.	Round Rock, TX	May 27, 2009.
74,174	Wiza Industries, Inc	Muskego, WI	June 1, 2009.
74,324	Kinetic Enterprise, DBA Triem Electric Motors	Mebane, NC	June 22, 2009.
74,571	Alpine Custom Shutters, Inc	Englewood, CO	August 18, 2009.
74,659	Clear Pine Mouldings, Inc., Contact Holding Company	Prineville, OR	March 1, 2010.
74,659A	Leased Workers from Mid Oregon Personnel Service, Working On-Site at Clear Pine Mouldings, Inc.	Prineville, OR	September 21, 2009.
74,719	Forrest City Machine Works, Inc	Forrest City, AR	October 12, 2009.
74,869	Chestnut Ridge Group, LLLP, I.C. Supermarkets, Inc.; Leased Workers The Callos Companies and Account Temps.	Latrobe, PA	November 4, 2009.
74,959	Herskovits Corporation, DBA Elram Corporation	Fall River, MA	November 23, 2009.
75,079	Thomasville Furniture Industries, Inc., Furniture Brands International, Leased Workers from Manpower, Inc.	Appomattox, VA	January 14, 2011.

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,658	Broadview Networks	Quincy, MA	September 21, 2009.
74,798	Hewlett Packard Company, Technology Support Group; Including Virtual Workers Reporting to this Location.	Farmington Hills, MI	October 8, 2009.
74,871	International Business Machines (IBM), Global Technology Services Delivery Division; Production Control, etc.	Oklahoma City, OK	November 12, 2009.
74,903	Time Insurance Company (Assurant Health), IT; Leased Workers from Capgemeni.	Miami, FL	November 18, 2009.
74,975	Digital River Education Services, Inc., Digital River, Inc.; Leased Workers of Serenity Staffing, Accountemps, etc.	Austin and Dallas, TX	December 7, 2009.
74,992	SuperMedia, LLC, Quality Assurance Software Testing Division; Leased Workers Advantage, etc.	D/FW Airport, TX	December 13, 2009.
75,016	Faurecia, Emissions Control Technologies Division	Dexter, MO	February 6, 2011.
75,057	Allstate Insurance Company, Technology and Operations Infrastructure Services; Leased Workers UST; etc.	Irving, TX	December 29, 2009.
75,073	Thomson Reuters, Healthcare and Science Division; Leased Workers from Adecco.	Philadelphia, PA	January 6, 2010.
75,087	International Business Machines (IBM), Integrated Technology, Storage Management, Teleworkers.	Glendale, San Jose, and San Ramon, CA.	December 22, 2009.
75,087A	International Business Machines (IBM), Integrated Technology, Storage Management, Teleworkers.	Smyrna, GA	December 22, 2009.
75,087B	International Business Machines (IBM), Integrated Technology, Storage Management, Teleworkers.	Des Moines, IA	December 22, 2009.
75,087C	International Business Machines (IBM), Integrated Technology, Storage Management, Teleworkers.	Bethesda, MD	December 22, 2009.
75,087D	International Business Machines (IBM), Integrated Technology, Storage Management, Teleworkers.	Charlotte, NC	December 22, 2009.
75,089	Startek USA, Inc	Alexandria, LA	January 10, 2010.
75,117	Acuity Brands Lighting, Inc., Acuity Brands, Inc.; Leased Workers Express Employment Professionals, etc.	Austin, TX	January 18, 2010.
75,124	Imation Corporation, Leased Workers of Express Employment Professionals.	Weatherford, OK	January 19, 2010.
75,132	NIOXIN Research Laboratories, Inc., Proctor & Gamble; Leased Workers Selectsource Staffing, etc.	Lithia Springs, GA	December 31, 2009.

The following certifications have been issued. The requirements of section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,260	XPEDX, International Paper Company; Leased Workers from Manpower.	Livonia, MI	May 26, 2009.
75,013	Cable Consultants, Inc., d/b/a Black Box Network Services, On Site At Hewlett Packard, Tek Systems.	Corvallis, OR	November 12, 2009.

The following certifications have been issued. The requirements of section 222(f) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,666	Goodyear, Wingfoot Commercial Tire	Portland, OR	June 25, 2008.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
74,956	Riverside Furniture Company, Retail Store Division	Rogers, AR	
74,956A	Riverside Furniture Company, Retail Store Division	North Little Rock, AR	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
74,653	Unicare, WellPoint, Inc	Plano, TX	
74,733	Xpedite Systems, LLC, Easylink Services International Corporation	Deerfield Beach, FL	
74,870	International Business Machines (IBM), Global Technology Services, SSO Band Support Capital One.	Plano, TX	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's website, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
75,046	Macsteel Service Centers USA	Liverpool, NY	

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

TA–W No.	Subject firm	Location	Impact date
75,098	IBM	Research Triangle Park, NC	

I hereby certify that the aforementioned determinations were issued during the period of January 24, 2011 through January 28, 2011. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: February 2, 2011.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–2964 Filed 2–9–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 22, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 22, 2011.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to foiarequest@dol.gov.

Signed at Washington, DC, this 31st day of January 2011.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 1/24/11 and 1/28/11]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
75127	Ashland Hercules Water Technologies (Workers)	Louisiana, MO	01/24/11	01/20/11
75128	Olympic Fabrication LLC (State/One-Stop)	Shelton, WA	01/24/11	01/20/11
75129	Randstadt (State/One-Stop)	Yakima, WA	01/24/11	01/20/11
75130	FTCA (Union)	Somerset, PA	01/24/11	01/21/11
75131	JLG Industries, Inc. (State/One-Stop)	Hagerstown, MD	01/25/11	01/24/11
75132	NIOXIN Research Laboratories, Inc. (Company)	Lithia Springs, GA	01/25/11	12/31/10
75133	McComb Mill Warehouse (Company)	McComb, MS	01/25/11	01/12/11
75134	Veyance Technologies, Inc. (Company)	Lincoln, NE	01/25/11	01/24/11
75135	Flowserve (State/One-Stop)	Albuquerque, NM	01/25/11	01/21/11
75136	The Connection (Workers)	Penn Yan, NY	01/25/11	01/24/11
75137	John Crane, Inc. (Company)	Cranston, RI	01/25/11	01/24/11
75138	Ashland Foundry and Machine Works, Inc. (Union)	Ashland, PA	01/25/11	01/24/11
75139	Somanetics (Workers)	Troy, MI	01/25/11	01/24/11
75140	Holland Consulting (Company)	Enumclaw, WA	01/26/11	01/25/11
75141	Wellpoint (Workers)	Green Bay, WI	01/26/11	01/20/11
75142	Oak Creek Consolidated, Inc. (Company)	Yorktown, VA	01/26/11	01/25/11
75143	Alliance Group Technologies, Inc. (Workers)	Peru, IN	01/27/11	01/26/11
75144	Cincinnati Tyrolit, Inc. (State/One-Stop)	Cincinnati, OH	01/28/11	01/27/11
75145	Volvo Information Technology (State/One-Stop)	Greensboro, NC	01/28/11	01/27/11
75146	Berkley Surgical (Workers)	Uniontown, PA	01/28/11	01/26/11

[FR Doc. 2011–2963 Filed 2–9–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,566]

Bob Evans Farms, Inc., an Ohio Corporation, a Subsidiary of Bob Evans Farms, Inc., a Delaware Corporation, Galva, Illinois; Notice of Negative Determination Regarding Application for Reconsideration

By application dated November 12, 2010, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of Bob Evans Farms, Inc., an Ohio Corporation, a subsidiary of Bob Evans Farms, Inc., a Delaware Corporation, Galva, Illinois. The negative determination was issued on October 15, 2010, and the Notice of Determination was published in the **Federal Register** on November 3, 2010 (75 FR 67773). The workers produce sausage rolls and links. The petitioner alleged that worker separations are due to increased imports of sows.

The negative determination was issued based on the findings that there have not been increased imports of articles like or directly competitive with those produced by the subject firm, there has not been a shift of production by the subject firm to a foreign country, and the workers are not adversely-affected secondary workers.

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The request for reconsideration states that "with the increased importation of sows (the main component in the production of pork sausage) from Canada, the cost of production of the finished sausage product increased. The workers' hours of production were decreased due to the cost of importation of Canadian sows to the Galva, Illinois plant." Because this allegation is identical to the petition allegation and has been addressed in the initial investigation, 29 CFR 90.18(c)(1) and (2) have not been met.

The request for reconsideration also infers that increased imports of a component part (sows) are a basis for certification of a worker group that produces the finished article (sausage).

The initial determination was based on the finding that there have not been increased imports of articles like or directly competitive with the sausage rolls or links produced by the subject firm. 29 CFR 90.2 states that "*like or directly competitive means that like* articles are those which are substantially identical in inherent or intrinsic characteristics (i.e., materials from which the articles are made, appearance, quality, texture, etc.); and *directly competitive* articles are those, although not substantially identical in their inherent or intrinsic characteristics, are substantially equivalent for commercial purposes (*i.e.,* adapted to the same uses and essentially interchangeable therefore)." Because sows are neither like nor directly competitive with sausage rolls or links, the certification of a worker group engaged in the production of finished articles (sausage rolls and links) cannot be based on increased imports of components (sows). Therefore, 29 CFR 90.18(c)(3) has not been met.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify

reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 26th day of January, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–2966 Filed 2–9–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,740]

Bruss North America Russell Springs, Kentucky; Notice of Revised Determination on Reconsideration

Following the issuance of a determination applicable to workers and former workers of Bruss North America, Russell Springs, Kentucky (subject firm), regarding their application for Trade Adjustment Assistance (TAA), the Department received new information relevant to the case. The initial determination was issued on May 28, 2010. The Department's Notice of Determination was published in the **Federal Register** on June 16, 2010 (75 FR 34175). The subject workers are engaged in employment related to the production of automobile parts and component parts. The worker group does not include any on-site leased workers.

New information obtained during a recent investigation for the subject firm revealed that there was a mistake of facts which were previously considered in the immediate case. Upon review, the Department has determined that the workers and former workers of Bruss North America, Russell Springs, Kentucky, who are engaged in employment related to the production of automobile parts and component parts, meet the criteria as Suppliers for secondary worker certification.

Criterion I has been met because a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened with separation.

Criterion II has been met because workers of Bruss North America, Russell Springs, Kentucky produced and sold automobile parts and component parts for a firm that employed a worker group eligible to apply for TAA and the component parts are related to the article that was the basis for the TAA certification.

Criterion III has been met because the loss of business by Bruss North America, Russell Springs, Kentucky with the aforementioned firm, with respect to automobile parts and components sold to the firm, contributed importantly to worker separations at Bruss North America, Russell Springs, Kentucky.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of the subject firm, who are engaged in employment related to the supply of automobile parts and components, meet the worker group certification criteria under Section 222(c) of the Act, 19 U.S.C. 2272(c). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

"All workers of Bruss North America, Russell Springs, Kentucky, who became totally or partially separated from employment on or after October 31, 2008, through two years from the date of this revised certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC, this 2nd day of February, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–2967 Filed 2–9–11; 8:45 am]

BILLING CODE 4510–FN–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2008–2 CRB CD 2000–2003 (Phase II)]

Distribution of 2000, 2001, 2002, and 2003 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of Phase II proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges are announcing the commencement of a proceeding to determine the Phase II distribution of 2000, 2001, 2002, and 2003 royalties collected under the cable statutory license. The Judges are also announcing the date by which a party who wishes to participate in this distribution proceeding must file its Petition to Participate and the accompanying $150 filing fee, if applicable.

DATES: Petitions to Participate and the filing fee are due on or before March 14, 2011.

ADDRESSES: An original, five copies, and an electronic copy in Portable Document Format (PDF) on a CD of the Petition to Participate, along with the $150 filing fee, may be delivered to the Copyright Royalty Board by either mail or hand delivery. Petitions to Participate and the $150 filing fee may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), Petitions to Participate, along with the $150 filing fee, must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, Petitions to Participate, along with the $150 filing fee, must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, Petitions to Participate, along with the $150 filing fee, if applicable, must be delivered to the Congressional Courier Acceptance Site, located at 2nd and D Street, NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: LaKeshia Brent, CRB Program Specialist, by telephone at (202) 707–7658, or e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Each year, semiannually, cable systems must submit royalty payments to the Copyright Office as required by the cable statutory license for the privilege of retransmitting over-the-air television and radio broadcast signals. 17 U.S.C. 111. These royalties are then distributed to copyright owners whose works were included in such retransmissions and who timely filed a claim for royalties. Distribution of the royalties for each calendar year are determined by the Copyright Royalty Judges ("Judges") in two phases. At Phase I, the royalties are divided among the representatives of the major categories of copyrightable content (movies, sports programming, music, *etc.*) requesting the distribution. At Phase II, the royalties are divided among the various copyright owners within each category.

The Judges published their final determination regarding the Phase I

distribution of the 2000–2003 cable royalties on May 12, 2010. 75 FR 26798. Thus, this Notice announcing the commencement of a proceeding under 17 U.S.C. 803(b)(1) for distribution of cable royalties collected for 2000, 2001, 2002, and 2003 is confined to Phase II.

Commencement of Phase II Proceeding

Consistent with 17 U.S.C. 804(b)(8), the Copyright Royalty Judges determine that a Phase II controversy exists as to the distribution of the 2000, 2001, 2002, and 2003 cable royalties. We reach this determination based on a *Motion to Initiate Phase II Proceedings* by the Joint Sports, Program Suppliers, and Devotional Claimants, three Phase I claimant groups, filed with the Judges on January 14, 2011. The Motion states that "[n]o pending controversies exist with respect to Phase I. However, controversies continue to exist with regard to Phase II in the devotional, sports, and syndicated programming categories. For example, one party, Independent Producers Group ('IPG'), claims that it represents copyright owners with [unresolved] Phase II claims in each of these categories." *Motion* at 1. The Motion further states that "[t]he Phase I Parties are also aware of other ongoing Phase II controversies, including ongoing Phase II controversies in the syndicated programming category between the MPAA-represented Program Suppliers and the NAB-represented Program Suppliers as to the 2000, 2001, 2002, and 2003 royalty years, and between the MPAA-represented Program Suppliers and Home Shopping Network ('HSN') for the 2002 and 2003 royalty years." *Motion* at 2. The Motion requests that the Judges commence a Phase II proceeding to resolve all outstanding Phase II controversies.[1] In light of the outstanding Phase II controversies with respect to cable royalties for 2000, 2001, 2002, and 2003, the Motion is *granted.*

Petitions To Participate

Petitions to Participate must be filed in accordance with 37 CFR 351.1(b)(2). Petitions to Participate submitted by interested parties whose claims do not exceed $1,000 must contain a statement that the party will not seek a distribution of more than $1,000.[2] No filing fee is required for these parties. A party whose claim(s) exceed $1,000 must submit a filing fee of $150 with its Petition to Participate or the Petition will be rejected. The filing fee must be paid by check or money order payable to the "Copyright Royalty Board." If a check is returned for insufficient funds, the corresponding Petition to Participate will be dismissed. In accordance with 37 CFR 350.2 (Representation), all parties, other than individuals, must be represented by an attorney.

Further procedural matters, including scheduling, will be addressed after Petitions to Participate have been received.

Dated: February 3, 2011.

James Scott Sledge,

Chief Copyright Royalty Judge.

[FR Doc. 2011–2940 Filed 2–9–11; 8:45 am]

BILLING CODE 1410–72–P

[1] IPG filed an untimely response to the Motion on January 27, 2011. *See* 37 CFR 350.4(f) (oppositions to motions shall be filed within five business days of the filing of the motion).

[2] The Copyright Royalty Judges Program Technical Corrections Act, Public Law 109–303, changed the amount from $10,000 to $1,000.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before March 14, 2011 to be assured of consideration.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167; or electronically mailed to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–713–1694 or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for these information collections on November 24, 2010 (75 FR 71743 and 71744). No comments were received. NARA has submitted the described information collections to OMB for approval. In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by these collections. In this notice, NARA is soliciting comments concerning the following information collections:

Title: Standard A-File.

OMB number: 3095–00XX.

Agency form numbers: NATF Form AFILE1.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 480.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 80.

Abstract: Submission of requests on a form is necessary to handle in a timely fashion the volume of requests received for these records and the need to obtain specific information from the researcher to search for the records sought. The records, called Alien Files, or A-Files, contain all records of any active case of an alien not yet naturalized as they passed through the United States immigration and inspection process. You can also use Order Online! (*http://www.archives.gov/research_room/obtain_copies/military_and_genealogy_order_forms.html*) to complete the forms and order the copies.

Dated: February 2, 2011.

Charles K. Piercy,

Acting Assistant Archivist for Information Services.

[FR Doc. 2011–3045 Filed 2–9–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request reinstatement and clearance for this collection. In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than three years.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information of respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by April 11, 2011, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Room 295, Arlington, VA 22230, or by e-mail to *splimpton@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpton@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: *Title of Collection:* Informal Science Education (ISE) Program.

Evaluation for the National Science Foundation

OMB Number: 3145–0158.

Expiration Date of Approval: Not applicable.

Type of request: Reinstatement.

Abstract:

Informal Science Education (ISE) is an NSF program that supports innovation in anywhere, anytime, lifelong learning, through investments in research, development, infrastructure, and capacity-building for science, technology, engineering and mathematics (STEM) learning outside formal school settings. Informal science experiences can serve to spark young people's interest in pursuing careers in STEM fields as well as to improve public engagement with STEM, contributing to science learning for most citizens. For over 40 years, NSF ISE programming has supported efforts to engage the public in science and science learning. The program is charged with advancing public understanding of STEM content and processes and promoting engagement with informal STEM education experiences. Since the last major evaluation of NSF ISE (COSMOS Corporation, 1998), ISE has taken strategic steps to support the growing maturation of the informal science field, producing seminal documents such as Framework for Evaluating Impacts of Informal Science Education Projects (Friedman, 2008) and Learning Science in Informal Environments (NRC, 2009), and supporting field-wide resources such as the InformalScience.org Web site and the Center for the Advancement of Informal Science Education (CAISE). The program's grant solicitations have reflected a growing professionalization for the informal science community with new expectations for rigorous research on implementation and outcomes.

The ISE program evaluation will characterize changes in the informal science arena since 1999 and delineate the role in those changes of the NSF ISE program between 1999 and the present. The evaluation will do so by analyzing NSF ISE-funded projects over that time frame, attending in particular to the impact on informal science infrastructure, the rigor of individual project evaluations, the learning outcomes for diverse audiences, and the features of exemplary projects. The ISE program evaluation will employ a mixed-method approach including extensive document review of solicitations, proposals, reports, and published literature; qualitative and quantitative analyses of surveys and interviews with researchers and practitioners in the field; and case studies of influential projects, initiatives, and ideas. This information collection request will include a survey instrument for principal investigators of past and current ISE projects, one survey instrument for project evaluators, and protocols for follow-up interviews with a sample of principal investigators and evaluators.

Estimate of Burden:

Respondents: Individuals.

Frequency: One time.

Estimated Number of Respondents: 1010.

Estimated Burden Hours on Respondents: 550.

Dated: February 7, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–2976 Filed 2–9–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271; License No. DPR–28; NRC–2010–0191]

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.; Notice of Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a petition dated April 19, 2010, filed by Congressman Paul W. Hodes, U.S. House of Representatives, hereinafter referred to as the "Petitioner." The petition was supplemented by letters dated May 14 and June 16, 2010. The petition concerns the operation of the Vermont Yankee Nuclear Power Station (Vermont Yankee).

The petition requested that the Nuclear Regulatory Commission (NRC) not allow Vermont Yankee, operated by Entergy Nuclear Operations, Inc. (Entergy or the licensee), to restart in May 2010, after its scheduled refueling outage, until the completion of all environmental remediation work and relevant reports on leaking tritium at the plant. Specifically, the petition asked the NRC to prevent Vermont Yankee from resuming power production until the following efforts have been completed to the Commission's satisfaction: (1) The tritiated groundwater remediation process; (2) the soil remediation process scheduled to take place during the refueling outage, to remove soil containing tritium and radioactive isotopes of cesium, manganese, zinc, and cobalt; (3) Entergy's root cause analysis; and (4) the Commission's review of the documents presented by Entergy as a result of the Commission's demand for information imposed on the licensee on March 1, 2010.

The petition raises concerns originating from the licensee's report to the NRC on January 7, 2010, that water samples taken from a monitoring well on site at Vermont Yankee showed tritium levels above background. Tritium is another name for the radioactive nuclide hydrogen-3. Tritium occurs naturally in the environment because of cosmic ray interactions and is also produced by nuclear reactor operations. Tritium is chemically identical to normal hydrogen (hydrogen-1), and like normal hydrogen tends to combine with oxygen to form water, which is referred to as tritiated water. The detection of tritiated water in the monitoring well indicated there was abnormal leakage from the nuclear plant. The licensee later identified a leak from underground pipe in the Advanced Off-Gas system as the source of the leak.

This petition was assigned to the NRC's Office of Nuclear Reactor Regulation (NRR) for review. NRR's Petition Review Board (PRB) met on May 3, 2010, and made an initial recommendation to accept this petition for review. The NRC communicated this decision to the Petitioner's staff, who told the PRB that the Petitioner did not desire to address the PRB. The PRB's final recommendation was to accept the petition for review. By letter dated May 20, 2010, Agencywide Documents Access and Management System (ADAMS) Accession No. ML101310049, the NRC informed the Petitioner of the PRB's recommendation and also stated that the NRC did not find cause to prohibit the restart of Vermont Yankee.

The NRC sent a copy of the proposed Director's Decision to the Petitioner for comment on November 18, 2010, and to the licensee for comment on November 29, 2010. The Petitioner did not provide any comments and the licensee provided minor comments. The licensee's comments have been addressed in the Director's Decision.

The NRR staff has determined that the activities requested by the Petitioner have been completed, with the exception of preventing the restart of Vermont Yankee. Therefore, the Director of NRR concludes that the petition has been granted in part and denied in part. The reasons for this decision are explained in the Director's Decision (DD–11–01) pursuant to Title 10 of the Code of Federal Regulations (10 CFR) 2.206, "Requests for action under this subpart."

Copies of the petition, ADAMS Accession No. ML101120663, and the Director's Decision, ADAMS Accession No. ML110060072, are available for inspection at the Commission's Public Document Room (PDR) at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the NRC's ADAMS Public Electronic Reading Room on the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* The supplemental letters are under ADAMS Accession Nos. ML101370031 and ML101720485. NRC Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," ADAMS Accession No. ML041770328, describes the petition review process. Persons who do not have access to ADAMS or who have problems in accessing the documents in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 27th day of January 2011.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–3026 Filed 2–9–11; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology; Notice of Meeting: Partially Closed Meeting of the President's Council of Advisors on Science and Technology

ACTION: Public notice.

SUMMARY: This notice sets forth the schedule and summary agenda for a partially closed meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA), 5 U.S.C., App.

DATE: March 8, 2011.

ADDRESSES: The meeting will be held at the Marriott Metro Center, 775 12th Street NW., Junior Ballroom, Washington, DC.

Type of Meeting: Open and Closed.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on March 8, 2011 from 10 a.m. to 5 p.m. with a lunch break from 12:15 p.m. to 2 p.m.

Open Portion of Meeting: During this open meeting, PCAST is tentatively scheduled to hear presentations on defense nuclear nonproliferation research and the Federal statistical system. Representatives from the Department of Health and Human Services will update PCAST on the implementation status of recommendations PCAST made in its reports on influenza. PCAST members will also discuss reports they are developing on the topics of advanced manufacturing; biodiversity preservation and ecosystem sustainability; and the first two years of undergraduate science, technology, engineering, and mathematics education. Additional information and the agenda will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

Closed Portion of the Meeting: PCAST may hold a closed meeting of approximately 1 hour with the President on March 8, 2011, which must take place in the White House for the President's scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1). The precise date and time of this potential meeting has not yet been determined.

Public Comments: It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on March 8, 2011 at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast.* This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at *http://whitehouse.gov/ostp/pcast*, no later than 12 p.m. Eastern Time on Tuesday, March 1, 2011. Phone

or e-mail reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

Written Comments: Although written comments are accepted until the date of the meeting, written comments should be submitted to PCAST at least two weeks prior to each meeting date, Tuesday, February 22, 2011, so that the comments may be made available to the PCAST members prior to the meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled "Connect with PCAST."

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.* A live video webcast and an archive of the webcast after the event are expected to be available at *http://whitehouse.gov/ostp/pcast.* The archived video will be available within one week of the meeting. Questions about the meeting should be directed to Dr. Deborah D. Stine, PCAST Executive Director, at *dstine@ostp.eop.gov*, (202) 456–6006. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House and from cabinet departments and other Federal agencies. *See* the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is administered by the Office of Science and Technology Policy (OSTP). PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of MIT and Harvard.

Meeting Accomodations: Individuals requiring special accommodation to access this public meeting should contact Dr. Stine at least ten business days prior to the meeting so that appropriate arrangements can be made.

Ted Wackler,

Deputy Chief of Staff.

[FR Doc. 2011–3039 Filed 2–9–11; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 103; SEC File No. 270–410; OMB Control No. 3235–0466.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval for Rule 103 of Regulation M (17 CFR 242.103)—Nasdaq Passive Market Making.

Rule 103 permits passive market making in Nasdaq securities during a distribution. A distribution participant that seeks use of this exception would be required to disclose to third parties its intention to engage in passive market making.

There are approximately 298 respondents per year that require an aggregate total of 298 hours to comply with this rule. Each respondent makes an estimated 1 annual response. Each response takes approximately 1 hour to complete. Thus, the total compliance burden per year is 298 burden hours. The total compliance labor cost for the respondents is approximately $19,966.00, resulting in an estimated labor cost of compliance for the respondent per response of approximately $67.00 (*i.e.,* $19,966.00/298 responses).

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 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted within 60 days of this notice.

Dated: February 3, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–2933 Filed 2–9–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 104; SEC File No. 270–411; OMB Control No. 3235–0465.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 104 of Regulation M (17 CFR 242.104)—Stabilizing and Other Activities in Connection with an Offering permits stabilizing by a distribution participant during a distribution so long as the distribution participant discloses information to the market and investors. This rule requires disclosure in offering materials of the potential stabilizing transactions and that the distribution participant inform the market when a stabilizing bid is made. It also requires the distribution participants (*i.e.* the syndicate manager) to maintain information regarding syndicate covering transactions and penalty bids and disclose such information to the Self-Regulatory Organization (SRO).

There are approximately 745 respondents per year that require an aggregate total of 149 hours to comply with this rule. Each respondent makes an estimated 1 annual response. Each response takes approximately 0.20 hours (12 minutes) to complete. Thus, the total compliance burden per year is 149 burden hours. The total internal labor compliance cost for the respondents is approximately $9,983.00, resulting in a cost of compliance for the respondent per response of approximately $13.40 (*i.e.,* $9,983/745 responses).

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 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted within 60 days of this notice.

Dated: February 3, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–2932 Filed 2–9–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 101; SEC File No. 270–408; OMB Control No. 3235–0464.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 101 of Regulation M (17 CFR 242.101)—Activities by Distribution Participants, prohibits distribution participants from purchasing activities at specified times during a distribution of securities. Persons otherwise covered by these rules may seek to use several applicable exceptions such as a calculation of the average daily trading volume of the securities in distribution, the maintenance of policies regarding information barriers between their affiliates, and the maintenance a written policy regarding general compliance with Regulation M for de minimus transactions.

There are approximately 1588 respondents per year that require an aggregate total of 31,309 hours to comply with this rule. Each respondent makes an estimated 1 annual response. Each response takes approximately 20 hours to complete. Thus, the total compliance burden per year is 31,309 burden hours. The total compliance internal labor cost for the respondents is approximately $1,783,673.73, resulting in a cost of compliance for the respondent per response of approximately $1123.22 (*i.e.,* $1,783,673.73/1588 responses).

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 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: February 3, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–2931 Filed 2–9–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rule 17d–1; SEC File No. 270–505; OMB Control No. 3235–0562]

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 17d–1, SEC File No. 270–505, OMB Control No. 3235–0562.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Section 17(d) (15 U.S.C. 80a–17(d)) of the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) (the "Act") prohibits first- and second-tier affiliates of a fund, the fund's principal underwriters, and affiliated persons of the fund's principal underwriters, acting as principal, to effect any transaction in which the fund or a company controlled by the fund is a joint or a joint and several participant in contravention of the Commission's rules. Rule 17d–1 (17 CFR 270.17d–1) prohibits an affiliated person of or principal underwriter for any fund (a "first-tier affiliate"), or any affiliated person of such person or underwriter (a "second-tier affiliate"), acting as principal, from participating in or effecting any transaction in connection with a joint enterprise or

other joint arrangement in which the fund is a participant, unless prior to entering into the enterprise or arrangement "an application regarding [the transaction] has been filed with the Commission and has been granted by an order." In reviewing the proposed affiliated transaction, the rule provides that the Commission will consider whether the proposal is (i) consistent with the provisions, policies, and purposes of the Act, and (ii) on a basis different from or less advantageous than that of other participants in determining whether to grant an exemptive application for a proposed joint enterprise, joint arrangement, or profit-sharing plan.

Rule 17d–1 also contains a number of exceptions to the requirement that a fund must obtain Commission approval prior to entering into joint transactions or arrangements with affiliates. For example, funds do not have to obtain Commission approval for certain employee compensation plans, certain tax-deferred employee benefit plans, certain transactions involving small business investment companies, the receipt of securities or cash by certain affiliates pursuant to a plan of reorganization, certain arrangements regarding liability insurance policies and transactions with "portfolio affiliates" (companies that are affiliated with the fund solely as a result of the fund (or an affiliated fund) controlling them or owning more than five percent of their voting securities) so long as certain other affiliated persons of the fund (*e.g.,* the fund's adviser, persons controlling the fund, and persons under common control with the fund) are not parties to the transaction and do not have a "financial interest" in a party to the transaction. The rule excludes from the definition of "financial interest" any interest that the fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material, as long as the board records the basis for its finding in their meeting minutes.

Thus, the rule contains two filing and recordkeeping requirements that constitute collections of information. First, rule 17d–1 requires funds that wish to engage in a joint transaction or arrangement with affiliates to meet the procedural requirements for obtaining exemptive relief from the rule's prohibition on joint transactions or arrangements involving first- or second-tier affiliates. Second, rule 17d–1 permits a portfolio affiliate to enter into a joint transaction or arrangement with the fund if a prohibited participant has a financial interest that the fund's board determines is not material and records the basis for this finding in their meeting minutes. These requirements of rule 17d–1 are designed to prevent fund insiders from managing funds for their own benefit, rather than for the benefit of the funds' shareholders.

Based on an analysis of past filings, Commission staff estimates that 8 funds file applications under section 17(d) and rule 17d–1 per year. The staff understands that funds that file an application generally obtain assistance from outside counsel to prepare the application. The cost burden of using outside counsel is discussed below. Based on a limited survey of persons in the mutual fund industry, the Commission staff estimates that each applicant will spend an average of 154 hours to comply with the Commission's applications process. The Commission staff therefore estimates the annual burden hours per year for all funds under rule 17d–1's application process to be 1,232 hours at a cost of $445,328.[1] The Commission, therefore, requests authorization to increase the inventory of total burden hours per year for all funds under rule 17d–1 from the current authorized burden of 616 hours to 1,232 hours. The increase is due to an increase in the number of funds that filed applications for exemptions under rule 17d–1.

As noted above, the Commission staff understands that funds that file an application under rule 17d–1 generally use outside counsel to assist in preparing the application.[2] The staff estimates that, on average, funds spend an additional $93,131 for outside legal services in connection with seeking Commission approval of affiliated joint transactions. Thus, the staff estimates that the total annual cost burden imposed by the exemptive application requirements of rule 17d–1 is $745,048.[3]

Based on staff discussions with fund representatives, we estimate that funds currently do not rely on the exemption from the term "financial interest" with respect to any interest that the fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material. Accordingly, we estimate that annually there will be no transactions under rule 17d–1 that will result in this aspect of the collection of information.

Based on these calculations, the total annual hour burden is estimated to be 1,232 hours and the total annual cost burden is estimated to be $745,048.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with these collections of information requirement is necessary to obtain the benefit of relying on rule 17d–1. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the 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.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: February 3, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–2930 Filed 2–9–11; 8:45 am]

BILLING CODE 8011–01–P

[1] The Commission staff estimates that a senior executive, such as the fund's chief compliance officer, will spend an average of 62 hours and a mid-level compliance attorney will spend an average of 92 hours to comply with this collection of information: 62 hours + 92 hours = 154 hours. 8 funds × 154 burden hours = 1,232 burden hours. The Commission staff estimate that the chief compliance officer is paid $423 per hour and the compliance attorney is paid $320 per hour. ($423 per hour × 62 hours) + ($320 per hour × 92 hours) = $55,666 per fund. $55,666 × 8 funds = $445,328. The $423 and $320 per hour figures are based on salary information compiled by SIFMA's *Management & Professional Earnings in the Securities Industry, 2010.* The Commission staff has modified SIFMA's information to account for an 1,800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[2] This understanding is based on conversations with representatives from the fund industry.

[3] The estimate is based on the following calculation: $93,131 × 8 funds = $745,048.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63851; File No. SR–C2–2011–004]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the C2 Fees Schedule

February 7, 2011.

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 February 1, 2011, C2 Options Exchange, Incorporated (the "Exchange" or "C2") 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

C2 proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/RuleFilings*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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

C2 proposes to amend its Fee Schedule to adopt separate transaction fees for five option classes. Specifically, classes C, BAC, XLF, F, and SPY maker-taker fees will be structured as follows: public customers will pay a liquidity removing taker rate of $.25 per contract and will not receive a maker rebate; C2 Market-Makers will pay a liquidity removing taker rate of $.34 per contract and will receive a $.25 per contract liquidity making rebate; and, all other users will pay a liquidity removing taker rate of $.34 per contract and will receive a $.10 per contract liquidity making rebate. There will be no taker fees or maker credits for trades executed as part of the open for these classes. The transaction fees for all other classes traded on C2 will remain the same. The change will be effective on February 1, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[3] in general, and furthers the objectives of Section 6(b)(4)[4] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among C2 Trading Permit Holders and other persons using Exchange facilities. The exchange believes that the proposed changes are reasonable, appropriate, and notes that they are designed to increase C2's competitive standing in the five specified option classes.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were 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 proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii)[5] of the Act and subparagraph (f)(2) of Rule 19b–4[6] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–C2–2011–004 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–C2–2011–004. This file number should be included on the subject line if e-mail 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of C2. 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–C2–2011–004 and should

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 C.F.R. 240.19b–4(f)(2).

be submitted on or before March 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–2973 Filed 2–9–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63845; File No. SR–C2–2011–003]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Bylaw and Related Rule Changes

February 4, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 27, 2011, C2 Options Exchange, Incorporated ("C2") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by C2. 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

C2 proposes to (i) amend its Bylaws and rules to eliminate its office of Vice Chairman of the Board, (ii) amend its Bylaws to provide that the Board of Directors may establish an Advisory Board, and (iii) amend its Bylaws to eliminate its Audit Committee.

The text of the proposed amendments to C2's Bylaws and the proposed amendments to C2's rules is available on C2's Web site at (*http://www.c2exchange.com/Legal*), at C2's Office of the Secretary, on the Commission's Web site at (*http://www.sec.gov*), 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, C2 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. C2 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 this proposed rule change is to eliminate the office of C2 Vice Chairman of the Board, to allow for a C2 Advisory Board, and to eliminate the C2 Audit Committee.

(a) Elimination of Office of Vice Chairman of the Board

Based on the Exchange's experience since its registration as a national securities exchange in December, 2009 and the launch of trading on the Exchange in October, 2010, the Exchange believes that it is no longer necessary to provide for an office of Vice Chairman of the Board (which is an office held by one of the Exchange's Industry Directors). It was originally contemplated that the Vice Chairman would take a lead role in facilitating communication between C2 and its Trading Permit Holders and in coordinating the activities of Trading Permit Holder committees. The Exchange now believes that C2 management is best able to take the lead role in this regard. The Exchange also believes that it will continue to be able to obtain input from Trading Permit Holders through, among other things, direct communication with individual Trading Permit Holders and the ability to establish Trading Permit Holder committees and an Advisory Board (as proposed by this rule filing).

The Exchange Bylaws will also continue to require that at least 30% of the directors on the C2 Board of Directors must be Industry Directors and that at least 20% of C2's directors must be Representative Directors. Representative Directors are Industry Directors nominated (or otherwise selected through a petition process) by the Industry-Director Subcommittee of the C2 Nominating and Governance Committee. The Industry-Director Subcommittee is composed of all of the Industry Directors serving on the Nominating and Governance Committee. C2 Trading Permit Holders may nominate alternative Representative Director candidates to those nominated by the Industry Director Subcommittee, in which case a Run-off Election is held in which C2's Trading Permit Holders vote to determine which candidates will be elected to the C2 Board of Directors to serve as Representative Directors. Thus, the Exchange will continue to provide for the fair representation of C2 Trading Permit Holders in the selection of directors and the administration of the Exchange consistent with Section 6(b)(3) of the Act.[3]

The specific proposed C2 Bylaw and rule changes related to the elimination of the office of Vice Chairman of Board include the following changes:

Section 3.7 of the Bylaws, which describes the selection, the term, and roles of the Vice Chairman, is proposed to be deleted. The current roles of the Vice Chairman listed in Section 3.7 of the Bylaws (and how those roles will be performed going forward) are (i) Presiding over meetings of the Board of Directors in the event that the Chairman of the Board is absent or unable to do so (which will be addressed by Section 3.8(a) of the Bylaws to be re-numbered from Section 3.9(a), which is proposed to be amended to eliminate references to the Vice Chairman and which will continue to allow the Board to designate an Acting Chairman of the Board in the absence or inability to act of the Chairman, which could be the Lead Director or another director); (ii) unless otherwise provided in the rules or by Board resolution, appointing, subject to Board approval, the individuals to serve on Trading Permit Holder committees (which will be addressed by Section 4.1(b) of the Bylaws, which is proposed to be amended to vest this appointment authority, also subject to Board approval of such appointments, in the Chief Executive Officer or his or her designee); and (iii) exercising such other powers and performing such other duties as are delegated to the Vice Chairman by the Board (which is not an item that needs to be addressed since there are no such other powers of duties that the Board has delegated to the Vice Chairman).

Two additional current roles of the Vice Chairman are set forth in Section 5.3 of the Bylaws, which is also proposed to be deleted. Those roles are presiding at meetings of Trading Permit Holders and coordinating the activities of all Trading Permit Holder committees. The Exchange's expectation is that C2 management will perform these functions.

Section 2.3 of the Bylaws is proposed to be amended to delete the Vice Chairman as one of the parties that can

[7] 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. 78f(b)(3).

call a special meeting of the stockholders. This Section will continue to permit special meetings of the stockholders to be called by either the Chairman of the Board or a majority of the Board.

Section 3.9(b) of the Bylaws is proposed to be re-numbered as Section 3.8(b) and to be amended to delete how the office of Vice Chairman is filled in the event of a vacancy in that office.

Section 3.12 of the Bylaws is proposed to be re-numbered as Section 3.11 and to be amended to delete the Vice Chairman as one of the parties that can call a special meeting of the Board of Directors. This Section will continue to permit special meetings of the Board to be called by either the Chairman of the Board or the Secretary upon the written request of any four directors.

In a related change, Section 4.1(b) of the Bylaws is proposed to be amended to vest the authority to remove a member of an Exchange committee (*i.e.,* a non-Board committee) in the Chief Executive Officer or his or her designee, subject to the approval of the Board. This authority was previously vested with the Board itself. The Exchange is proposing to vest this authority with the Chief Executive Officer or his or her designee in order to have consistency with the proposed Exchange committee appointment authority which, as is described above, is also proposed to be vested in the Chief Executive Officer or his or her designee, subject to the approval of the Board.

Section 4.2 of the Bylaws is proposed to be amended to delete the Vice Chairman as one of the required members of the C2 Executive Committee. Section 4.2 will continue to require that the Executive Committee include the Chairman of the Board, the Chief Executive Officer (if a director), the Lead Director (if any), at least one Representative Director, and such other number of directors that the Board deems appropriate, provided that in no event shall the number of Non-Industry Directors constitute less than the number of Industry Directors serving on the Executive Committee (excluding the Chief Executive Officer from the calculation of Industry Directors for such purpose).[4]

Section 5.1 of the Bylaws is proposed to be amended to delete the Vice Chairman as one of the required officers of the Exchange.

The title of Chapter XVI of the Exchange's rules is proposed to be shortened from "Summary Suspension by Chairman of the Board or Vice Chairman of the Board" to "Summary Suspension" in order to eliminate the reference to the Vice Chairman. The text of Chapter XVI is not proposed to be revised and would continue to incorporate by reference the summary suspension rules contained in Chapter XVI of the CBOE rules as they may be in effect from time to time.

(b) Addition of Advisory Board Provision

The Exchange proposes to provide in new proposed Section 6.1 of the Bylaws that the Board of Directors may establish an Advisory Board which shall advise the Office of the Chairman regarding matters of interest to Trading Permit Holders. The Exchange believes that the ability to establish such a body is beneficial in that it allows the Exchange to establish an additional vehicle for Exchange management to receive advice from the perspective of Trading Permit Holders and regarding matters that impact Trading Permit Holders

Under proposed Section 6.1 of the Bylaws, it is proposed that the Board of Directors shall determine the number of members of an Advisory Board, that the Chief Executive Officer or his or her designee shall serve as the Chairman of an Advisory Board, and that the C2 Nominating and Governance Committee shall recommend the members of an Advisory Board for approval by the Board of Directors.

The Advisory Board would be completely advisory in nature and not be vested with any Exchange decision-making authority or other authority to act on behalf of the Exchange. Although proposed Section 6.1 of the Bylaws provides the Board of Directors with the discretion of whether or not to put in place an Advisory Board, it is the current intention of the Board of Directors to establish an Advisory Board.

(c) Elimination of Exchange Audit Committee

The Exchange proposes to eliminate its Audit Committee because its functions are duplicative of the functions of the Audit Committee of its parent company, CBOE Holdings, Inc. ("CBOE Holdings").

Under its charter, the CBOE Holdings Audit Committee has broad authority to assist the CBOE Holdings Board of Directors in discharging its responsibilities relating to, among other things, (i) the qualifications, engagement, and oversight of CBOE Holdings' independent auditor, (ii) CBOE Holdings' financial statements and disclosure matters, (iii) CBOE Holdings' internal audit function and internal controls, and (iv) CBOE Holdings' oversight and risk management, including compliance with legal and regulatory requirements. Because CBOE Holdings' financial statements are prepared on a consolidated basis that includes the financial results of CBOE Holdings' subsidiaries, including C2, the CBOE Holdings Audit Committee's purview necessarily includes C2. The CBOE Holdings Audit Committee is composed of at least three CBOE Holdings directors, all of whom must be independent within the meaning given to that term in the CBOE Holdings Bylaws and Corporate Governance Guidelines and Rule 10A–3 under the Act.[5] All CBOE Holdings Audit Committee members must be financially literate (or become financially literate within a reasonable period of time after appointment to the Committee), and at least one member of the Committee must be an "audit committee financial expert" as defined by the Commission.

By contrast, the C2 Audit Committee has a more limited role, focused solely on C2. Under its charter, the primary functions of the C2 Audit Committee are focused on (i) C2's financial statements and disclosure matters and (ii) C2's oversight and risk management, including compliance with legal and regulatory requirements, in each case, only to the extent required in connection with C2's discharge of its obligations as a self-regulatory organization. However, to the extent that the C2 Audit Committee reviews financial statements and disclosure matters, its activities are duplicative of the activities of the CBOE Holdings Audit Committee, which is also charged with review of financial statements and disclosure matters. Similarly, the CBOE Holdings Audit Committee has general responsibility for oversight and risk management, including compliance with legal and regulatory requirements, for CBOE Holdings and all of its subsidiaries, including C2. Thus, the

[4] C2's Executive Committee generally does not make a decision unless there is a need for a C2 Board-level decision between C2 Board meetings due to the time sensitivity of the matter. In addition, in situations when the Executive Committee does make a decision between C2 Board meetings, the C2 Board is generally aware ahead of time of the potential that the Executive Committee may need to make the decision. The C2 Board is fully informed of any decision made by the Executive Committee at its next meeting and can always decide to review that decision and take a different action. C2's affiliate Chicago Board Options Exchange, Incorporated ("CBOE") previously noted the foregoing to the Commission with respect to CBOE's Executive Committee (*see* Footnote 87 of Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (SR–CBOE–2008–88)) and the same is true with respect to C2's Executive Committee.

[5] 17 CFR 240.10A–3.

responsibilities of the C2 Audit Committee are fully duplicated by the responsibilities of the CBOE Holdings Audit Committee. Accordingly, C2 is proposing to delete Section 4.3 of the C2 Bylaws which provides for the C2 Audit Committee and to delete a reference to the C2 Audit Committee in Section 4.1(a) of the C2 Bylaws (which lists the required C2 Board committees).

Although the CBOE Holdings Audit Committee has and will continue to have overall responsibilities with respect to the internal audit function, the C2 Board of Directors will still maintain its own independent oversight over the internal audit function with respect to C2 regulatory functions through the C2 Regulatory Oversight Committee. Specifically, upon elimination of the C2 Audit Committee, the charter of the C2 Regulatory Oversight Committee will be amended to provide that the Regulatory Oversight Committee will review all internal audits relating to C2's regulatory functions and that the Regulatory Oversight Committee will have the authority to review the internal audit plan with respect to C2's regulatory functions and to request at any time that C2's internal auditor conduct an audit relating to those functions. These changes are in addition to the current C2 Regulatory Oversight Committee charter provision which provides that the Regulatory Oversight Committee shall meet regularly with C2's internal auditor regarding regulatory functions and are consistent with the Regulatory Oversight Committee's existing practice of reviewing internal audits of C2's regulatory functions.

C2 believes that its proposal to eliminate its Audit Committee is substantially similar to prior actions by other securities exchanges with parent company audit committees to eliminate their exchange-level audit committees.[6]

(d) Miscellaneous Non-Substantive Bylaw Changes

In addition to the changes set forth above, the Exchange proposes to make the following non-substantive changes to the Bylaws.

First, the Exchange proposes to amend the title of the Bylaws from "Amended and Restated Bylaws of C2 Options Exchange, Incorporated" to "Second Amended and Restated Bylaws of C2 Options Exchange, Incorporated" since the Exchange is making the Bylaw changes proposed by this rule filing through as second amendment and restatement of its Bylaws.

Second, the Exchange is proposing to re-number various sections of the Bylaws to eliminate gaps in the numbering of the Bylaw sections resulting from the proposed deletion of certain of the Bylaw sections as described above.

Third, the Exchange proposes to make a clarifying change to Section 3.2 of the Bylaws to change a reference to the Industry-Director Subcommittee of the Nominating and Governance Committee from "committee" to "Subcommittee."

Fourth, the Exchange proposes to delete some out-dated provisions from the Bylaws. Specifically, the Exchange proposes to delete a paragraph of Section 3.2 of the Bylaws which describes the initial election process for Representative Directors following the commencement of trading on the Exchange and which has already been completed. Similarly, the Exchange proposes to delete provisions in Section 4.1 of the Bylaws and Section 4.4 of the Bylaws (to be re-numbered from Section 4.5) regarding the initial appointment of the Nominating and Governance Committee and the initial appointment of other Board committees since these appointments have already occurred.

(e) Effectiveness of Changes

The Exchange proposes to make effective the proposed Bylaw and rule changes related to the elimination of the Vice Chairman of the Board that are described in subsection (a)(1) of Item 3 of this rule filing on the date of the annual election of C2 directors in 2011 (which is anticipated to occur in May 2011). The Exchange proposes to make effective these changes at that time because the current term of the Vice Chairman expires on that date and this will permit the current Vice Chairman to serve out his current term of office.

The Exchange proposes to make effective all of the other changes proposed by this rule filing at the time that the Commission approves this rule filing. These changes include those relating to the addition of an Advisory Board provision and to the elimination of the C2 Audit Committee as well as the miscellaneous non-substantive Bylaw changes, all of which are described in subsections (a)(2)–(a)(4) of Item 3 of this rule filing.

2. Statutory Basis

For the reasons set forth above, C2 believes that this filing is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(1) of the Act[8] and Section 6(b)(5) of the Act[9] in particular, in that (i) it enables C2 to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Trading Permit Holders and persons associated with its Trading Permit Holders, with the provisions of the Act, the rules and regulations thereunder, and the rules of C2 and (ii) to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest. Specifically, the proposed changes will streamline, make more efficient, and improve C2's governance structure by eliminating the position of Vice Chairman of the Board which C2 no longer believes is necessary; by adding a Bylaw provision that the Board of Directors may establish an Advisory Board, which C2 views as a useful vehicle that the Board may utilize to receive input from the perspective of Trading Permit Holders and with respect to matters of interest to Trading Permit Holders; and by eliminating the C2 Audit Committee, which C2 believes is duplicative of the CBOE Holdings Audit Committee and which change will allow C2 directors to focus their attention on matters falling directly within the purview of the C2 Board of Directors.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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

[6] *See, e.g.,* Exchange Act Release No. 60276 (July 9, 2009), 74 FR 34840 (July 17, 2009) (File No. NASDAQ–2009–042).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78f(b)(5).

organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–C2–2011–003 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–C2–2011–003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–C2–2011–003 and should be submitted on or before March 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–2972 Filed 2–9–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63831; File No. SR–CBOE–2011–011]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Fees Schedule for the CBOE Stock Exchange

February 3, 2011.

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 January 27, 2011, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I 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 modify the Fees Schedule for its CBOE Stock Exchange ("CBSX"). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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 amend its CBSX Fees Schedule to modify the CBSX regulatory fees. Currently, CBOE charges a $2,500 fee to CBSX Trading Permit Holders who apply for CBOE to act as their designated examining authority as well as $2,500 per month to CBSX Trading Permit Holders for whom CBOE acts as the designated examining authority. To offset an increase in the cost associated with processing these applications and acting as the regulatory authority, the Exchange proposes to raise the $2,500 fees to $3,000. The Exchange believes the regulatory fees are appropriate and reasonable in that they help offset costs incurred in connection with regulation of CBSX.

The fee changes will become effective on February 1, 2011.

2. Statutory Basis

Because the filing increases certain regulatory-related fees to offset regulatory costs, the proposed rule change is consistent with Section 6(b) of Act,[3] in general, and furthers the objectives of Section 6(b)(4) of the Act[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or

[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. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii) of the Act [5] and subparagraph (f)(2) of Rule 19b–4 [6] 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2011–011 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–2011–011. This file number should be included on the subject line if e-mail 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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–2011–011 and should be submitted on or before March 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–2949 Filed 2–9–11; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63836; File No. SR–NASDAQ–2011–004]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4758 To Add a New Routing Option, LIST

February 3, 2011.

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 January 24, 2011, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") 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 Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal 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 Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to amend NASDAQ Rule 4758 to add a new routing option, LIST. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com,* at the Exchange'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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add a routing strategy, LIST, that will provide firms flexibility to participate in the opening and closing processes of the primary listing markets and also take advantage of the Exchange's liquidity during the remainder of the trading day. LIST is a variation on a currently existing routing strategy, SKIP, but offers increased sensitivity to the opening and closing crosses on securities' primary listing markets.

Under LIST, an order received before the security's primary listing market opening will participate in the primary listing market's opening cross, after which any unexecuted shares will check the NASDAQ book. The security's primary listing market is considered "open" after the first of the following occurs: (1) The primary listing market returns the order; (2) NASDAQ receives the first regular way print from the primary; or (3) the time is 9:45 a.m.

Remaining shares will then be routed to Reg-NMS protected market centers in accordance with the LIST System routing table,[4] and then return to be posted on the NASDAQ book.[5] Similarly, LIST orders entered after the primary listing market's opening process but prior to 3:58 p.m. will check the NASDAQ book, route in accordance

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] As provided, in Rule 4758(a)(1)(A), the term "System routing table" refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. NASDAQ reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice.

[5] Pursuant to NASDAQ Rule 4758(a)(1)(B), if a routed order is returned, in whole or in part, that order will receive a new time stamp reflecting the time of its return to the System.

with the LIST System routing table, and then post to the NASDAQ book.

At 3:58 p.m., all LIST orders on the book will be sent to their primary listing market, as "day" orders, to participate in the closing cross. LIST orders entered at or after 3:58 p.m. but before 4 p.m. will also be sent to their primary listing market for the closing cross, after first checking the NASDAQ book and routing in accordance with the LIST System routing table.[6] Shares unexecuted in the closing process will be posted to the NASDAQ book.

LIST orders received after 4 p.m. will be posted to the NASDAQ book. Where NASDAQ is the primary listing market for a LIST order security, the order will be routed as described above, although rather than route out for the open and/or close, it will participate in NASDAQ's open and/or closing cross.

If trading in the security is stopped across all markets, LIST orders will be sent to the primary listing market to participate in the re-opening process. When normal trading resumes, the orders will be cancelled off of the primary and posted on the NASDAQ book.

NASDAQ has designed LIST to be Reg-NMS compliant, and believes that LIST, like all NASDAQ routing strategies, conforms to Reg-NMS requirements. LIST orders may not be designated as MGTC or SGTC.

The proposed LIST option is similar to two order types utilized by NYSE Arca, as established by SR–NYSEArca 2009–56:[7] The "Primary Until 9:45 Order" and the "Primary After 3:45 Order." NASDAQ's LIST order type combines these two separate NYSE Arca routing options into a single order type. In addition, under a LIST routing strategy, unlike under its NYSE Arca counterparts, orders will be removed from the primary listing market upon the primary listing market's open rather than at the 9:45 cutoff time.

This rule change also introduces fees for the new LIST routing strategy. The fees for LIST orders that participate in the open or closing process at the securities' primary listing market are the fees charged to Nasdaq by those venues, passed through to the member. Specifically, the fee for LIST orders that participate in the NYSE closing process is $0.00085 per share executed, while the fee for orders participating in the opening process or the re-opening process after trading is halted across all markets is $0.0005 per share executed. The fee for LIST orders and DOT orders[8] participating in the NYSE opening process is subject to a $10,000 per month per member cap. The fee for LIST orders that participate in the NYSEAmex closing process is $0.00085 per share executed, while the fee for orders participating in the opening process or the re-opening process after trading is halted across all markets is $0.0005 per share executed. The fee for LIST orders that participate in the NYSEArca closing process or the re-opening process after trading is halted across all markets is $0.0010 per share executed, while the fee for orders participating in the opening process is $0.0005 per share executed. The fee for LIST orders participating in the NYSEArca opening process is subject to a $10,000 per month per member cap. LIST orders that participate in NASDAQ's opening, closing, and halt re-opening processes are charged NASDAQ's usual fees for those processes, as provided in Rule 7018(d) and (e).

LIST orders that execute at venues other than NASDAQ, but not in the opening or closing processes, are charged $0.0030 per share executed, and orders that execute in NASDAQ outside of its opening and closing processes are charged NASDAQ's regular execution fee, which is also $0.0030 per share executed. Because LIST orders have the potential to post at NYSEArca or NYSEAmex and then be routed to other venues by those exchanges, NASDAQ is also adding language stipulating that it will pass on to its member any routing fees charged to it by NYSEArca or NYSEAmex. Similar language is already in Rule 7018 with respect to routing charges assessed by NYSE.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Sections 6(b)(5) of the Act,[10] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed routing option will accomplish those ends by providing more flexible options, insomuch as it offers a means for NASDAQ members to route to the opening and closing processes of U.S. listing venues, while also allowing unexecuted shares to route to other trading venues and post on the NASDAQ book.

The rule change is also consistent with Section 6(b)(5) of the Act,[11] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. The fees assessed for a LIST order to participate in the open and closing of the security's primary listing market are based on the fees and rebates that are charged and offered to NASDAQ by the exchanges to which it routes. As such, a member will pay the same fees for participation in the opening and closing of the security's primary listing market when using LIST as it would if it went to that venue directly. A member will also pay the same fee for executing at venues other than NASDAQ outside the open or close under LIST as it would under alternative NASDAQ routing strategies, including STGY, SCAN, SKNY, and SKIP. Finally, LIST orders that participate in NASDAQ's opening and closing processes are charged NASDAQ's usual fees for those processes, as provided in Rule 7018(d) and (e). In sum, the LIST order fees are set to reflect NASDAQ's routing costs while offering members a routing option they have requested. Use of the routing option is, of course, entirely voluntary.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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.

[6] Due to the possibility that orders received very near the 4:00 p.m. deadline (*e.g.* 3:59:59:999) will be routed to the primary listing market but arrive after the security has closed, customers are encouraged to submit their LIST orders prior to 3:58.

[7] Securities Exchange Act Release No. 60256 (July 7, 2009), 74 FR 33489 (July 13, 2009) (SR–NYSEArca-2009–56).

[8] DOT orders are an existing order type that is also eligible to participate in the NYSE opening process.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that it expects to have the technological changes in place to support the proposed rule change by February 7, 2011, and believes that the benefits to market participants expected from the rule change should not be delayed. The Exchange believes that the rule change will reduce the messaging traffic that is now required to achieve the same result, and thus contribute to a more efficient public market.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposed routing strategy is similar to routing order types that were implemented by NYSE Arca.[16] Therefore, the Commission designates the proposal operative upon filing.[17]

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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–004. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–004 and should be submitted on or before March 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–2927 Filed 2–9–11; 8:45 am]

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. NASDAQ has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] Securities Exchange Act Release No. 60256 (July 7, 2009), 74 FR 33489 (July 13, 2009) (SR–NYSEArca-2009–56).

[17] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63832; File No. SR–NSX–2011–01]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand Use of Self Trade Prevention Order Modifiers

February 3, 2011.

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 January 28, 2011, National Stock Exchange, Inc. 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 constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal 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 Substance of the Proposed Rule Change

National Stock Exchange, Inc. ("NSX®" or the "Exchange") proposes to allow the Self Trade Prevention order modifier to be used in conjunction with Zero Display Reserve Orders.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Self Trade Prevention ("STP") modifier under NSX Rule 11.11(c)(1) allows an ETP Holder to submit orders that may avoid trading against other orders of the same ETP Holder. Currently, Rule 11.11(c)(1)(D) excludes the use of the STP Modifier with Zero Display Reserve Orders (as defined in Rule 11.11(c)(2)(A)). In the instant rule change, the Exchange proposes to allow the use of the STP modifier with Zero Display Reserve Orders. The proposed changes are more fully discussed below.

Background

As more fully discussed in the rule filing pursuant to which this order modifier was introduced,[4] the "Self Trade Prevention" modifier is instructions designed to prevent two orders with the same designated Unique Identifier (as defined below) from executing against each other. The ETP Holder elects at the time an STP modified order is submitted whether the new order, an existing order (which must also have been submitted with an STP modifier) or both orders will be cancelled (or rejected, as applicable) instead of otherwise interacting.

Three STP modifiers can be set at one of three identification levels: the market participant level (pursuant to the "MPID"), the FIX session level (pursuant to "FIX Session ID") or an ETP Holder's user level (pursuant to the "Party ID") (any such identifier, a "Unique Identifier").[5] The STP instruction on the incoming order controls the interaction between two orders marked with STP modifiers from the same Unique Identifier. As further described in the rule filing pursuant to which the STP modifier became available,[6] the three STP modifiers are "STP Reject Newest ("STPN")", STP Cancel Oldest ("STPO"), and STP Cancel Both ("STPB").

An incoming order marked with the STPN modifier will not execute against opposite side resting interest marked with any STP modifier originating from the same Unique Identifier. The incoming order marked with the STPN modifier will be rejected. The resting order marked with an STP modifier, which otherwise would have interacted with the incoming order from the same Unique Identifier, will remain on the NSX Book. An incoming order marked with the STPO modifier will not execute against opposite side resting interest marked with any STP modifier originating from the same Unique Identifier. The resting order marked with the STP modifier, which otherwise would have interacted with the incoming order by the same Unique Identifier, will be cancelled. The incoming order marked with the STPO modifier will remain on the NSX Book. An incoming order marked with the STPB modifier will not execute against opposite side resting interest marked with any STP modifier originating from the same Unique Identifier. The entire size of both orders will be rejected or cancelled, as applicable.

STP modifiers are intended to prevent interaction between the same Unique Identifier. STP modifiers must be present on both the buy and the sell order in order to prevent a trade from occurring and to effect a cancel and/or reject instruction.

Use of STP Modifiers With Zero Display Reserve Orders

The instant rule change proposes to delete paragraph (D) of NSX Rule 11.11(c)(1), which currently prohibits the use of the STP Modifier in connection with Zero Display Reserve Orders. At the time of the implementation of Rule 11.11(c)(1), Zero Display Reserve Orders were made unavailable in connection with the use of the STP modifier because of technical challenges regarding identification of the "old" versus the "new" Zero Display Reserve Order for STP purposes under certain circumstances. Since that time, the Exchange has modified the system to recognize, for purposes of the STP modifier and consistent with all other order combinations, the original timestamp of a Zero Display Reserve Order as definitive for purposes of identifying the "old" versus "new" order in the context of STP modifiers.

The following are examples of how the STP modifier operates in connection with various types of Zero Display Reserve Orders.[7] Each example assumes the national best bid/offer is 20.00/20.10 and that ETP Holder A's STP modifiers pertain to the same Unique Identifier.

Example 1: Interaction of Two Zero Display Reserve Orders

ETP Holder A enters a Zero Display Reserve Order to buy 500 shares @ 20.05 with an STP—Cancel Old ("STPO") modifier. Thereafter, ETP Holder A enters a Zero Display Reserve Order to sell 500 shares @ 20.05, also with an STPO modifier.

Example 1 Result: The first order is cancelled because the STP instruction on the incoming order controls the interaction between two orders marked with STP modifiers from the same Unique Identifier. The second order to sell 500 @ 20.05 will remain on the book.

Example 2: Interaction of a Zero Display Reserve Order (Pegged to Primary) and a Limit Order

ETP Holder A enters a Zero Display Reserve Order to sell, pegged to track the national best offer ("Pegged to Primary") under Rule 11.11(c)(2)(A) (which order will track the best offer), with an STPO modifier. Subsequently, ETP Holder A enters a limit order to buy for 20.05 with a STPO modifier. Thereafter, the market moves and the best offer becomes 20.05.

Example 2 Result: The first order is cancelled. The second order to buy for 20.05 will remain on the book.[8]

Example 3: Interaction of a Zero Display Reserve Order and a Zero Display Reserve Order (Midpoint Peg/Post Only)

ETP Holder A enters a Zero Display Reserve Order to buy 500 shares @ 20.09, with an STPO modifier. Thereafter, ETP Holder A enters a Zero Display Reserve Order (Midpoint Peg) under Rule 11.11(c)(2)(A) (which will track the midpoint), Post Only, to sell 500 shares, with an STPO modifier.

Example 3 Result: The Zero Display Reserve Order (Midpoint Peg/Post Only) will post to the book. The first order, the Zero Display Reserve Order to buy, will

[4] Securities Exchange Act Release No. 61781 (March 25, 2010), 75 FR 16540 (April 1, 2010) (SR–NSX–2010–02).

[5] Each ETP Holder is issued a unique MPID identifier that allows the Exchange to determine the ETP Holder for each order and/or execution. The FIX Session ID is unique to each physical connection between the Exchange and an ETP Holder. The Party ID identifies a unique user of an ETP Holder.

[6] *See supra,* footnote 3.

[7] Other examples of how orders with the STP modifier operate are contained in the Exchange's rule filing proposing approval of the modifier. *See supra,* footnote 3.

[8] Absent operation of the STP modifier, entry of the second order would have caused the Zero Display Reserve Order to 'flip' (*i.e.,* change from liquidity provider to a liquidity taker) and interact with the limit order bid; however, since both are STP orders of the same ETP Holder with the same Unique Identifiers, the two orders will not execute. Rather, the Zero Display Reserve Order, as the "old" (resting) order based on its earlier timestamp, will be cancelled back to the client consistent with the instructions of the new STP modified order.

be cancelled back to the client [9] consistent with the STPO instructions on the second order.

Example 4: Interaction of a Zero Display Reserve Order and a Zero Display Reserve Order (Market Peg/Post Only)

ETP Holder A enters a Zero Display Reserve Order to buy 500 shares @ 20.00, with an STPO modifier. Thereafter, ETP Holder A enters a Zero Display Reserve Order (Market Peg) under Rule 11.11(c)(2)(A) (which will track the bid), Post Only, to sell 500 shares, with an STPO modifier.

Example 4 Result: The Zero Display Reserve Order (Market Peg/Post Only) will post to the book. The first order, the Zero Display Reserve Order to buy, will be cancelled back to the client [10] consistent with the STPO instructions on the second order.

Additional Discussion

The Exchange believes that expanding the STP functionality to Zero Display Reserve Orders will allow ETP Holders to better manage order flow and prevent undesirable executions with themselves or the potential for (or the appearance of) "wash sales" that may occur as a result of the velocity of trading in today's high speed marketplace. Many ETP Holders have multiple connections into the Exchange due to capacity and speed related demands. Orders routed by the same ETP Holder via different connections or in different capacities may, in certain circumstances, trade against each other. The availability of STP modifiers for use in conjunction with Zero Display Reserve Orders provide ETP Holders the opportunity to prevent these potentially undesirable trades occurring under the same Unique Identifier on both the buy and sell side of the execution.

The Exchange notes that the STP modifiers do not alleviate, or otherwise exempt, broker-dealers from their best execution obligations. Broker-dealers using the STP modifiers on agency orders will be obligated to execute those agency orders at the same price, or a better price than they would have received had the orders been executed on the Exchange. Finally, the Exchange notes that expanding the STP modifier to use with Zero Display Reserve Orders will streamline certain regulatory functions by reducing inadvertent self-trade executions that would otherwise be captured by Exchange generated wash trading surveillance reports when orders are executed under the same Unique Identifier. The Exchange has developed a surveillance program to identify the use of the STP modifier on agency orders, in connection with Zero Display Reserve Orders and otherwise, and to surveil such orders for potential misuse. For these reasons, the Exchange believes the use of STP modifiers with the Zero Display Reserve Order offers ETP Holders enhanced order processing functionality that may prevent potentially undesirable executions without negatively impacting broker-dealer best execution obligations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) [12] in particular in that it is designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change advances these objectives by making available to ETP Holders that use Zero Display Reserve Orders an order modifier that is currently in use elsewhere within the national market system [13] and by allowing firms to better manage order flow and prevent undesirable executions against themselves.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, 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) [14] of the Act and Rule 19b–4(f)(6) thereunder.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSX–2011–01 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–NSX–2011–01. This file number should be included on the subject line if e-mail 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[16] 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

[9] Absent operation of the STP modifier, the first order will flip and execute against the second order.

[10] Absent operation of the STP modifier, the first order will flip and execute against the second order.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] *See* BATS Rule 11.9(f)(1), (2) and (4).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. *Id.*

[16] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2011–01 and should be submitted on or before March 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–2925 Filed 2–9–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63821; File No. SR–EDGX–2011–02]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

February 2, 2011.

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 January 25, 2011, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–EDGX–2011–01,[4] the Exchange filed for immediate effectiveness a rule filing to amend Rule 11.9 to add its routing strategies, which were contained in its fee schedule, to the rule and to introduce additional routing strategies to the rule. Two of those strategies that the Exchange added to Rules 11.9(b)(3)(q) and (r) were the SWPA/SWPB routing strategies. Under the SWPA strategy, an order would check the System for available shares and then would be sent to Protected Quotations and only for displayed size. Under this strategy, orders would not have to contain sufficient size to execute against *all* Protected Quotations (emphasis added). If any shares remain unexecuted, such remainder will be cancelled back to the User. Under the SWPB routing strategy, an order would check the System for available shares and then is sent to Protected Quotations and only for displayed size. Under this strategy, orders would have to contain sufficient size to execute against all Protected Quotations. The entire SWPB order will be cancelled back to the User immediately if at the time of entry there is insufficient quantity in the SWPB order to fulfill the displayed size of all Protected Quotations.

In this filing, the Exchange proposes to add the corresponding flag for the use of the SWPA/SWPB strategies, SW, to its fee schedule and assign it a fee of $0.0031 per share for removal of liquidity from all market centers except from the New York Stock Exchange (NYSE). For any SWPA/SWPB orders that remove liquidity from the NYSE, the Exchange will continue to assign Flag D and charge a fee of $0.0023 per share. This is clarified in proposed footnote 8 to the fee schedule. The lower fee charged for removing liquidity from the NYSE is consistent with the processing of similar routing strategies by EDGX's competitors. Secondly, of the major market centers, the NYSE fees for removing liquidity itself are lower, and EDGX is thus able to pass back such lower rates to its Members.

EDGX Exchange proposes to implement these amendments to the Exchange fee schedule on January 25, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The fee of $0.0031 per share is an equitable allocation of reasonable dues, fees, and other charges in that this order type is limited in its interaction with other Member orders as it only executes to the extent a Member order is at the Protected Quotation. As a result, compared to other routing strategies that always sweep the EDGX book before routing out, such as ROBA (fee of $0.0025 per share), the SWPA/SWPB fees are higher. Secondly, the fee is equitable when compared to other similar type strategies of EDGX's competitors. As noted in SR–EDGX–2011–01, the SWPA/SWPB routing strategies are based on Nasdaq's MOPP strategy and BATS Parallel T routing strategy.[7] Nasdaq charges $0.0035 per share for MOPP orders and BATS charges $0.0033 per share for such orders. EDGX's rate is even more competitive than these. The Exchange also notes that it operates in a highly

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

[4] *See* SR–EDGX–2011–01 (January 21, 2011).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] *See, e.g.,* NASDAQ Rule 4758 and BATS Rule 11.13.

competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [8] and Rule 19b–4(f)(2) [9] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2011–02 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–EDGX–2011–02. This file number should be included on the subject line if e-mail 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,[10] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2011–02 and should be submitted on or before March 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–2924 Filed 2–9–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 19b–4(f)(2).

[10] The text of the proposed rule change is available on Exchange's Web site at *http://www.directedge.com,* on the Commission's Web site at *http://www.sec.gov,* at EDGX, and at the Commission's Public Reference Room.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63820; File No. SR–EDGA–2011–02]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

February 2, 2011.

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 January 25, 2011, the EDGA Exchange, Inc. (the "Exchange" or the "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–EDGA–2011–01,[4] the Exchange filed for immediate effectiveness a rule filing to amend Rule 11.9 to add its routing strategies, which were contained in its fee schedule, to the rule and to introduce additional routing strategies to the rule. Two of those strategies that the Exchange added to Rules 11.9(b)(3)(q) and (r) were the SWPA/SWPB routing strategies. Under the SWPA strategy, an order would check the System for available shares and then would be sent to Protected Quotations and only for displayed size. Under this strategy, orders would not have to contain sufficient size to execute against *all* Protected Quotations (emphasis added). If any shares remain unexecuted, such remainder will be cancelled back to the User. Under the SWPB routing strategy, an order would check the System for available shares and then is sent to Protected Quotations and only for displayed size. Under this strategy, orders would have to contain sufficient size to execute against all Protected Quotations. The entire SWPB order will be cancelled back to the User immediately if at the time of entry there is insufficient quantity in the SWPB order to fulfill the displayed size of all Protected Quotations.

In this filing, the Exchange proposes to add the corresponding flag for the use of the SWPA/SWPB strategies, SW, to its fee schedule and assign it a fee of $0.0031 per share for removal of liquidity from all market centers except from the New York Stock Exchange (NYSE). For any SWPA/SWPB orders that remove liquidity from the NYSE, the Exchange will continue to assign Flag D and charge a fee of $0.0023 per share. This is clarified in proposed footnote 8 to the fee schedule. The lower fee charged for removing liquidity from the NYSE is consistent with the processing of similar routing strategies by EDGA's competitors. Secondly, of the major market centers, the NYSE fees for removing liquidity itself are lower, and EDGA is thus able to pass back such lower rates to its Members.

EDGA Exchange proposes to implement these amendments to the Exchange fee schedule on January 25, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The fee of $0.0031 per share is an equitable allocation of reasonable dues, fees, and other charges in that this order type is limited in its interaction with other Member orders as it only executes to the extent a Member order is at the Protected Quotation. As a result, compared to other routing strategies that always sweep the EDGA book before routing out, such as ROBA (fee of $0.0025 per share), the SWPA/SWPB fees are higher. Secondly, the fee is equitable when compared to other similar type strategies of EDGA's competitors. As noted in SR–EDGA–2011–01, the SWPA/SWPB routing strategies are based on Nasdaq's MOPP strategy and BATS Parallel T routing strategy.[7] Nasdaq charges $0.0035 per share for MOPP orders and BATS charges $0.0033 per share for such orders. EDGA's rate is even more competitive than these. The Exchange also notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[8] and Rule 19b–4(f)(2)[9] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2011–02 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–EDGA–2011–02. This file number should be included on the subject line if e-mail 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,[10] 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

[4] *See* SR–EDGA–2010–01 (January 21, 2011).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] *See, e.g.,* NASDAQ Rule 4758 and BATS Rule 11.13.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 19b–4(f)(2).

[10] The text of the proposed rule change is available on Exchange's Web site at *http://www.directedge.com,* on the Commission's Web site at *http://www.sec.gov,* at EDGA, and at the Commission's Public Reference Room.

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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2011–02 and should be submitted on or before March 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–2923 Filed 2–9–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63844; File No. SR–CBOE–2011–010]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Bylaw and Related Rule Changes

February 4, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 27, 2011, Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, and II below, which Items have been prepared by CBOE. 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

CBOE proposes to (i) Amend its Bylaws and rules to eliminate its office of Vice Chairman of the Board, (ii) amend its Bylaws to eliminate its Trading Advisory Committee and provide that the Board of Directors may establish an Advisory Board, (iii) amend its Bylaws to eliminate its Audit Committee, and (iv) amend its Bylaws to conform the composition requirements of its Board of Directors and Executive Committee to the composition requirements of the Board of Directors and Executive Committee of its affiliate C2 Options Exchange, Incorporated ("C2").

The text of the proposed amendments to CBOE's Bylaws and the proposed amendments to CBOE's rules is available on CBOE's Web site (*http://www.cboe.org/Legal*), at CBOE's Office of the Secretary, on the Commission's Web site at *http://www.sec.gov.,* 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, CBOE 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. CBOE 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 this proposed rule change is to eliminate the office of CBOE Vice Chairman of the Board, to eliminate the CBOE Trading Advisory Committee and allow for a CBOE Advisory Board, to eliminate the CBOE Audit Committee, and to conform the composition requirements for the CBOE Board of Directors and CBOE Executive Committee to the corollary C2 composition requirements.

(a) Elimination of Office of Vice Chairman of the Board

In light of CBOE's demutualization and conversion from a membership organization to a stock corporation owned by a public holding company in June 2010, and based on the Exchange's experience since that time in operating in that form, the Exchange believes that it is no longer necessary to provide for an office of Vice Chairman of the Board (which is an office held by one of the Exchange's Industry Directors). Historically, the Vice Chairman's primary functions were to take a lead role in facilitating communication between the Exchange and its membership, including lessor members that owned memberships and leased them to trading members, and in coordinating the activities of member committees. The role of the Vice Chairman has been significantly reduced since the Exchange has changed its structure. For example, the Exchange no longer has lessor members (as they became stockholders of CBOE's holding company, CBOE Holdings, Inc. ("CBOE Holdings"), in CBOE's restructuring), the Exchange's trading members are now Trading Permit Holders, and there are far fewer Trading Permit Holder committees than in the past. Additionally, the Exchange believes that it will continue to be able to obtain input from Trading Permit Holders through, among other things, direct communication with individual Trading Permit Holders and the ability to establish Trading Permit Holder committees (even if fewer than in the past) and an Advisory Board (as proposed by this rule filing).

The Exchange Bylaws will also continue to require that at least 30% of the directors on the CBOE Board of Directors must be Industry Directors and that at least 20% of CBOE's directors must be Representative Directors. Representative Directors are Industry Directors nominated (or otherwise selected through a petition process) by the Industry-Director Subcommittee of the CBOE Nominating and Governance Committee. The Industry-Director Subcommittee is composed of all of the Industry Directors serving on the Nominating and Governance Committee. CBOE Trading Permit Holders may nominate alternative Representative Director candidates to those nominated by the Industry Director Subcommittee, in which case a Run-off Election is held in which CBOE's Trading Permit Holders vote to determine which candidates will be elected to the CBOE Board of Directors to serve as Representative Directors. Thus, the Exchange will continue to provide for the fair representation of CBOE Trading Permit Holders in the selection of directors and the administration of the Exchange consistent with Section 6(b)(3) of the Act.[3]

The specific proposed CBOE Bylaw and rule changes related to the elimination of the office of Vice Chairman of Board include the following changes:

[11] 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. 78f(b)(3).

Section 3.7 of the Bylaws, which describes the selection, the term, and roles of the Vice Chairman, is proposed to be deleted. The current roles of the Vice Chairman listed in Section 3.7 of the Bylaws (and how those roles will be performed going forward) are (i) Presiding over meetings of the Board of Directors in the event that the Chairman of the Board is absent or unable to do so (which will be addressed by Section 3.8(a) of the Bylaws to be re-numbered from Section 3.9(a), which is proposed to be amended to eliminate references to the Vice Chairman and which will continue to allow the Board to designate an Acting Chairman of the Board in the absence or inability to act of the Chairman, which could be the Lead Director or another director); (ii) serving as chair of the Trading Advisory Committee (which Committee is proposed to be eliminated by this rule filing); (iii) unless otherwise provided in the rules or by Board resolution, appointing, subject to Board approval, the individuals to serve on Trading Permit Holder committees (which will be addressed by Section 4.1(b) of the Bylaws, which is proposed to be amended to vest this appointment authority, also subject to Board approval of such appointments, in the Chief Executive Officer or his or her designee); and (iv) exercising such other powers and performing such other duties as are delegated to the Vice Chairman by the Board (which is not an item that needs to be addressed since there are no such other powers of duties that the Board has delegated to the Vice Chairman).

Two additional current roles of the Vice Chairman are set forth in Section 5.3 of the Bylaws, which is also proposed to be deleted. Those roles are presiding at meetings of Trading Permit Holders and coordinating the activities of all Trading Permit Holder committees. The Exchange's expectation is that CBOE management will perform these functions.

Section 2.3 of the Bylaws is proposed to be amended to delete the Vice Chairman as one of the parties that can call a special meeting of the stockholders. This Section will continue to permit special meetings of the stockholders to be called by either the Chairman of the Board or a majority of the Board.

Section 3.9(b) of the Bylaws is proposed to be re-numbered as Section 3.8(b) and to be amended to delete how the office of Vice Chairman is filled in the event of a vacancy in that office.

Section 3.12 of the Bylaws is proposed to be re-numbered as Section 3.11 and to be amended to delete the Vice Chairman as one of the parties that can call a special meeting of the Board of Directors. This Section will continue to permit special meetings of the Board to be called by either the Chairman of the Board or the Secretary upon the written request of any four directors.

In a related change, Section 4.1(b) of the Bylaws is proposed to be amended to vest the authority to remove a member of an Exchange committee (*i.e.,* a non-Board committee) in the Chief Executive Officer or his or her designee, subject to the approval of the Board. This authority was previously vested with the Board itself. The Exchange is proposing to vest this authority with the Chief Executive Officer or his or her designee in order to have consistency with the proposed Exchange committee appointment authority which, as is described above, is also proposed to be vested in the Chief Executive Officer or his or her designee, subject to the approval of the Board.

Section 4.2 of the Bylaws is proposed to be amended to delete the Vice Chairman as one of the required members of the CBOE Executive Committee.

Section 5.1 of the Bylaws is proposed to be amended to delete the Vice Chairman as one of the required officers of the Exchange.

CBOE Rule 2.1(a) is proposed to be amended to vest the appointment and removal authority with respect to Exchange committees in the Chief Executive Officer or his or her designee, subject to the approval of the Board, consistent with the proposed Bylaw changes described above. Currently, Rule 2.1(a) provides that the Vice Chairman possesses this appointment authority, subject to the approval of the Board (except with respect to the Business Conduct Committee ("BCC")); that the President possesses this appointment authority, subject to the approval of the Board, with respect to the BCC; and that the Board possesses the removal authority. The President was vested with the appointment authority for the BCC, subject to the approval of the Board, so that this authority would be exercised by an individual that is not subject to the disciplinary jurisdiction of the BCC. The Chief Executive Officer, like the President, is part of Exchange management and is not a Trading Permit Holder or an associated person of a Trading Permit Holder and is not subject to the disciplinary jurisdiction of the BCC. The Exchange represents that any designee of the Chief Executive Officer designated to appoint the members of the BCC, subject to the approval of the Board, would also not be a Trading Permit Holder or an associated person of a Trading Permit Holder and would also not be subject to the disciplinary jurisdiction of the BCC.

CBOE Rule 16.1 is proposed to be amended to vest the President with summary suspension authority under the Rule instead of the Vice Chairman. The Chairman of the Board would also continue to retain that authority. Also, the title of Chapter XVI of the Exchange's rules is proposed to be shortened from "Summary Suspension by Chairman of the Board or Vice Chairman of the Board" to "Summary Suspension" in order to eliminate the reference to the Vice Chairman.

(b) Elimination of Trading Advisory Committee and Addition of Advisory Board Provision

Section 4.7 of the Bylaws currently provides for a Trading Advisory Committee to advise CBOE's Office of the Chairman regarding matters of interest to Trading Permit Holders. Section 4.7 provides that the Board of Directors sets the number of members on the Trading Advisory Committee, that the majority of the members of the Committee shall be involved in trading either directly or through their firms, that the Chairman of the Committee is the Vice Chairman of the Board, and that the Vice Chairman appoints the other members of the Committee with the approval of the Board.

In place of a Trading Advisory Committee, the Exchange proposes to amend the Bylaws to delete Section 4.7 of the Bylaws as well as a reference to the Trading Advisory Committee in Section 4.1(b) of the Bylaws and to provide in new proposed Section 6.1 of the Bylaws that the Board of Directors may establish an Advisory Board which shall advise the Office of the Chairman regarding matters of interest to Trading Permit Holders. The Exchange believes that the term "Advisory Board" better reflects the important function served by such a body in providing a vehicle for Exchange management to receive advice from the perspective of Trading Permit Holders and regarding matters that impact Trading Permit Holders.

Under proposed Section 6.1 of the Bylaws, it is proposed that the Board of Directors shall determine the number of members of an Advisory Board, that the Chief Executive Officer or his or her designee shall serve as the Chairman of an Advisory Board, and that the CBOE Nominating and Governance Committee shall recommend the members of an Advisory Board for approval by the Board of Directors.

The Advisory Board would be completely advisory in nature and not

be vested with any Exchange decision-making authority or other authority to act on behalf of the Exchange. Although proposed Section 6.1 of the Bylaws provides the Board of Directors with the discretion of whether or not to put in place an Advisory Board, it is the current intention of the Board of Directors to establish an Advisory Board.

(c) Elimination of Exchange Audit Committee

The Exchange proposes to eliminate its Audit Committee because its functions are duplicative of the functions of the Audit Committee of its parent company, CBOE Holdings.

Under its charter, the CBOE Holdings Audit Committee has broad authority to assist the CBOE Holdings Board of Directors in discharging its responsibilities relating to, among other things, (i) The qualifications, engagement, and oversight of CBOE Holdings' independent auditor, (ii) CBOE Holdings' financial statements and disclosure matters, (iii) CBOE Holdings' internal audit function and internal controls, and (iv) CBOE Holdings' oversight and risk management, including compliance with legal and regulatory requirements. Because CBOE Holdings' financial statements are prepared on a consolidated basis that includes the financial results of CBOE Holdings' subsidiaries, including CBOE, the CBOE Holdings Audit Committee's purview necessarily includes CBOE. The CBOE Holdings Audit Committee is composed of at least three CBOE Holdings directors, all of whom must be independent within the meaning given to that term in the CBOE Holdings Bylaws and Corporate Governance Guidelines and Rule 10A–3 under the Act.[4] All CBOE Holdings Audit Committee members must be financially literate (or become financially literate within a reasonable period of time after appointment to the Committee), and at least one member of the Committee must be an "audit committee financial expert" as defined by the SEC.

By contrast, the CBOE Audit Committee has a more limited role, focused solely on CBOE. Under its charter, the primary functions of the CBOE Audit Committee are focused on (i) CBOE's financial statements and disclosure matters and (ii) CBOE's oversight and risk management, including compliance with legal and regulatory requirements, in each case, only to the extent required in connection with CBOE's discharge of its obligations as a self-regulatory organization. However, to the extent that the CBOE Audit Committee reviews financial statements and disclosure matters, its activities are duplicative of the activities of the CBOE Holdings Audit Committee, which is also charged with review of financial statements and disclosure matters. Similarly, the CBOE Holdings Audit Committee has general responsibility for oversight and risk management, including compliance with legal and regulatory requirements, for CBOE Holdings and all of its subsidiaries, including CBOE. Thus, the responsibilities of the CBOE Audit Committee are fully duplicated by the responsibilities of the CBOE Holdings Audit Committee. Accordingly, CBOE is proposing to delete Section 4.3 of the CBOE Bylaws which provides for the CBOE Audit Committee and to delete a reference to the CBOE Audit Committee in Section 4.1(a) of the CBOE Bylaws (which lists the required CBOE Board committees).

Although the CBOE Holdings Audit Committee has and will continue to have overall responsibilities with respect to the internal audit function, the CBOE Board of Directors will still maintain its own independent oversight over the internal audit function with respect to CBOE regulatory functions through the CBOE Regulatory Oversight Committee. Specifically, upon elimination of the CBOE Audit Committee, the charter of the CBOE Regulatory Oversight Committee will be amended to provide that the Regulatory Oversight Committee will review all internal audits relating to CBOE's regulatory functions and that the Regulatory Oversight Committee will have the authority to review the internal audit plan with respect to CBOE's regulatory functions and to request at any time that CBOE's internal auditor conduct an audit relating to those functions. These changes are in addition to the current CBOE Regulatory Oversight Committee charter provision which provides that the Regulatory Oversight Committee shall meet regularly with CBOE's internal auditor regarding regulatory functions and are consistent with the Regulatory Oversight Committee's existing practice of reviewing internal audits of CBOE's regulatory functions.

CBOE believes that its proposal to eliminate its Audit Committee is substantially similar to prior actions by other securities exchanges with parent company audit committees to eliminate their exchange-level audit committees.[5]

(d) Composition Requirements for Board of Directors and Executive Committee

CBOE proposes to amend its Bylaws to conform the composition requirements of its Board of Directors and Executive Committee to the composition requirements of the Board of Directors and Executive Committee of C2.

Section 3.1 of the CBOE Bylaws currently provides, in pertinent part, that in no event shall the number of Non-Industry Directors on the CBOE Board of Directors constitute less than a majority of the members of the Board. Consistent with Section 3.1 of the C2 Bylaws, CBOE proposes to change this provision to provide that in no event shall the number of Non-Industry Directors on the CBOE Board constitute less than the number of Industry Directors on the Board (excluding the Chief Executive Officer from the calculation of Industry Directors for such purpose).

Similarly, Section 4.2 of the CBOE Bylaws currently provides, in pertinent part, that at all times the majority of the directors serving on the CBOE Executive Committee must be Non-Industry Directors. Like with the proposed change to the composition requirements for the CBOE Board of Directors and consistent with Section 4.2 of the C2 Bylaws, CBOE proposes to change this provision to provide that in no event shall the number of Non-Industry Directors constitute less than the number of Industry Directors serving on the CBOE Executive Committee (excluding the Chief Executive Officer from the calculation of Industry Directors for such purpose).

Accordingly, following this proposed change to the CBOE Executive Committee composition requirements and the proposed elimination of the Vice Chairman, Section 4.2 of the CBOE Bylaws will require that the Executive Committee include the Chairman of the Board, the Chief Executive Officer (if a director), the Lead Director (if any), at least one Representative Director, and such other number of directors that the Board deems appropriate, provided that in no event shall the number of Non-Industry Directors constitute less than the number of Industry Directors serving on the Executive Committee (excluding the Chief Executive Officer from the

[4] 17 CFR 240.10A–3.

[5] *See, e.g.,* Exchange Act Release No. 60276 (July 9, 2009), 74 FR 34840 (July 17, 2009) (File No. NASDAQ–2009–042).

calculation of Industry Directors for such purpose).[6]

CBOE believes that having the same composition requirements for CBOE Holdings' two affiliated securities exchange subsidiaries (CBOE and C2) will promote consistency and efficiency. CBOE and C2 currently have the same individuals serving on the CBOE and C2 Boards and the CBOE and C2 Executive Committees. This approach simplifies the process of scheduling and conducting meetings and allows the Boards and Executive Committees of both exchanges to operate most efficiently. To the extent that CBOE and C2 desire to continue this approach in the future, these proposed changes better enable CBOE and C2 to do so. Also, in addition to being consistent with C2's corollary composition requirements for its Board and Executive Committee, CBOE believes that the proposed CBOE Board and Executive Committee composition requirement changes are consistent with the composition requirements of the Board of Directors and Executive Committee of NASDAQ Stock Market LLC.[7]

(e) Miscellaneous Non-Substantive Bylaw and Rule Changes

In addition to the changes set forth above, the Exchange proposes to make the following non-substantive changes to its Bylaws and rules.

First, the Exchange proposes to amend the title of the Bylaws from "Amended and Restated Bylaws of Chicago Board Options Exchange, Incorporated" to "Second Amended and Restated Bylaws of Chicago Board Options Exchange, Incorporated" since the Exchange is making the Bylaw changes proposed by this rule filing through as second amendment and restatement of its Bylaws.

Second, the Exchange is proposing to re-number various sections of the Bylaws to eliminate gaps in the numbering of the Bylaw sections resulting from the proposed deletion of certain of the Bylaw sections as described above.

Third, the Exchange proposes to make a clarifying change to Section 3.2 of the Bylaws to change a reference to the Industry-Director Subcommittee of the Nominating and Governance Committee from "committee" to "Subcommittee."

Fourth, the Exchange is proposing to make a clarifying change to CBOE Rule 2.1 in addition to the changes to Rule 2.1 discussed above to make clear that the term of an Exchange committee member's appointment continues until the first regular meeting of the Board of Directors of the next calendar year and until that committee member's successor is appointed or that committee member's earlier death, resignation, or removal. In other words, if the Board of Directors does not appoint a successor to the committee member at the first regular Board meeting of the year, the committee member would continue in office until a successor is appointed or the person's earlier death, resignation, or removal.

(f) Effectiveness of Changes

The Exchange proposes to make effective the proposed Bylaw and rule changes related to the elimination of the Vice Chairman of the Board that are described in subsection (a)(1) of Item 3 of this rule filing on the date of the annual election of CBOE directors in 2011 (which is anticipated to occur in May 2011). The Exchange proposes to make effective these changes at that time because the current term of the Vice Chairman expires on that date and this will permit the current Vice Chairman to serve out his current term of office.

The Exchange proposes to make effective all of the other changes proposed by this rule filing at the time that the Commission approves this rule filing. These changes include those relating to the elimination of the Trading Advisory Committee and the addition of an Advisory Board provision, to the elimination of the CBOE Audit Committee, and to the composition requirements for the Board of Directors and Executive Committee and they also include the miscellaneous non-substantive Bylaw changes (all of which are described in subsections (a)(2)–(a)(5) of Item 3 of this rule filing).

2. Statutory Basis

For the reasons set forth above, CBOE believes that this filing is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(1) of the Act[9] and Section 6(b)(5) of the Act[10] in particular, in that (i) it enables CBOE to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Trading Permit Holders and persons associated with its Trading Permit Holders, with the provisions of the Act, the rules and regulations thereunder, and the rules of CBOE and (ii) to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest. Specifically, the proposed changes will streamline, make more efficient, and improve CBOE's governance structure (i) By eliminating the position of Vice Chairman of the Board which CBOE no longer believes is necessary; (ii) by eliminating the Trading Advisory Committee and adding a Bylaw provision that the Board of Directors may establish an Advisory Board, which CBOE views as a useful vehicle that the Board may utilize to receive input from the perspective of Trading Permit Holders and with respect to matters of interest to Trading Permit Holders; (iii) by eliminating the CBOE Audit Committee, which CBOE believes is duplicative of the CBOE Holdings Audit Committee and which change will allow CBOE directors to focus their attention on matters falling directly within the purview of the CBOE Board of Directors; and (iv) by conforming the composition requirements of the CBOE Board of Directors and CBOE Executive Committee to the corollary C2 composition requirements, which CBOE believes will promote consistency and efficiency and better enable CBOE and C2 to have the same Board compositions if desired.

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.

[6] CBOE's Executive Committee generally does not make a decision unless there is a need for a CBOE Board-level decision between CBOE Board meetings due to the time sensitivity of the matter. In addition, in situations when the Executive Committee does make a decision between CBOE Board meetings, the CBOE Board is generally aware ahead of time of the potential that the Executive Committee may need to make the decision. The CBOE Board is fully informed of any decision made by the Executive Committee at its next meeting and can always decide to review that decision and take a different action. CBOE previously noted the foregoing to the Commission (*see* Footnote 87 of Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (SR–CBOE–2008–88)) and it continues to be the case.

[7] *See* Article I(l), Section 2(a) of Article III, and Section 5(a) of Article III of the By-Laws of the NASDAQ Stock Market LLC. *See also* Exchange Act Release No. 44280 (May 8, 2001), 66 FR 26892 (May 15, 2001) (SR–NASD–2001–06) (approving amendment to NASD By-Laws to allow for the treatment of staff Governors as "neutral" for purposes of Industry/Non-Industry balancing on the NASD Board of Governors).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(1).

[10] 15 U.S.C. 78f(b)(5).

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2011–010 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–2011–010. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2011–010 and should be submitted on or before March 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–2971 Filed 2–9–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63842; File No. SR–CBOE–2011–009]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Stock-Option Orders

February 4, 2011.

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 January 27, 2011, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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. CBOE has submitted the proposed rule change under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its complex order request for response ("RFR") auction ("COA") as it applies to stock-option orders to incorporate certain order eligibility parameters. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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

Prior to routing to the complex order book or once on PAR, eligible complex orders may be subjected to an automated COA process where orders are exposed for price improvement under Rule 6.53C(d), *Process for Complex Order RFR Auction.* Generally, if a market order cannot be filled in whole or in a permissible ratio at the conclusion of COA, then the order (or any remaining balance) will route to PAR for manual handling. However, the Exchange has the ability to vary this process for market stock-option orders that contain one or more option leg(s) under Rule 6.53C.06(d). Specifically, instead of routing to PAR for manual handling, the Exchange may determine on a class-by-class basis that any remaining balance of the option leg(s) of a market stock-option order will automatically route to CBOE's Hybrid System for processing as a simple market order(s) consistent with CBOE's order execution rules and any remaining balance of the stock leg will automatically route to the CBOE Stock Exchange ("CBSX"), CBOE's stock facility, for processing as a simple

[11] 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).

[4] 17 CFR 240.19b–4(f)(6).

market order consistent with CBSX order execution rules.[5] This alternate legging functionality is intended to assist in the automatic execution and processing of stock-option orders that are market orders. The Exchange notes that when a stock-option order is legged in this manner, it is possible for CBOE to route the option leg(s) to another options exchange and/or for CBSX to route the stock leg to another stock exchange, consistent with their respective rules.[6]

The Exchange is preparing to activate this legging functionality for market stock-option orders. However, before activating the functionality, the Exchange is proposing to codify certain order eligibility parameters that would be applicable to such market stock-option orders. Specifically, the Exchange is proposing to provide that for each class in which the legging functionality is activated, an "eligible market order" means a stock-option order that is within designated size and order type [7] parameters, determined by the Exchange on a class-by-class basis, and for which the national best bid or offer ("NBBO") is within designated size and price parameters, as determined by the Exchange for the individual leg. The designated NBBO price parameters will be determined based on a minimum bid price for sell orders and a maximum offer price for buy orders. The Exchange may also determine on a class-by-class basis to limit the trading times within regular trading hours that the legging functionality will be available.[8]

The Exchange notes that the inclusion of an order eligibility provision will provide the Exchange with more flexibility to administer the legging functionality in a manner that is consistent with other CBOE rules that contain order eligibility provisions based on order size, order type and other factors, *e.g.,* Rules 6.13, *CBOE Hybrid System Automatic Execution Feature,* 6.14, *Hybrid Agency Liaison (HAL),* 6.14A, 6.53, *Certain Types of Orders Defined,* and 6.53C(d).[9] The Exchange also notes that the designated NBBO size and NBBO price parameters and the eligible trading time parameter are specific to the COA legging functionality (although the Exchange notes that there are other price reasonability check parameters within various other CBOE Rules, *e.g.,* Rule 6.13 and Interpretation and Policy .08 to Rule 6.53C, *Complex Orders on the Hybrid System*).

Under these new order eligibility parameters, for example, the Exchange might determine that for a given option class the COA legging functionality would only be available for stock-option orders involving one option leg where the maximum eligible order size is 1,000 shares for the stock leg and 10 contracts for the option leg. Under the NBBO size parameter, the Exchange might also determine that the legging functionality would only be available in instances where the minimum NBBO size is at least 1,000 shares for the stock leg and the minimum NBBO size for the options leg(s) is a size that is at least sufficient to satisfy the entire option leg(s). Under the NBBO price parameter, the Exchange might also determine that the legging functionality would only be available in instances where the NBBO bid for a component leg is at least $0.25 or higher for a sell option leg. As for the eligible trading times, the Exchange might determine to designate a time within regular trading hours when the legging functionality would be available, such as, for example, saying the legging functionality would not be available within 3 minutes of the 3 p.m. (Central Time) close of trading.[10]

As indicated above, the legging functionality is intended to assist in the automatic execution and processing of stock-option orders that are market orders. The Exchange believes the addition of the above described order eligibility parameters will provide the Exchange more flexibility in administering the legging functionality in a manner that is consistent with other Exchange rules that contain order eligibility provisions. The Exchange also believes that these eligibility parameters will enhance the functionality and assist with the maintenance of orderly markets by helping to mitigate the potential risks associated with legging stock option orders, *e.g.,* the risk of an order drilling through multiple price points on another exchange (thereby resulting in execution at prices that are away from the NBBO and potentially erroneous), and/or the risk of one leg of the stock-option order going unexecuted (thereby not achieving a complete stock-option order execution and having a partial position that is unhedged).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [11] in general and furthers the objectives of Section 6(b)(5) of the Act [12] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The Exchange believes the proposed rule change will assist in the automatic execution and processing of stock-option orders that are market orders. The Exchange also believes the addition of the order eligibility parameters will provide the Exchange with more flexibility in administering the legging functionality in a manner that is consistent with other Exchange rules that contain order eligibility provisions. In addition, the Exchange believes that these eligibility requirements will enhance the functionality and assist with the maintenance of orderly markets by helping to mitigate the potential risks associated with legging stock option orders, *e.g.,* the risk of an order drilling through multiple price points on another exchange (thereby resulting in execution at prices that are away from the NBBO and potentially erroneous), and/or the risk of one leg of the stock-option order going unexecuted (thereby not achieving a complete stock-option order execution and having a partial position that is unhedged).

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.

[5] Pursuant to Rule 6.53C.01, any determination by the Exchange to route stock-option market orders in this manner will be announced to Trading Permit Holders via Regulatory Circular.

[6] *See, e.g.,* CBOE's Rules 6.14A, *Hybrid Agency Liaison 2 (HAL2),* and 6.14B, *Order Routing to Other Exchanges,* and CBSX's Rule 52.6, *Processing of Round-lot Orders.*

[7] The legging functionality is currently only available for stock-option orders that are market orders. The market stock-option "order types" are those with only one option leg and those with more than one option leg (*e.g.,* a conversion or reversal).

[8] Pursuant to Rule 6.53C.01, any determination by the Exchange regarding these legging functionality parameters will be announced to Trading Permit Holders via Regulatory Circular.

[9] Indeed, to be eligible for the COA process itself, an order must be a COA-eligible order. A "COA-eligible order" is a complex order (including a stock-option order) that, as determined by the Exchange on a class-by-class basis, is eligible for COA considering the order's marketability (defined as a number of ticks away from the current market), size, complex order type and complex order origin types (i.e., non-broker-dealer public customer, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange). *See* Rule 6.53C(d)(i)(2) and Interpretation and Policy .06(d) to Rule 6.53C.

[10] In the example above, the Exchange would issue a Regulatory Circular to Trading Permit Holders before the legging functionality parameters go into effect for the given option class that announces the particular parameters that the Exchange determined to establish. *See* note 8, *supra.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

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 proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

CBOE has designated the proposed rule change as one that does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 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. Therefore, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

The Exchange has asked the Commission to waive the 30-day operative delay. CBOE believes that the proposed order eligibility parameters for the legging functionality will provide the Exchange with flexibility in administering the legging functionality and assist in the maintenance of fair and orderly markets by helping to mitigate potential risks associated with the legging of stock-option orders, including the risk of executions at multiple price points that are away from the NBBO and potentially erroneous, and the risk that one leg of the order will go unexecuted, resulting in an incomplete execution of the stock-option order and a partial position that is unhedged.

The Commission grants the CBOE's request.[15] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the order eligibility parameters could help to mitigate some of the risks associated with the legging of stock-option orders, including the risk of an incomplete execution of one leg of the order that results in a position that is not fully hedged, and the risk that a component of the order could be executed at multiple prices that are away from the NBBO and potentially erroneous. The Commission notes, in addition, that CBOE will notify Trading Permit Holders through a Regulatory Circular of the legging functionality parameters for an option class before the parameters go into effect.[16]

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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–009 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–2011–009. This file number should be included on the subject line if e-mail 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–009 and should be submitted on or before March 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Cathy H. Ahn,

Deputy Secretary.

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[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). Rule 19b-4(f)(6)(iii) also requires an exchange to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange satisfied this requirement.

[15] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] *See* notes 8 and 10, *supra. See also* CBOE Rule 6.53C, Interpretation and Policy .01.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63839; File No. SR–EDGA–2011–03]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

February 3, 2011.

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 February 1, 2011, the EDGA Exchange, Inc. (the "Exchange" or the "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members[3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–EDGA–2011–01,[4] the Exchange filed for immediate effectiveness a rule filing to amend Rule 11.9 to add its routing strategies, which were contained in its fee schedule, to the rule and to introduce additional routing strategies to the rule. Two of the strategies that the Exchange added to Rules 11.9(b)(3)(h) and (i) were the ROUT and ROUX routing strategies. Under both routing strategies, an order checks the Exchange's system ("System") for available shares and then is sent to destinations on the System routing table. In Rule 11.9(b)(3) the Exchange defined the term "System routing table" to mean the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them.

In this filing, the Exchange proposes to add the corresponding flags for the use of the ROUT and ROUX strategies to its fee schedule and assign corresponding fees. For any order routed using the ROUT routing strategy, the Exchange is proposing a fee of $0.0025 per share to be assessed and a flag of "RT" to be yielded, except when routed to EDGX Exchange, Inc. ("EDGX"), in which case a flag "I" is yielded a flag and a fee of $0.0030 is assessed. The latter exception is clarified in proposed footnote 10. Similarly, for any order routed using the ROUX routing strategy, the Exchange is proposing a fee of $0.0027 per share to be assessed and a flag of "RX" to be yielded, except when routed to EDGX, in which case a flag "I" is yielded a fee of $0.0030 is assessed. The latter exception is clarified in proposed footnote 10. The Exchange notes that the fee is higher if an order is routed to EDGX, which is affiliated with EDGA, rather than to other destinations on the System routing table using the ROUT/ROUX strategies.

In SR–EDGA–2011–01, the Exchange also added the ROOC routing option in Rule 11.9(b)(3)(p) for orders that the entering firm wishes to designate for participation in the opening or closing process of a primary listing market (NYSE, Nasdaq, NYSE Amex, or NYSE Arca) if received before the opening/closing time of such market. If shares remain unexecuted after attempting to execute in the opening or closing process, they are either posted to the book, executed, or routed like a ROUT routing option, as described in Rule 11.9(b)(3)(h). In this filing, the Exchange proposes to add the corresponding flags for the use of the ROOC strategy to its fee schedule and assign corresponding fees. If the entering firm wishes the order to participate in the listing market close via the ROOC strategy, it will be assigned a flag of "CL" and a fee of $0.0010 per share, except for NYSE Arca. This fee represents a blended rate of all four primary listing market fees for participation in the market close. For ease of administration, the Exchange uses this blended rate as it represents an average fee from the primary listing markets. However, a flag of "O" will be yielded and the associated fee for the "O" flag, $0.0005 per share, will be assessed, if the order is routed to the NYSE Arca closing process. This is clarified in proposed footnote 9 to the fee schedule and represents a pass through of the NYSE Arca fee. If the entering firm wishes to designate that the order participate in the opening process of NYSE Amex and it adds liquidity, it will be assigned a flag of "8" and a rebate of $0.0015 per share. This rebate represents a pass through of the NYSE Amex rebate. If the entering firm wishes to designate that the order participate in the opening process of NYSE Arca and it adds liquidity, it will be assigned a flag of "9" and a rebate of $0.0021 per share. This rebate represents a pass through of the NYSE Arca rebate. The Exchange proposes to add these flags effective February 1, 2011 but not implement them until the ROOC strategy is effective, which is on or about February 14, 2011.

Currently, the "K" flag is yielded when an order is routed to BATS BZX Exchange using the ROBA order type. The Exchange proposes that this flag be yielded and its associated fee of $0.0025 per share be assessed when an order is routed to Nasdaq PSX using the ROUC order type, as defined in Rule 11.9(b)(3)(a).[5] This fee of $0.0025 per share represents a pass through of the Nasdaq PSX rate.

Currently, the Exchange provides a reduced rate for non-displayed ("Flag H") executions for a non-aggregated MPID representing the volume of a Member and meeting certain criteria. For executions in stocks priced $1.00 and over, if the average daily volume ("ADV") of Flag H executions for a non-aggregated MPID is increased such that its ADV is 1,000,000 greater than its ADV of Flag H executions averaged across the month of October 2010, then the non-aggregated MPID would qualify for a rate of $0.00025 per share. For executions in stocks priced below $1.00, if the ADV of Flag H executions for a non-aggregated MPID is increased such that its ADV is 1,000,000 greater than its ADV of Flag H executions averaged across the month of October 2010, then the non-aggregated MPID would qualify for a rate of .025% of the total dollar volume of the Flag H executions. The Exchange is proposing to delete these reduced rates, which are found in footnote 2 of the fee schedule, effective February 1, 2011 as it does not believe that the reduced rates are effective at incenting Members to add liquidity to the Exchange.

Currently, stocks priced below $1.00 are charged 0.20% of the dollar value of the transaction when routed to Nasdaq and removing liquidity in securities on all Tapes, as noted in footnote 3 of the fee schedule and as indicated on corresponding flag J. The Exchange proposes to increase this fee to 0.30% of the dollar value of the transaction to reflect an increase in rate provided by Nasdaq effective January 3, 2011.

Finally, in the description of the SW flag on the fee schedule the Exchange proposes to make a technical change to amend the word "routing" to "routed."

EDGA Exchange proposes to implement these amendments to the Exchange fee schedule on February 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[6]

[4] *See* SR–EDGA–2011–01 (January 21, 2011).

[5] Rule 11.9(b)(3)(a) defines the ROUC order type as a routing option under which an order checks the System for available shares, and then is sent sequentially to destinations on the System routing table, Nasdaq OMX BX, and NYSE. If shares remain unexecuted after routing, they are posted on the EDGX Exchange's book.

[6] 15 U.S.C. 78f.

in general, and furthers the objectives of Section 6(b)(4),[7] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the fees of $0.0025 per share/$0.0027 per share, respectively, for the ROUT and ROUX routing strategies, represent an equitable allocation of reasonable dues, fees, and other charges. When compared to other similar fees assessed for other Exchange routing strategies, the ROUT and ROUX strategies route to more destinations and more costly ones and thus, the Exchange passes on higher fees to its Members. In addition, other market centers charge comparable rates. The comparable routing strategy to the ROUT strategy is either Parallel D or Parallel 2D with the DRT (Dark routing technique) option on BATS BZX Exchange ("BATS") and SCAN/STGY on Nasdaq OMX Exchange ("Nasdaq.") BATS charges $0.0028 per share for its Parallel D and Parallel 2D routing strategies and $0.0020 per share for its DRT option. Nasdaq charges $0.0030 per share for its SCAN and STGY routing strategies. The comparable routing strategy to the ROUX strategy is also the Parallel D or Parallel 2D strategies on BATS and the SKIP/SKNY strategies on Nasdaq. BATS charges $0.0028 per share for either of their strategies and Nasdaq charges $0.0030 for either of their strategies.

The Exchange believes that the fees associated with the new flags described above represent an equitable allocation of reasonable dues, fees, and other charges. The fee associated with the "CL" flag ($0.0010) (except for NYSE Arca) represents a blended rate of all four primary listing market fees for participation in the market close. However, a flag of "O" will be yielded and the associated fee for the "O" flag, $0.0005 per share, will be assessed, if the order is routed to the NYSE Arca closing process. This represents a pass through of the NYSE Arca fee. If the entering firm wishes to designate that the order participate in the opening process of NYSE Amex and it adds liquidity, it will be assigned a flag of "8" and a rebate of $0.0015 per share. This rebate represents a pass through of the NYSE Amex rebate. If the entering firm wishes to designate that the order participate in the opening process of NYSE Arca and it adds liquidity, it will be assigned a flag of "9" and a rebate of $0.0021 per share. This rebate also represents a pass through of the NYSE Arca rebate. The fee associated with the K flag ($0.0025 per share) also represents a pass through of the Nasdaq PSX rate. In addition, as discussed above, stocks priced below $1.00 are now proposed to be charged 0.30% of the dollar value of the transaction when routed to Nasdaq and removing liquidity in securities on all Tapes, as noted in proposed footnote 3 of the fee schedule. This increase in fee (from 0.20% of the dollar value of the transaction) reflects a pass through of the Nasdaq's increased rate, effective January 3, 2011.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[8] and Rule 19b–4(f)(2)[9] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2011–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2011–03. This file number should be included on the subject line if e-mail 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,[10] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 19b–4(f)(2).

[10] The text of the proposed rule change is available on Exchange's Web site at *http://www.directedge.com,* on the Commission's Web site at *http://www.sec.gov,* at EDGA, and at the Commission's Public Reference Room.

2011–03 and should be submitted on or before March 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–2969 Filed 2–9–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63838; File No. SR–Phlx–2011–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC To Modify Fees for NASDAQ OMX PSX

February 3, 2011.

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 January 26, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the fees applicable to trading on the NASDAQ OMX PSX system ("PSX"). The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to modify order execution fees applicable to use of PSX for trading stocks priced at $1 or more. Since its launch in October 2010, PSX has employed a promotional, "inverted" pricing structure under which the rebate paid to members that provide liquidity exceeds the fee charged for accessing liquidity. Specifically, PSX currently charges $0.0013 per share executed for orders that access liquidity, while paying a higher rebate for orders that provide liquidity. Consistent with PSX's goal of encouraging display of larger order sizes, the Exchange currently offers a rebate of $0.0024 per share executed for Displayed Orders with an original order size of 2,000 or more shares, but only $0.0018 per share executed for Non-Displayed Orders or for Displayed Orders with an original order size of less than 2,000.[3]

Effective February 1, 2011, the fee for accessing liquidity will increase to $0.0025 per share executed, while the rebate for providing displayed liquidity with an original order size of 2,000 or more shares will remain $0.0024 per share executed. The rebate for Displayed Orders with an original order size of less than 2,000 will increase to $0.0022 per share executed. However, consistent with PSX's goal of encouraging greater display of liquidity, the rebate for Non-Displayed Orders that provide liquidity will be decreased to $0.0010 per share executed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The impact of the price changes upon the net fees paid by a particular market participant will depend upon a number of variables, including the prices of the market participant's quotes and orders relative to the national best bid and offer (*i.e.,* its propensity to add or remove liquidity), its usage of Non-Displayed orders, and the size of the orders that it enters. The Exchange believes that the proposal reflects an equitable allocation of fees, as all similarly situated member organizations will be subject to the same fee structure, and access to the Exchange's market is offered on fair and non-discriminatory terms.

Although the change will result in an increase of the fee charged to access liquidity on PSX, the fee structure adopted by PSX at its inception, in which liquidity provider rebates paid per share exceeded access fees charged, reflected a promotional pricing structure for a new market entrant under which costs exceed revenues on every share executed. Accordingly, the change is a reflection of PSX's more established status and the desirability of adopting a price model that results in net execution revenues to the Exchange. Similarly, although the proposed decrease in the rebate paid with respect to Non-Displayed Orders effectively constitutes a price increase, the Exchange believes that it may help to advance its market structure goals of encouraging the use of the venue as a means to display liquidity. The Exchange further notes that these price increases will be partially offset by the increase in the rebate paid with respect to orders with a size below 2,000 shares.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees continue to be reasonable and equitably allocated to members on the

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The higher credit applies to an order as it is decremented by partial executions, but does not apply in circumstances where an order for more than 2,000 shares is entered and then reduced in size by the entering Participant, such that the order is subsequently in the System for less than 2,000 shares. Moreover, changes to orders that result from system operations other than execution and decrementation are deemed to result in new orders. For example, a Pegged Order is considered a new order each time its price changes.

Thus, if a Participant entered a 2,400 share order that posted to the PSX book, the order was executed for 1,000 shares, and the remainder of the order was then executed for 1,400, both of the executions would receive the higher credit. However, if a PSX Participant entered a 2,400 share order and subsequently modified the order down to 1,500 shares, the lower credit would apply. Finally, if a Participant entered a 2,400 share buy order pegged to the national best bid, the order executed for 1,000 shares, and the order then repriced due to a change in the national best bid, the 1,000 share execution would receive the higher 0.0024 credit but a subsequent execution of the repriced order would receive the lower credit because it would be treated as a new order with a size below 2,000 shares.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

basis of whether they opt to direct orders to the Exchange and thereby make use of its order execution services. In particular, the Exchange notes that the proposed fees are consistent with Rule 610(c) under Regulation NMS,[6] which found that fees not in excess of $0.0030 per share executed would promote the objective of equal regulation and preventing excessive fees. As the Commission determined in that matter, competition is best able to determine whether a strategy of charging fees set at lower levels, or of charging a higher fee and paying a higher rebate, will be successful.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution and routing is extremely competitive, members may readily favor the Exchange's competitors in making order routing decisions to the extent that they deem PSX's fees to be excessive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[8] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–11 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–Phlx–2011–11. This file number should be included on the subject line if e-mail 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–11, and should be submitted on or before March 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

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[6] 17 CFR 242.610(c).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37596 (June 29, 2005).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63837; File No. SR–EDGX–2011–03]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

February 3, 2011.

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 February 1, 2011, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–EDGX–2010–10,[4] the Exchange filed for immediate effectiveness a rule filing to charge for legacy ISE [5] Financial Information Exchange ("FIX") sessions ("Sessions") used to connect to EDGX and thereby, amended its fee schedule accordingly.[6] These Sessions are logical ports used to enter orders into the Exchange's trading system and to receive order messages from the Exchange. The Sessions are currently being used to send orders to EDGX by certain legacy Members of the ISE who became Members of EDGX. The amendment to the fee schedule enabled the Exchange to continue to bill Members for these Sessions until they are terminated.

The Exchange notes that all Members have transitioned their order entry to other ports and no firms currently send orders over ISE FIX sessions as of February 1, 2011. Therefore, effective February 1, 2011, the Exchange will be discontinuing the ISE FIX sessions as all Members of EDGX that previously used ISE FIX sessions have transitioned to their Direct EDGX Sessions.

In SR–EDGX–2011–01, the Exchange added the ROOC routing option in Rule 11.9(b)(3)(p) for orders that the entering firm wishes to designate for participation in the opening or closing process of a primary listing market (NYSE, Nasdaq, NYSE Amex, or NYSE Arca) if received before the opening/closing time of such market. If shares remain unexecuted after attempting to execute in the opening or closing process, they are either posted to the book, executed, or routed like a ROUT routing option, as described in Rule 11.9(b)(3)(h). In this filing, the Exchange proposes to add the corresponding flags for the use of the ROOC strategy to its fee schedule and assign corresponding fees. If the entering firm wishes the order to participate in the listing market close via the ROOC strategy, it will be assigned a flag of "CL" and a fee of $0.0010 per share, except for NYSE Arca. This fee represents a blended rate of all four primary listing market fees for participation in the market close. For ease of administration, the Exchange uses this blended rate as it represents an average fee from the primary listing markets. However, a flag of "O" will be yielded and the associated fee for the "O" flag, $0.0005 per share, will be assessed, if the order is routed to the NYSE Arca closing process. This is clarified in proposed footnote 9 to the fee schedule and represents a pass through of the NYSE Arca fee. If the entering firm wishes to designate that the order participate in the opening process of NYSE Amex and it adds liquidity, it will be assigned a flag of "8" and a rebate of $0.0015 per share. This rebate represents a pass through of the NYSE Amex rebate. If the entering firm wishes to designate that the order participate in the opening process of NYSE Arca and it adds liquidity, it will be assigned a flag of "9" and a rebate of $0.0021 per share. This rebate represents a pass through of the NYSE Arca rebate. The Exchange proposes to add these flags effective February 1, 2011 but not implement them until the ROOC strategy is effective, which is on or about February 14, 2011.

Currently, the "K" flag is yielded when an order is routed to BATS BZX Exchange using the ROBA order type. The Exchange proposes that this flag be yielded and its associated fee of $0.0025 per share be assessed when an order is routed to Nasdaq PSX using the ROUC order type, as defined in Rule 11.9(b)(3)(a).[7] This fee of $0.0025 per share represents a pass through of the Nasdaq PSX rate.

Currently, stocks priced below $1.00 are charged 0.20% of the dollar value of the transaction when routed to Nasdaq and removing liquidity in securities on all Tapes, as noted in footnote 3 of the fee schedule and as indicated on corresponding flag J. The Exchange proposes to increase this fee to 0.30% of the dollar value of the transaction to reflect an increase in rate provided by Nasdaq, effective January 3, 2011.

EDGX Exchange proposes to implement these amendments to the Exchange fee schedule on February 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Exchange believes that the fees associated with the new flags described above represent an equitable allocation of reasonable dues, fees, and other charges. The fee associated with the "CL" flag ($0.0010) (except for NYSE Arca) represents a blended rate of all four primary listing market fees for participation in the market close. However, a flag of "O" will be yielded and the associated fee for the "O" flag, $0.0005 per share, will be assessed, if the order is routed to the NYSE Arca closing process. This represents a pass through of the NYSE Arca fee. If the entering firm wishes to designate that the order participate in the opening process of NYSE Amex and it adds liquidity, it will be assigned a flag of "8" and a rebate of $0.0015 per share. This rebate represents a pass through of the NYSE Amex rebate. If the entering firm wishes to designate that the order participate in the opening process of NYSE Arca and it adds liquidity, it will be assigned a flag of "9" and a rebate of $0.0021 per share. This rebate also represents a pass through of the NYSE Arca rebate. The fee associated with the K flag ($0.0025 per share) also represents a pass through of the Nasdaq PSX rate. In addition, as discussed above, stocks priced below $1.00 are now proposed to be charged 0.30% of the dollar value of the transaction when routed to Nasdaq and removing liquidity in securities on all Tapes, as noted in proposed footnote 3 of the fee schedule. This increase in fee (from 0.20% of the dollar value of the transaction) reflects a pass through of the Nasdaq's increased rate, effective January 3, 2011.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that

[4] *See* Securities Exchange Act Release No. 62640 (August 4, 2010), 75 FR 48734 (August 11, 2010) (SR–EDGX–2010–10).

[5] A wholly-owned subsidiary of Direct Edge Holdings, LLC (prior to July 16, 2010) previously operated the ISE Stock Exchange as a facility of ISE. These Session fees are identical to the fees filed previously filed by and billed for by the ISE. *See* Securities Exchange Act Release No. 56379 (September 10, 2007), 72 FR 52591 (September 14, 2007) (SR–ISE–2007–79).

[6] As stated in SR–ISE–2007–79, the ISE used the FIX protocol, which Members program to in order to develop applications that send trading commands and/or queries to and receive broadcasts and/or transactions from the trading system. The protocol processes quotes, receives orders from Members, tracks activity in the underlying markets, when applicable, executes trades in the matching engine, and broadcasts trade details to participating Members.

[7] Rule 11.9(b)(3)(a) defines the ROUC order type as a routing option under which an order checks the System for available shares, and then is sent sequentially to destinations on the System routing table, Nasdaq OMX BX, and NYSE. If shares remain unexecuted after routing, they are posted on the Exchange's book.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

the proposed rates are equitable in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [10] and Rule 19b–4(f)(2) [11] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–EDGX–2011–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2011–03. This file number should be included on the subject line if e-mail 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,[12] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2011–03 and should be submitted on or before March 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–2950 Filed 2–9–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 19b–4(f)(2).

[12] The text of the proposed rule change is available on Exchange's Web site at *http://www.directedge.com*, on the Commission's Web site at *http://www.sec.gov*, at EDGX, and at the Commission's Public Reference Room.

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12461 and # 12462]

Maine Disaster # ME–00028

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of *Maine* (FEMA–1953–DR), dated 02/01/2011.

Incident: Severe Storms and Flooding.

Incident Period: 12/12/2010 through 12/19/2010.

DATES: *Effective Date:* 02/01/2011.

Physical Loan Application Deadline Date: 04/04/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 11/01/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/01/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Aroostook; Piscataquis; Washington. And the Tribal Lands of the Passamaquoddy Tribe located entirely within Washington County.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ..	3.250
Non-Profit Organizations Without Credit Available Elsewhere:	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere:	3.000

The number assigned to this disaster for physical damage is 12461B and for economic injury is 12462B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–2977 Filed 2–9–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12459 and #12460]

California Disaster #CA–00162

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 02/02/2011.

Incident: Severe Winter Storms, Flooding, and Debris and Mud Flows.

Incident Period: 12/17/2010 through 01/04/2011.

Effective Date: 02/02/2011.

Physical Loan Application Deadline Date: 04/04/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 11/02/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Orange, San Bernardino, San Luis Obispo.

Contiguous Counties:

California: Inyo, Kern, Kings, Los Angeles, Monterey, Riverside, San Diego, Santa Barbara.

Arizona: La Paz, Mohave.

Nevada: Clark.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.500
Homeowners Without Credit Available Elsewhere	2.250
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12459 B and for economic injury is 12460 0.

The States which received an EIDL Declaration # are California, Arizona, Nevada.

Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: February 2, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–2979 Filed 2–9–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 7332]

Department of State Performance Review Board Members

In accordance with section 4314(c)(4) of 5 United States Code, the Department of State has appointed the following individuals to the Department of State Performance Review Board for Non-Career Senior Executive Service members:

Jeanne-Marie Smith, Chairperson, Senior Advisor, Deputy Secretary for Management and Resources, Department of State;

Kris M. Balderston, Special Representative, Global Partnership Initiative, Department of State; and

Cheryl Ann Benton, Deputy Assistant Secretary, Bureau of Public Affairs.

Dated: February 2, 2011.

Nancy J. Powell,

Director General of the Foreign Service and Director of Human Resources, Department of State.

[FR Doc. 2011–3006 Filed 2–9–11; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind a Notice of Intent To Prepare an Environmental Impact Statement on Seattle Ferry Terminal (Colman Dock) in Seattle, WA

AGENCY: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), Department of Transportation.

ACTION: Notice to rescind a notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration and Federal Highway Administration, in cooperation with the Washington State Department of Transportation, Ferries Division (WSF), are rescinding the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) that had been proposed to improve the ferry facilities at Seattle Ferry Terminal (Colman Dock) in Seattle, Washington. That NOI was published in the **Federal Register** on March 17, 2006, at 71 FR 13892.

FOR FURTHER INFORMATION CONTACT: Pete Jilek, Urban Area Engineer, Federal Highway Administration, Washington Division, at (360) 753–9550; Daniel Drais, Environmental Protection Specialist, Federal Transit Administration, Region 10, at (206) 220–4465.

SUPPLEMENTARY INFORMATION: After a lengthy cessation of work on the project described in the NOI found at 71 FR 13892, WSF reconsidered the project's purpose and need and the available resources. WSF has concluded the project it intended to pursue in 2006 will not be carried out in the foreseeable future. As such, the NOI is being rescinded.

Issued On: February 3, 2011.

Peter A. Jilek,

Urban Area Engineer.

[FR Doc. 2011–2830 Filed 2–9–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0022]

Parts and Accessories Necessary for Safe Operation; Brakes; Application for Exemption From Innovative Electronics

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA requests public comment on an application for exemption from Innovative Electronics regarding the use of trailer-mounted electric brake controllers, which monitor and actuate trailer brakes based on inertial forces developed in response to the braking action of the towing vehicle. While trailer-mounted electric brake controllers function like an electric surge brake, the Federal Motor Carrier Safety Regulations (FMCSRs) define a surge brake as a "self-contained, permanently closed *hydraulic* brake system" [Emphasis added.] As such, the use of trailer-mounted electric brake controllers on commercial motor vehicles is currently prohibited. Innovative Electronics is requesting a temporary exemption in advance of petitioning FMCSA for rulemaking to

modify the current definition of a surge brake.

DATES: Comments must be received on or before March 14, 2011.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2010–0022 by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the "Public Participation" heading below. 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 for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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 19476) or you may visit *http://www.regulations.gov.*

Public participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the *http://www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want us to notify you that we received your comments, please include a self addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–0676; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 107, 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from many of the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule implementing section 4007 (69 FR 51589). Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 381.300(b)).

Background

On October 7, 2005, in response to a petition for rulemaking submitted by the Surge Brake Coalition ("the Coalition"), FMCSA published a notice of proposed rulemaking (NPRM) to allow the use of surge-braked trailers in interstate commerce (70 FR 58657). On March 6, 2007, FMCSA published a final rule revising the FMCSRs to allow the use of automatic hydraulic inertia brake systems (surge brakes) on commercial trailers when the ratios of gross vehicle weight ratings (GVWR) for the towing vehicle and trailer are within certain limits (72 FR 9855).

A surge brake is defined in 49 CFR 393.5 as "A self-contained, permanently closed hydraulic brake system for trailers that relies on inertial forces, developed in response to the braking action of the towing vehicle, applied to a hydraulic device mounted on or connected to the tongue of the trailer, to slow down or stop the towed vehicle."

The March 2007 final rule established the requirements for surge brakes as follows:

> 393.48(d) Surge brakes. (1) Surge brakes are allowed on:
>
> (d)(1)(i) Any trailer with a gross vehicle weight rating (GVWR) of 12,000 pounds or less, when its GVWR does not exceed 1.75 times the GVWR of the towing vehicle; and
>
> (d)(1)(ii) Any trailer with a GVWR greater than 12,000 pounds, but less than 20,001 pounds, when its GVWR does not exceed 1.25 times the GVWR of the towing vehicle.
>
> (d)(2) The gross vehicle weight (GVW) of a trailer equipped with surge brakes may be used instead of its GVWR to calculate compliance with the weight ratios specified in paragraph (d)(1) of this section when the trailer manufacturer's GVWR label is missing.
>
> (d)(3) The GVW of a trailer equipped with surge brakes must be used to calculate compliance with the weight ratios specified in paragraph (d)(1) of this section when the trailer's GVW exceeds its GVWR.
>
> (d)(4) The surge brakes must meet the requirements of *§ 393.40.*
>
> 393.49 Control valves for brakes.
>
> (c) Surge brake exception. This requirement is not applicable to trailers equipped with surge brakes that satisfy the conditions specified in 393.48(d).

Innovative Electronics' Application for Exemption

On March 30, 2010, Innovative Electronics applied for an exemption from 49 CFR 393.48(a) and 49 CFR 393.49(a) to allow commercial motor vehicles to tow trailers equipped with trailer-mounted electric brake controllers. A copy of the application is included in the docket referenced at the beginning of this notice.

In its application, Innovative Electronics states:

> Electric brakes have been used on commercial trailers for a long period of time; however each tow vehicle must currently be equipped with a brake controller in the towing vehicle which applies the trailer brakes when the driver applies the towing vehicle's brakes. Tow vehicle brake controllers are usually aftermarket devices which are manually adjustable to increase or decrease the amount of electric brake force applied to the trailer wheels to adjust for wet or dry road conditions and loaded or

unloaded trailer condition. Electric brakes on commercial trailers will not operate unless the tow vehicle has a brake controller.

Technology developments in electronics have allowed the development of a self contained electric brake control device that is mounted directly to the trailer enabling it to monitor and actuate the brakes based on inertial forces developed in response to the braking action of the towing vehicle. The device is essentially an electric surge brake controller, with the electric power for the brakes provided by the tow vehicle, but the braking action of the trailer is controlled by the electronic controller mounted on the trailer. A trailer using this trailer mounted electronic brake controller does not meet the "operative at all times" requirement of 49 CFR 393.48 and the brakes do not meet the "apply by a single application valve" requirement of 49 CFR 393.49. Innovative Electronics and other electric surge brake controller manufactures have identified potential significant market penetration in commercial trailers equipped with electric brakes. Consequently, Innovative Electronics is requesting this exemption for all commercial motor vehicles as defined in § 390.5, for a period of 2 years.

Innovative Electronics requests that the standards for hydraulic surge brakes in 393.48(d) and 393.49(c) be applied to the temporary exemption, i.e., substituting "trailer mounted electric brake controller" for "surge brake" as follows:

(1) Trailer-mounted electric brake controllers are allowed on:

(i) Any trailer with a gross vehicle weight rating (GVWR) of 12,000 pounds or less, when its GVWR does not exceed 1.75 times the GVWR of the towing vehicle; and

(ii) Any trailer with a GVWR greater than 12,000 pounds, but less than 20,001 pounds, when its GVWR does not exceed 1.25 times the GVWR of the towing vehicle.

(2) The gross vehicle weight (GVW) of a trailer equipped with a trailer-mounted electric brake controller may be used instead of its GVWR to calculate compliance with the weight ratios specified in paragraph (d)(1) of this section when the trailer manufacturer's GVWR label is missing.

(3) The GVW of a trailer equipped with a trailer-mounted electric brake controller must be used to calculate compliance with the weight ratios specified in paragraph (d)(1) of this section when the trailer's GVW exceeds its GVWR.

(4) The trailer equipped with a trailer-mounted electric brake controller must meet the requirements of *§ 393.40.*

Control valves for brakes.

(1) Trailer-mounted electric brake controller exception. This requirement is not applicable to trailers equipped with trailer-mounted electric brake controllers that satisfy the conditions specified in 393.48(d).

Without this exemption, commercial vehicle operators who tow trailers equipped with electric brakes must continue to purchase and install aftermarket trailer brake controls in each tow vehicle which may be used to tow a commercial trailer equipped with electric brakes. Similarly, rental companies will be prevented from renting trailers equipped with electric brakes to commercial customers whose tow vehicles are not equipped with electric brake controllers, although they can rent such trailers to a customer for non-commercial use.

Innovative Electronics has provided limited test data showing that the trailer-mounted electronic brake controller appears to meet the braking performance requirements of 49 CFR 393.52(d). These test data have been included in the docket referenced at the beginning of this notice. Innovative Electronics' trailer-mounted electric brake controllers are currently available for non-commercial use trailers. The use of trailers equipped with electric brakes is currently allowed, and the brake performance of trailers equipped with the trailer-mounted controller appears to be at least as good as the performance of a tow vehicle equipped with a trailer brake controller. Trailer-mounted electric brake controllers offer the advantage of continuous electronic sensing of the braking forces acting on the trailer by the tow vehicle, thus eliminating the over-application of the trailer brakes in wet or icy conditions and continuously adjusting the application of the trailer brakes to variations in trailer weight; this is not possible when relying on the crude manual adjustments available on most in-cab tow vehicle brake controllers.

For the reasons stated above, Innovative Electronics requests that motor carriers be permitted to use trailer-mounted electronic brake controllers, which would eliminate the requirement for each individual tow vehicle to be equipped with an electronic brake controller. Innovative Electronics is making this request because it believes the use of trailer-mounted electronic brake controllers will maintain a level of safety that is equivalent to the level of safety achieved without the exemption.

FMCSA notes that, in comments submitted to the 2005 NPRM, the Coalition stated that surge brake technology had evolved since its petition was originally submitted, and suggested that the definition of surge brakes may someday require modification. For example, the Coalition noted that non-hydraulic surge brake systems had been developed and were entering the marketplace in Europe. The Coalition proposed that FMCSA consider deleting "permanently closed hydraulic" and the adjective 'hydraulic' from the definition of surge brakes as proposed in the NPRM to eliminate any future design restrictions or the need for further rulemaking petitions.

FMCSA responded in the March 2007 final rule, stating that "No data are available to the Agency regarding the performance of other surge brake technologies to support the Coalition's request to remove the word 'hydraulic' from the definition of surge brake. If the Coalition wishes to make such data available to FMCSA, a modification of this definition may be evaluated."

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on Innovative Electronics' application for an exemption from 49 CFR 393.48(a) and 49 CFR 393.49(a). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: February 4, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–2985 Filed 2–9–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2010–0414]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt twenty-three individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective February 10, 2011. The exemptions expire on February 10, 2013.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Background

On December 23, 2010, FMCSA published a notice of receipt of Federal diabetes exemption applications from twenty-three individuals and requested comments from the public (75 FR 80889). The public comment period closed on January 24, 2011 and no comments were received.

FMCSA has evaluated the eligibility of the twenty-three applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441) **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These twenty-three applicants have had ITDM over a range of 1 to 33 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the December 23, 2010, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comment

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

The Pennsylvania Department of Transportation stated that it had reviewed the driving records for Thomas H. Adams and are in favor of granting him a Federal diabetes exemption.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the twenty-three exemption applications, FMCSA exempts, Thomas H. Adams, Jr., Charlie A. Barner, Charles G. Beasley, Philp M. Carr, Timothy D. Cochran, John A. Curtis, Robert M. Eggert, Christopher R. Everitt, Dustin J. Favor, Scott J. Forsmann, Joseph A. Griffin, Paul R. Hollenbach, Michael A. Holy, Victor M. Lewis, William P. Miller, Jr., Floyd R. Plocher, Darwin D. Roberts, Robert A. Roskamp, David N. Studebaker, Danny J. Watson, Robert L. Wenzel, David A. Wiltse and Walter B. Wirth from the ITDM standard in 49 CFR 391.41(b)(3), subject to the

conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: February 4, 2011.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2011–2984 Filed 2–9–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Association of American Railroads

[Waiver Petition Docket Number FRA–2005–21613]

FRA granted waiver Docket Number FRA–2005–21613 to the Association of American Railroads (AAR) on December 5, 2005, establishing an extensive testing and inspection program to determine extended clean, repair and test intervals for air brake valves and related components as required by the *Railroad Locomotive Safety Standards* per 49 CFR 229.27 *Annual tests* and § 229.29 *Biannual tests.* Eighteen (18) separate groups of locomotives were identified for investigation in the waiver approval letter. This waiver has expired and AAR's request is to extend the waiver for another 5 years, as provided for in condition 12 of the original approval letter. As part of this request for extension, AAR has also requested that three Wabtec Railway Electronics (WRE) air brake system models (EPIC, EPIC–II, and EPIC 3102D2) be combined into one testing category, thereby reducing the number of locomotive groups that must be investigated.

In support of this petition, AAR says that this extension will be utilized to collect additional data sufficient to determine appropriate test and inspection intervals for electronic air brake equipment. They have also submitted information from WRE supporting combining EPIC 3102D2 and EPIC II models into one group, stating that they have commonality of pneumatic components and electronic controls.

Electronic airbrake systems began to be introduced in the early 1990s. Due to the clean operation of these systems, the brake manufacturers applied for and were granted industry wide waivers permitting the clean, repair and test intervals under 49 CFR 229.27 and 229.29, to be extended to 5 years. Waiver Docket Number FRA–2000–7367 (formerly H–95–3), applies to electronic brake systems manufactured by New York Air Brake Corporation (NYAB) and Waiver Docket Number FRA–2002–13397 (formerly H–92–3) applies to electronic air brake systems manufactured by Wabtec Railway Electronics.

The successful performance of the electronic air brake systems out to 5 years led the CSX Transportation, Inc. (CSXT) to apply for a further extension for NYAB electronic air brake systems. An extensive test and inspection program under waiver Docket Number FRA–1999–6252 led to further extension of the airbrake servicing interval for the subject CSXT locomotives. The joint FRA-industry-labor committee approach to performing waiver evaluations was also validated by the experience on CSXT.

Based largely on the success of CSXT clean, repair, and test interval extension program, AAR applied for and was granted a waiver establishing a similar program for many groups of locomotives owned and operated by their member railroads. Conditional approval of waiver Docket Number FRA–2005–21613 established the terms under which the relief granted to CSXT could be extended to other AAR member railroads and established a means of evaluating 18 groups of locomotives for potential increases in electronic airbrake clean, repair and test intervals. The groups of locomotives are based on locomotive manufacturer, air brake manufacturer, manufacturer's system model, and whether or not the locomotives are equipped with an air dryer. The process for evaluating groups of locomotives was based on the establishment of the same type of test and inspection program as had been used on CSXT for each group of locomotives identified in the approval letter.

In the 5 years that this waiver has been in effect, several joint committees including representatives of FRA, railroads, labor organizations (both operating and maintaining crafts), locomotive manufacturers, airbrake manufacturers, and others have met repeatedly to evaluate the condition of the electronic air brake equipment on various groups of locomotives at ages beyond the 5-year clean, repair and test cycle previously approved. The BNSF Railway (BNSF) has convened a joint waiver committee to evaluate GE and EMD locomotives equipped with NYAB CCB–2 air brakes without an air dryer. Interim results at the 7 years of service mark have shown the air brake system condition to be substantially the same as for similar CSXT locomotives which are air dryer equipped. Tests, teardowns and inspections of WRE Fastbrake systems have recently begun on the Union Pacific Railroad (UP) and CSXT.

Some of the locomotive groups being studied have not yet reached the clean, repair and test cycle time limit and the committees will continue to meet if this extension is granted. Certain other combinations of equipment have not yet passed beyond the 5-year age covered under the earlier waivers so committees to cover these groups are yet to be formed.

In addition to the committee work being done, Norfolk Southern, UP, Amtrak, and Canadian National have submitted the proper documentation and have been individually approved for the same relief granted to CSXT based on the established similarity of their locomotives and electronic airbrake systems to those evaluated on CSXT.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number 2005–21613) and may be submitted by any of the following methods:

• *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Fax:* 202–493–2251.

• *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and 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).

Issued in Washington, DC, on February 4, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–2921 Filed 2–9–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Denton County Transportation Authority

[Waiver Petition Docket Number FRA–2010–0180]

The Denton County Transportation Authority, Texas (DCTA), seeks a waiver of compliance from certain provision of Title 49 of the CFR. Specifically, DCTA has ordered 11 Stadler Bussnang AG, GTW 2/6 Diesel Multiple Units (DMU), the first of which will arrive in July of 2011, for use on its new "A-train" commuter rail service between Dallas, Texas, and Denton, TX. These vehicles are constructed by European manufacturer and meet European safety standards for crashworthiness and related safety measures. DCTA has submitted two petitions for relief simultaneously. The first petition for relief, the "Base Waiver," seeks relief from certain requirements of Title 49 of the CFR, particularly part 238, Passenger Equipment Safety Standards (§§ 238.115, 238.121, 238.223, 238 Appendix D Locomotive Fuel Tanks, 238.229, 238.230, 238.305, 238.309); part 229, Railroad Locomotive Safety Standards (§§ 229.31, 229.51, 229.47, 229.71, 229.135, 229 Appendix D Certification of Crashworthy Event Recorder); part 231, Railroad Safety Appliance Standards (§ 231.14); and Part 239, Passenger Train Emergency Preparedness (§ 239.101). The second petition for relief pertains to DCTA's plan to store, test, and maintain these DMU's on yard and out-of-service mainline tracks until FRA considers them for revenue service.

DCTA is building its new "A-train" commuter rail service along a 21.3-mile corridor adjacent to and parallel with Interstate 35 between Dallas, TX, and Denton, TX, along right-of-way-owned by Dallas Area Rapid Transit (DART) and featuring five (5) station stops. DART and DCTA directly operate the mainline and maintain trackage rights agreement with freight railroads for operation on the line. This rail corridor is currently active and is served only by the Dallas Garland and Northeastern Railroad (DGNO), which will continue to provide freight service to customers in the Lewisville, TX, area. DCTA has chosen these Stadler DMU's because DCTA states that they offer an equivalent or higher level of safety, security, and performance to the passengers and crew than conventional FRA-compliant equipment. Initially, DCTA will use FRA-approved and compliant RDC–1 Budd DMU's, leased from Trinity Railway Express (TRE), for a short period of time until FRA considers the Stadler DMU for revenue service. If FRA approves the Stadler DMU for revenue service, and in order to mitigate any potential hazards that may arise from mixing Stadler DMU's with the general railroad system, DCTA will operate its "A-train" commuter rail service during an exclusive passenger period that is temporally separate from DGNO freight trains. This temporal separation may not be necessary once DCTA submits criteria and procedures that provide a technical framework for presenting evidence to FRA in support of a petition for waiver of Tier 1 crashworthiness and occupant protection standards [Alternate Vehicle Technology (per guidelines set forth in the Engineering Task Force report to the Passenger Safety Working Group of the Railroad Safety Advisory Committee)].

Pertaining to the second petition, DCTA will be testing and commissioning the Stadler DMU's while sharing the facility and yard storage tracks at the Operations and Maintenance (O&M) Facility with the leased RDC–1 DMU's. The O&M Facility has been designed to accommodate both the RDC and the Stadler DMU's sufficiently, with storage capacity to hold both fleets concurrently. In order to reduce potential hazards associated with co-mingling these two vehicle types in the O&M Facility, DCTA will operationally segregate the two types by using locked switches, derails, and blue flag protection. Testing on the mainline will be outlined in a Test Plan for FRA's approval and will occur in test zones and during times that no passenger or freight movements occur. DCTA states that this second petition for relief need only be applicable for the time period between FRA's approval of the "Base Waiver" and upon DCTA receiving permission from FRA to begin using the Stadler DMU in revenue service.

Noting that certain provisions in 49 CFR Part 231 pertaining to safety appliances are statutorily required, and therefore not subject to FRA's waiver authority, DCTA also requested that FRA exercise its authority under 49 U.S.C. 20306 to exempt DCTA from certain provisions of Chapter 203, Title 49 of the United States Code because the GTW 2/6 DMU vehicles will be equipped with their own array of safety devices resulting in equivalent safety.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before

the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0180) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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; Page 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on February 4, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–2920 Filed 2–9–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Council on Jobs and Competitiveness (PCJC)

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Open Meeting.

SUMMARY: The President's Council on Jobs and Competitiveness will meet on February 24, 2011, in the White House State Dining Room, 1600 Pennsylvania Avenue, NW., Washington, DC, beginning at 1:45 p.m. Eastern Time. The meeting will be open to the public via live webcast at *http://www.whitehouse.gov/live.*

DATES: The meeting will be held on February 24, 2011 at 1:45 p.m. Eastern Time.

ADDRESSES: The PCJC will convene its first meeting in the White House State Dining Room, 1600 Pennsylvania Avenue, NW., Washington, DC. The public is invited to submit written statements to the PCJC by any of the following methods:

Electronic Statements

- Send written statements to the PCJC's electronic mailbox at *PCJC@treasury.gov;* or

Paper Statements

- Send paper statements in triplicate to John Oxtoby, Designated Federal Officer, President's Council on Jobs and Competitiveness, Office of the Under Secretary for Domestic Finance, Room 1325A, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, all statements will be posted on the White House website (*http://www.whitehouse.gov*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Department will also make such statements available for public inspection and copying in the Department's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: John Oxtoby, Designated Federal Officer, President's Council on Jobs and Competitiveness, Office of the Under Secretary for Domestic Finance, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 622–2000.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. II, section 10(a), and the regulations thereunder, John Oxtoby, Designated Federal Officer of the Council, has ordered publication of this notice that the PCJC will convene its next meeting on February 24, 2011, in the White House State Dining Room, 1600 Pennsylvania Avenue, NW., Washington, DC, beginning at 1:45 p.m. Eastern Time. The meeting will be broadcast on the internet via live webcast at *http://www.whitehouse.gov/live.* The purpose of this meeting is to focus on finding new ways to promote growth by investing in American business, to encourage hiring, to educate and train our workers to compete globally, and to attract the best jobs and businesses to the United States. This will be the first meeting of the President's Council on Jobs and Competitiveness. Due to the significant logistical difficulties of convening the members of the Council, the meeting has been scheduled with less than 15 days notice (*see* 41 CFR 102–3.150(b).

Dated: February 7, 2011.

Alastair Fitzpayne,

Deputy Chief of Staff.

[FR Doc. 2011–3048 Filed 2–9–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Interagency Notice of Change in Control

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before March 14, 2011. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain.*

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington DC 20503, or by fax to (202) 393–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G

Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552 by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, *ira.mills@ots.treas.gov*, or on (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Interagency Notice of Change in Control.

OMB Number: 1550–0032.

Form Number: 1622.

Description: The Regional Office must review the information contained in the Change of Control notices to determine if the application is considered eligible for delegated action. If the application is considered non-delegated, OTS's Washington staff must also review the application. The OTS must review the information in these applications to determine that no person is acting directly or indirectly, or in concert with one or more other persons, to acquire control of an insured depository institution through the purchase, assignment, transfer, pledge, or other disposition of voting stock of the thrift institution, unless OTS has been afforded sixty days prior written notice to review the proposal and to object to the acquisition.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 45.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 1,673 hours.

Dated: February 4, 2011.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2011–2941 Filed 2–9–11; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Interagency Charter and Federal Deposit Insurance Application

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before March 14, 2011. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain.*

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington DC 20503, or by fax to (202) 393–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552 by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, *ira.mills@ots.treas.gov,* or on (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Interagency Charter and Federal Deposit Insurance Application.

OMB Number: 1550–0005.

Form Numbers: 138; 1623.

Description: Organizers of a Federal savings association must file an Interagency Charter and Federal Deposit Insurance Application for permission to organize with the OTS. The submission is required to establish a Federal savings association or a Federal savings bank, and the issuance of a Federal charter, pursuant to 12 CFR parts 543 and 552.

The applicant shall publish notice no earlier than seven days before and no later than the date of filing of the application. The applicant publishes a notice(s) in accordance with requirements set forth in 12 CFR subpart B, Publication Requirements, Sections 516.50, 516.60, 516.70, and 516.80.

OTS analyzes each information collection to determine whether to approve the proposed application for a Federal charter.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 5.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 625 hours.

Dated: February 4, 2011.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2011–2943 Filed 2–9–11; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket ID: OTS–2011–0003]

Open Meeting of the OTS Minority Depository Institutions Advisory Committee

AGENCY: Department of the Treasury, Office of Thrift Supervision.

ACTION: Notice of meeting.

SUMMARY: The OTS Minority Depository Institutions Advisory Committee (MDIAC) will convene a meeting on Tuesday, March 1, 2011, in Conference Room 6B of the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC, beginning at 9 a.m.

Eastern Time. The meeting will be open to the public.

DATES: The meeting will be held on Tuesday, March 1, 2011, at 9 a.m. Eastern Time.

ADDRESSES: The meeting will be held at the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC in Conference Room 6B. The public is invited to submit written statements to the MDIAC by any one of the following methods:

- *E-mail address: Commaffairs@ots.treas.gov;* or
- *Mail:* To Joel T. Palmer, Acting Managing Director, Compliance and Consumer Protection, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, in triplicate.

The agency must receive statements no later than February 22, 2011.

FOR FURTHER INFORMATION CONTACT: Joel T. Palmer, Acting Managing Director, Compliance and Consumer Protection, (202) 906–7933, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: By this notice, the Office of Thrift Supervision is announcing that the OTS Minority Depository Institutions Advisory Committee will convene a meeting on Tuesday, March 1, 2011, in Conference Room 6B at the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC, beginning at 9 a.m. Eastern Time. The meeting will be open to the public. Because the meeting will be held in a secured facility with limited space, members of the public who plan to attend the meeting, and members of the public who require auxiliary aid, must contact the Office of Community Affairs at 202–906–7891 by 5 p.m. Eastern Time on Tuesday, February 22, 2011, to inform OTS of their desire to attend the meeting and to provide the information that will be required to facilitate entry into the OTS building. To enter the building, attendees should provide a government issued ID (*e.g.,* driver's license, voter registration card, *etc.*) with their full name, date of birth, and address. The purpose of the meeting is to advise OTS on ways to meet the goals established by section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101–73, Title III, 103 Stat. 353, 12 U.S.C.A. § 1463 note. The goals of section 308 are to preserve the present number of minority institutions, preserve the minority character of minority-owned institutions in cases involving mergers or acquisitions, provide technical assistance, and encourage the creation of new minority institutions. The MDIAC will help OTS meet those goals by providing informed advice and recommendations regarding a range of issues involving minority depository institutions.

Dated: February 4, 2011.

By the Office of Thrift Supervision.

John E. Bowman,

Acting Director.

[FR Doc. 2011–2944 Filed 2–9–11; 8:45 am]

BILLING CODE 6720–01–P

FEDERAL REGISTER

Vol. 76 Thursday,
No. 28 February 10, 2011

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List the Pacific Walrus as Endangered or Threatened; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R7–ES–2009–0051; MO 92210–0–0008–B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List the Pacific Walrus as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 12-month finding on a petition to list the Pacific walrus (*Odobenus rosmarus divergens*) as endangered or threatened and to designate critical habitat under the Endangered Species Act of 1973, as amended. After review of all the available scientific and commercial information, we find that listing the Pacific walrus as endangered or threatened is warranted. Currently, however, listing the Pacific walrus is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add Pacific walrus to our candidate species list. We will develop a proposed rule to list the Pacific walrus as our priorities allow. We will make any determination on critical habitat during development of the proposed listing rule. Consistent with section 4(b)(3)(C)(iii) of the Endangered Species Act, we will review the status of the Pacific walrus through our annual Candidate Notice of Review.

DATES: The finding announced in this document was made on February 10, 2011.

ADDRESSES: This finding and supporting documentation are available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R7–ES–2009–0051. A range map of the three walrus subspecies and a more detailed map of the Pacific walrus range are available at the following Web site: *http://alaska.fws.gov/fisheries/mmm/walrus/wmain.htm.* Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Alaska Regional Office, 1011 East Tudor Road, Anchorage, AK 99503. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: James MacCracken, Marine Mammals Management, Alaska Regional Office (*see* **ADDRESSES**); by telephone: 800–362–5148; or by facsimile: 907–786–3816. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

On February 8, 2008, we received a petition dated February 7, 2008, from the Center for Biological Diversity, requesting that the Pacific walrus be listed as endangered or threatened under the Act and that critical habitat be designated. The petition included supporting information regarding the species' ecology and habitat use patterns, and predicted changes in sea-ice habitats and ocean conditions that may impact the Pacific walrus. We acknowledged receipt of the petition in a letter to the Center for Biological Diversity, dated April 9, 2008. In that letter, we stated that an emergency listing was not warranted and that all remaining available funds in the listing program for Fiscal Year (FY) 2008 had already been allocated to the U.S. Fish and Wildlife Service's (Service) highest priority listing actions and that no listing funds were available to further evaluate the Pacific walrus petition in FY 2008.

On December 3, 2008, the Center for Biological Diversity filed a complaint in U.S. District Court for the District of Alaska for declaratory judgment and injunctive relief challenging the failure of the Service to make a 90-day finding on their petition to list the Pacific walrus, pursuant to section 4(b)(3) of the Endangered Species Act, 16 U.S.C. 1533(b)(3), and the Administrative Procedure Act, 5 U.S.C. 706(1). On May 18, 2009, a settlement agreement was approved in the case of *Center for Biological Diversity* v. *U.S. Fish and Wildlife Service, et al.* (3:08–cv–00265–JWS), requiring us to submit our 90-day finding on the petition to the **Federal Register** by September 10, 2009. On September 10, 2009, we made our 90-day finding that the petition presented substantial scientific information indicating that listing the Pacific walrus may be warranted (74 FR 46548). On August 30, 2010, the Court approved an amended settlement agreement requiring us to submit our 12-month finding to the **Federal Register** by January 31, 2011. This notice constitutes the 12-month finding on the February 7, 2008, petition to list the Pacific walrus as endangered or threatened.

This 12-month finding is based on our consideration and evaluation of the best scientific and commercial information available. We reviewed the information provided in the petition submitted to the Service by the Center for Biological Diversity, information available in our files, and other available published and unpublished information. Additionally, in response to our **Federal Register** notice of September 10, 2009, requesting information from the public, as well as our September 10, 2010 press release, and other outreach efforts requesting new information from the public, we received roughly 30,000 submissions, which we have considered in making this finding, including information from the U.S. Marine Mammal Commission, the State of Alaska, the Alaska North Slope Borough, the Eskimo Walrus Commission, the Humane Society of the United States, the Center for Biological Diversity, the American Petroleum Institute, and many interested citizens. We also consulted with recognized Pacific walrus experts and Federal, State, and Tribal agencies.

Species Information

Taxonomy and Species Delineation

The walrus (*Odobenus rosmarus*) is the only living representative of the family Odobenidae, a group of marine carnivores that was highly diversified in

the late Miocene and early Pliocene (Kohno 2006, pp. 416–419; Harington 2008, p. 26). Fossil evidence suggests that the genus evolved in the North Pacific Ocean and dispersed throughout the Arctic Ocean and North Atlantic during interglacial phases of the Pleistocene (Harington and Beard 1992, pp. 311–319; Dyke *et al.* 1999, p. 60; Harington 2008, p. 27).

Three modern subspecies of walruses are generally recognized (Wozencraft 2005, p. 525; Integrated Taxonomic Information System, 2010, p. 1): The Atlantic walrus (*O. r. rosmarus*), which ranges from the central Canadian Arctic eastward to the Kara Sea (Reeves 1978, pp. 2–20); the Pacific walrus (*O. r. divergens*), which ranges across the Bering and Chukchi Seas (Fay 1982, pp. 7–21); and the Laptev walrus (*O. r. laptevi*), which is represented by a small, geographically isolated population of walruses in the Laptev Sea (Heptner *et al.* 1976, p. 34; Vishnevskaia and Bychkov 1990, pp. 155–176; Andersen *et al.* 1998, p. 1323; Wozencraft 2005, p. 595; Jefferson *et al.* 2008, p. 376). Atlantic and Pacific walruses are genetically and morphologically distinct from each other (Cronin *et al.* 1994, p. 1035), likely as a result of range fragmentation and differentiation during glacial phases of extensive Arctic sea-ice cover (Harington 2008, p. 27). Although geographically isolated and ecologically distinct, walruses from the Laptev Sea appear to be more closely related to Pacific walruses (Lindqvist *et al.* 2009, pp. 119–121).

Pacific walruses are ecologically distinct from other walrus populations, primarily because they undergo significant seasonal migrations between the Bering and the Chukchi Seas and rely principally on broken pack ice habitat to access offshore breeding and feeding areas (Fay 1982, p. 279) (*see Species Distribution,* below). In contrast, Atlantic walruses, which are represented by several small discrete groups of animals distributed from the central Canadian Arctic eastward to the Kara Sea, exhibit smaller seasonal movements and feed primarily in coastal areas because the continental shelf is narrow over much of their range. The majority of productive feeding areas used by Atlantic walruses are accessible from the coast, and all age classes and gender groups use terrestrial haulouts during ice-free seasons (Born *et al.* 2003, p. 356; COSEWIC 2006, p. 15; Laidre *et al.* 2008, pp. S104, S115).

The Pacific walrus is generally considered a single population, although some heterogeneity has been documented. Jay *et al.* (2008, p. 938) found some differences in the ratio of trace elements in the teeth of Pacific walruses sampled in winter from two breeding areas (southeast Bering Sea and St. Lawrence Island), suggesting that the sampled animals had a history of feeding in different regions. Scribner *et al.* (1997, p. 180), however, found no difference in mitochondrial and nuclear DNA among Pacific walruses sampled from different breeding areas. Pacific walruses are identified and managed in the United States and the Russian Federation (Russia) as a single population (Service 2010, p. 1).

Species Description

Walruses are readily distinguished from other Arctic pinnipeds (aquatic carnivorous mammals with all four limbs modified into flippers, this group includes seals, sea lions, and walruses) by their enlarged upper canine teeth, which form prominent tusks. The family name Odobenidae (tooth walker), is based on observations of walruses using their tusks to pull themselves out of the water. Males, which have relatively larger tusks than females, also tend to have broader skulls (Fay 1982, pp. 104–108). Walrus tusks are used as offensive and defensive weapons (Kastelein 2002, p. 1298). Adult males use their tusks in threat displays and fighting to establish dominance during mating (Fay *et al.* 1984, p. 93), and animals of both sexes use threat displays to establish and defend positions on land or ice haulouts (Fay 1982, pp. 134–138). Walruses also use their tusks to anchor themselves to ice floes when resting in the water during inclement weather (Fay 1982, pp. 134–138; Kastelein 2002, p. 1298).

The Pacific walrus is the largest pinniped species in the Arctic. At birth, calves are approximately 65 kilograms (kg) (143 pounds (lb)) and 113 centimeters (cm) (44.5 inches (in)) long (Fay 1982, p. 32). After the first 7 years of life, the growth rate of female walruses declines rapidly, and they reach a maximum body size by approximately 10 years of age. Adult females can reach lengths of up to 3 meters (m) (9.8 feet (ft)) and weigh up to 1,100 kg (2,425 lb). Male walrus tend to grow faster and for a longer period of time than females. They usually do not reach full adult body size until they are 15 to 16 years of age. Adult males can reach lengths of 3.5 m (11.5 ft) and can weigh more than 2,000 kg (4,409 lb) (Fay 1982, p. 33).

Behavior

Walruses are social and gregarious animals. They tend to travel in groups and haul out of the water to rest on ice or land in densely packed groups. On land or ice, in any season, walruses tend to lie in close physical contact with each other. Young animals often lie on top of adults. Group size can range from a few individuals up to several thousand animals (Gilbert 1999, p. 80; Kastelein 2002, p. 1298; Jefferson *et al.* 2008, p. 378). At any time of the year, when groups are disturbed, stampedes from a haulout can result in injuries and mortalities. Calves and young animals are particularly vulnerable to trampling injuries (Fay 1980, pp. 227–227; Fay and Kelly 1980, p. 226).

The reaction of walruses to disturbance ranges from no reaction to escape into the water, depending on the circumstances (Fay *et al.* 1984, pp. 13–14). Many factors play into the severity of the response, including the age and sex of the animals, the size and location of the group (on ice, in water, on land), their distance from the disturbance, and the nature and intensity of the disturbance (Fay *et al.* 1984, pp. 14, 114–119). Females with calves appear to be most sensitive to disturbance, and animals on shore are more sensitive than those on ice (Fay *et al.* 1984, p. 114). A fright response caused by disturbance can cause stampedes on a haulout, resulting in injuries and mortalities (Fay and Kelly 1980, pp. 241–244).

Mating occurs primarily in January and February in broken pack ice habitat in the Bering Sea. Breeding bulls follow herds of females and compete for access to groups of females hauled out onto sea ice (Fay 1982, pp. 193–194). Males perform visual and acoustical displays in the water to attract females and defend a breeding territory. Subdominant males remain on the periphery of these aggregations and apparently do not display. Intruders into display areas are met with threat displays and physical attacks. Individual females leave the resting herd to join a male in the water where copulation occurs (Fay *et al.* 1984, pp. 89–99; Sjare and Stirling 1996, p. 900). Gestation lasts 15 to 16 months (Fay 1982, p. 197) and pregnancies are spaced at least 2 years apart (Fay 1982, p. 206). Calving occurs on sea ice, most typically in May, before the northward spring migration (Fay 1982, pp. 199–200). Mothers and newborn calves stay mostly on ice floes during the first few weeks of life (Fay *et al.* 1984, p. 12).

The social bond between the mother and calf is very strong, and it is unusual for a cow to become separated from her calf (Fay 1982, p. 203). The calf normally remains with its mother for at least 2 years, sometimes longer, if not supplanted by a new calf (Fay 1982, pp. 206–211). After separation from their

mother, young females tend to remain with groups of adult females, whereas young males gradually separate from the females and begin to associate with groups of other males. Individual social status appears to be based on a combination of body size, tusk size, and aggressiveness. Individuals do not necessarily associate with the same group of animals and must continually reaffirm their social status in each new aggregation (Fay 1982, p. 135; NAMMCO 2004, p. 43).

Species Distribution

Pacific walruses range across the shallow continental shelf waters of the northern Bering Sea and Chukchi Sea, occasionally ranging into the East Siberian Sea and Beaufort Sea (Fay 1982, pp. 7–21; Figure 1 in Garlich-Miller *et al.* 2011). Waters deeper than 100 m (328 ft) and the extent of the pack ice are factors that limit distribution to the north (Fay 1982, p. 23). Walruses are rarely spotted south of the Alaska Peninsula and Aleutian archipelago; however, migrant animals (mostly males) are occasionally reported in the North Pacific (Service 2010, unpublished data).

Pacific walruses are highly mobile, and their distribution varies markedly in response to seasonal and interannual variations in sea-ice cover. During the January to March breeding season, walruses congregate in the Bering Sea pack ice in areas where open leads (fractures in sea ice caused by wind drift or ocean currents), polynyas (enclosed areas of unfrozen water surrounded by ice) or thin ice allow access to water (Fay 1982, p. 21; Fay *et al.* 1984, pp. 89–99). The specific location of winter breeding aggregations varies annually depending upon the distribution and extent of ice. Breeding aggregations have been reported southwest of St. Lawrence Island, Alaska; south of Nunivak Island, Alaska; and south of the Chukotka Peninsula in the Gulf of Anadyr, Russia (Fay 1982, p. 21; Mymrin *et al.* 1990, pp. 105–113; Figure 1 in Garlich-Miller *et al.* 2011).

In spring, as the Bering Sea pack ice deteriorates, most of the population migrates northward through the Bering Strait to summer feeding areas over the continental shelf in the Chukchi Sea. However, several thousand animals, primarily adult males, remain in the Bering Sea during the summer months, foraging from coastal haulouts in the Gulf of Anadyr, Russia, and in Bristol Bay, Alaska (Figure 1 in Garlich-Miller *et al.* 2011).

Summer distributions (both males and females) in the Chukchi Sea vary annually, depending upon the extent of sea ice. When broken sea ice is abundant, walruses are typically found in patchy aggregations over continental shelf waters. Individual groups may range from less than 10 to more than 1,000 animals (Gilbert 1999, pp. 75–84; Ray *et al.* 2006, p. 405). Summer concentrations have been reported in loose pack ice off the northwestern coast of Alaska, between Icy Cape and Point Barrow, and along the coast of Chukotka, Russia, as far west as Wrangel Island (Fay 1982, pp. 16–17; Gilbert *et al.* 1992, pp. 1–33; Belikov *et al.* 1996, pp. 267–269). In years of low ice concentrations in the Chukchi Sea, some animals range east of Point Barrow into the Beaufort Sea; walruses have also been observed in the Eastern Siberian Sea in late summer (Fay 1982, pp. 16–17; Belikov *et al.* 1996, pp. 267–269). The pack ice of the Chukchi Sea usually reaches its minimum extent in September. In years when the sea ice retreats north beyond the continental shelf, walruses congregate in large numbers (up to several tens of thousands of animals in some locations) at terrestrial haulouts on Wrangel Island and other sites along the northern coast of the Chukotka Peninsula, Russia, and northwestern Alaska (Fay 1982, p. 17; Belikov *et al.* 1996, pp. 267–269; Kochnev 2004, pp. 284–288; Ovsyanikov *et al.* 2007, pp. 1–4; Kavry *et al.* 2008, pp. 248–251).

In late September and October, walruses that summered in the Chukchi Sea typically begin moving south in advance of the developing sea ice. Satellite telemetry data indicate that male walruses that summered at coastal haulouts in the Bering Sea also begin to move northward towards winter breeding areas in November (Jay and Hills 2005, p. 197). The male walruses' northward movement appears to be driven primarily by the presence of females at that time of year (Freitas *et al.* 2009, pp. 248–260).

Foraging and Prey

Walruses consume mostly benthic (region at the bottom of a body of water) invertebrates and are highly adapted to obtain bivalves (Fay 1982, p. 139; Bowen and Siniff 1999, p. 457; Born *et al.* 2003, p. 348; Dehn *et al.* 2007, p. 176; Boveng *et al.* 2008, pp. 17–19; Sheffield and Grebmeier 2009, pp. 766–767). Fish and other vertebrates have occasionally been found in their stomachs (Fay 1982, p. 153; Sheffield and Grebmeier 2009, p. 767). Walruses root in the bottom sediment with their muzzles and use their whiskers to locate prey items. They use their fore-flippers, nose, and jets of water to extract prey buried up to 32 cm (12.6 in) (Fay 1982, p. 163; Oliver *et al.* 1983, p. 504; Kastelein 2002, p. 1298; Levermann *et al.* 2003, p. 8). The foraging behavior of walruses is thought to have a major impact on benthic communities in the Bering and Chukchi Seas (Oliver *et al.* 1983, pp. 507–509; Klaus *et al.* 1990, p. 480). Ray *et al.* (2006, pp. 411–413) estimate that walruses consume approximately 3 million metric tons (3,307 tons) of benthic biomass annually, and that the area affected by walrus foraging is in the order of thousands of square kilometers (sq km) (thousands of square miles (sq mi)) annually. Consequently, walruses play a major role in benthic ecosystem structure and function, which Ray *et al.* (2006, p. 415) suggested increased nutrient flux and productivity.

The earliest studies of food habits were based on examination of stomachs from walruses killed by hunters. These reports indicated that walruses were primarily feeding on bivalves (clams), and that non-bivalve prey was only incidentally ingested (Fay 1982, p. 145; Sheffield *et al.* 2001, p. 311). However, these early studies did not take into account the differential rate of digestion of prey items (Sheffield *et al.* 2001, p. 311). Additional research indicates that stomach contents include over 100 taxa of benthic invertebrates from all major phyla (Fay 1982, p. 145; Sheffield and Grebmeier 2009, p. 764), and while bivalves remain the primary component, walruses are not adapted to a diet solely of clams. Other prey items have similar energetic benefits (Wacasey and Atkinson 1987, pp. 245–247). Based on analysis of the contents from fresh stomachs of Pacific walruses collected between 1975 and 1985 in the Bering Sea and Chukchi Sea, prey consumption likely reflects benthic invertebrate composition (Sheffield and Grebmeier 2009, pp. 764–768). Of the large number of different types of prey, statistically significant differences between males and females from the Bering Sea were found in the occurrence of only two prey items, and there were no statistically significant differences in results for males and females from the Chukchi Sea (Sheffield and Grebmeier 2009, pp. 765). Although these data are for Pacific walrus stomachs collected 25–35 years ago, we have no reason to believe there has been a change in the general pattern of prey use described here.

Walruses typically swallow invertebrates without shells in their entirety (Fay 1982, p. 165). Walruses remove the soft parts of mollusks from their shells by suction, and discard the shells (Fay 1982, pp. 166–167). Born *et al.* (2003, p. 348) reported that Atlantic

walruses consumed an average of 53.2 bivalves (range 34 to 89) per dive. Based on caloric need and observations of captive walruses, walruses require approximately 29 to 74 kg (64 to 174 lbs) of food per day (Fay 1982, p. 160). Adult males forage little during the breeding period (Fay 1982, pp. 142, 159–161; Ray *et al.* 2006, p. 411), while lactating females may eat two to three times that of nonpregant, nonlactating females (Fay 1982, p.159). Calves up to 1 year of age depend primarily on their mother's milk (Fay 1982, p. 138) and are gradually weaned in their second year (Fisher and Stewart 1997, pp. 1165–1175).

Although walruses are capable of diving to depths of more than 250 m (820 ft) (Born *et al.* 2005, p. 30), they usually forage in waters of 80 m (262 ft) or less (Fay and Burns 1988, p. 239; Born *et al.* 2003, p. 348; Kovacs and Lydersen 2008, p. 138), presumably because of higher productivity of their benthic foods in shallow waters (Fay and Burns 1988, pp. 239–240; Carey 1991, p. 869; Jay *et al.* 2001, p. 621; Grebmeier *et al.* 2006b, pp. 334–346; Grebmeier *et al.* 2006a, p. 1461). Walruses make foraging trips from land or ice haulouts that range from a few hours up to several days and up to 100 kilometers (km) (60 miles (mi)) (Jay *et al.* 2001, p. 626; Born *et al.* 2003, p. 349; Ray *et al.* 2006, p. 406; Udevitz *et al.* 2009, p. 1122). Walruses tend to make shorter and more frequent foraging trips when sea ice is used as a foraging platform compared to terrestrial haulouts (Udevitz *et al.* 2009, p. 1122). Satellite telemetry data for walruses in the Bering Sea in April of 2004, 2005, and 2006 showed they spent an average of 46 hours in the water between resting bouts on ice, which averaged 9 hours (Udevitz *et al.* 2009, p. 1122). Because females and young travel with the retreating pack ice in the spring and summer, they are passively transported northward over feeding grounds across the continental shelves of the Bering and Chukchi Seas. Male walruses appear to have greater endurance than females, with foraging excursions from land haulouts that can last up to 142 hours (about 6 days) (Jay *et al.* 2001, p. 630).

Sea-Ice Habitats

The Pacific walrus is an ice-dependent species that relies on sea ice for many aspects of its life history. Unlike other pinnipeds, walruses are not adapted for a pelagic existence and must haul out on ice or land regularly. Floating pack ice serves as a substrate for resting between feeding bouts (Ray *et al.* 2006, p. 404), breeding behavior (Fay *et al.* 1984, pp. 89–99), giving birth (Fay 1982, p. 199), and nursing and care of young (Kelly 2001, pp. 43–55). Sea ice provides access to offshore feeding areas over the continental shelf of the Bering and Chukchi Seas, passive transportation to new feeding areas (Richard 1990, p. 21; Ray *et al.* 2006, pp. 403–419), and isolation from terrestrial predators (Richard 1990, p. 23; Kochnev 2004, p. 286; Ovsyanikov *et al.* 2007, pp. 1–4). Sea ice provides an extensive substrate upon which the risk of predation and hunting is greatly reduced (Kelly 2001, pp. 43–55; Fay 1982, p. 26).

Sea ice in the Northern Hemisphere is comprised of first-year sea ice that formed in the most recent autumn-winter period, and multi-year ice that has survived at least one summer melt season. Sea-ice habitats for walruses include openings or leads that provide access to the water and to food resources. Walruses generally do not use multi-year ice or highly compacted first-year ice in which there is an absence of persistent leads or polynyas (Richard 1990, p. 21). Expansive areas of heavy ice cover are thought to play a restrictive role in walrus distributions across the Arctic and serve as a barrier to the mixing of populations (Fay 1982, p. 23; Dyke *et al.* 1999, pp. 161–163; Harington 2008, p. 35). Walruses generally do not occur farther south than the maximum extent of the winter pack ice, possibly due to their reliance on sea ice for breeding and rearing young (Fay *et al.* 1984, pp. 89–99) and isolation from terrestrial predators (Kochnev 2004, p. 286; Ovsyanikov *et al.* 2007, pp. 1–4), or because of the higher densities of benthic invertebrates in northern waters (Grebmeier *et al.* 2006a, pp. 1461–1463).

Walruses generally occupy first-year ice that is greater than 20 cm (7.9 in) thick and are not found in areas of extensive, unbroken ice (Fay 1982, pp. 21, 26; Richard 1990, p. 23). Thus, in winter they concentrate in areas of broken pack ice associated with divergent ice flow or along the margins of persistent polynyas (Burns *et al.* 1981, pp. 781–797; Fay *et al.* 1984, pp. 89–99; Richard 1990, p. 23) in areas with abundant food resources (Ray *et al.* 2006, p. 406). Females with young generally spend the summer months in pack ice habitats of the Chukchi Sea, where they feed intensively between bouts of resting and suckling their young. Some authors have suggested that the size and topography of individual ice floes are important features in the selection of ice haulouts, noting that some animals have been observed returning to the same ice floe between feeding bouts (Ray *et al.* 2006, p. 406). However, it has also been noted that walruses can and will exploit a fairly broad range of ice types and ice concentrations in order to stay in preferred foraging or breeding areas (Freitas *et al.* 2009, p. 247; Jay *et al.* 2010a, p. 300). Walruses tend to make shorter foraging excursions when they are using sea ice rather than land haulouts (Udevitz *et al.* 2009, p. 1122), presumably because it is more energetically efficient for them to haulout on ice near productive feeding areas than forage from shore. Fay (1982, p. 25) notes that several authors reported that when walruses had the choice of ice or land for a resting place, ice was always selected.

Terrestrial Habitats (Coastal Haulouts)

When suitable sea ice is not available, walruses haul out on land to rest. A wide variety of substrates, ranging from sand to boulders, are used. Isolated islands, points, spits, and headlands are occupied most frequently. The primary consideration for a terrestrial haulout site appears to be isolation from disturbances and predators, although social factors, learned behavior, protection from strong winds and surf, and proximity to food resources also likely influence the choice of terrestrial haulout sites (Richard 1990, p. 23). Walruses tend to use established haulout sites repeatedly and exhibit some degree of fidelity to these sites (Jay and Hills 2005, pp. 192–202), although the use of coastal haulouts appears to fluctuate over time, possibly due to localized prey depletion (Garlich-Miller and Jay 2000, pp. 58–65). Human disturbance is also thought to influence the choice of haulout sites; many historic haulouts in the Bering Sea were abandoned in the early 1900s when the Pacific walrus population was subjected to high levels of exploitation (Fay 1982, p. 26; Fay *et al.* 1984, p. 231).

Adult male walruses use land-based haulouts more than females or young, and consequently, have a greater geographical distribution through the ice-free season. Many adult males remain in the Bering Sea throughout the ice-free season, making foraging trips from coastal haulouts in Bristol Bay, Alaska, and the Gulf of Anadyr, Russia (Figure 1 in Garlich-Miller *et al.* 2011), while females and juvenile animals generally stay with the drifting ice pack throughout the year (Fay 1982, pp. 8–19). Females with dependent young may prefer sea-ice habitats because coastal haulouts pose greater risk from trampling injuries and predation (Fay and Kelly 1980, pp. 226–245; Ovsyanikov *et al.* 1994, p. 80; Kochnev

2004, pp. 285–286; Ovsyanikov *et al.* 2007, pp. 1–4; Kavry *et al.* 2008, pp. 248–251; Mulcahy *et al.* 2009, p. 3). Females may also prefer sea-ice habitats because they may have difficulty nourishing themselves while caring for a young calf that has limited swimming range (Cooper *et al.* 2006, p. 101; Jay and Fischbach 2008, p. 1).

The numbers of male walruses using coastal haulouts in the Bering Sea during the summer months, and the relative uses of different coastal haulout sites in the Bering Sea have varied over the past century. Harvest records indicate that walrus herds were once common at coastal haulouts along the Alaska Peninsula and the islands of northern Bristol Bay (Fay *et al.* 1984, pp. 231–376). By the early 1950s, most of the traditional haulout areas in the Southern Bering Sea had been abandoned, presumably due to hunting pressure. During the 1950s and 1960s, Round Island was the only regularly used haulout in Bristol Bay, Alaska. In 1960, the State of Alaska established the Walrus Islands State Game Sanctuary, which closed Round Island to hunting. Peak counts of walruses at Round Island increased from 1,000–2,000 animals in the late 1950s (Frost *et al.* 1983, pp. 379) to more than 10,000 animals in the early 1980s (Sell and Weiss, p. 12), but subsequently declined to 2,000–5,000 over the past decade (Sell and Weiss 2010, p. 12). General observations indicate that declining walrus counts at Round Island may, in part, reflect a redistribution of animals to other coastal sites in the Bristol Bay region. For example, walruses have been observed increasingly regularly at the Cape Seniavin haulout on the Alaska Peninsula since the 1970s, and at Cape Peirce and Cape Newenham in northwest Bristol Bay since the early 1980s (Jay and Hills 2005, p. 193; Figure 1 in Garlich-Miller *et al.* 2011).

Traditional male summer haulouts along the Bering Sea coast of Russia include sites along the Kamchatka Peninsula, the Gulf of Anadyr (most notably Rudder and Meechkin spits), and Arakamchechen Island (Garlich-Miller and Jay 2000, pp. 58–65; Figure 1 in Garlich-Miller *et al.* 2011). Several of the southernmost haulouts along the coast of Kamchatka have not been occupied in recent years, and the number of animals in the Gulf of Anadyr has also declined in recent years (Kochnev 2005, p. 4). Factors influencing abundance at Bering Sea haulouts are poorly understood, but may include changes in prey densities near the haulouts, changes in population size, disturbance levels, and changing seasonal distributions (Jay and Hills 2005, p. 198) (presumably mediated by sea-ice coverage or temperature).

Historically, coastal haulouts along the Arctic (Chukchi Sea) coast have been used less consistently during the summer months than those in the Bering Sea because of the presence of pack ice (a preferred substrate) for much of the year in the Chukchi Sea. Since the mid-1990s, reductions of summer sea ice coincided with a marked increase in the use of coastal haulouts along the Chukchi sea coast of Russia during the summer months (Kochnev 2004, pp. 284–288; Kavry *et al.* 2008, pp. 248–251). Large, mixed (composed of various age and sex groups) herds of walruses, up to several tens of thousands of animals, began to use coastal haulouts on Wrangel Island, Russia in the early 1990s, and several coastal haulouts along the northern Chukotka coastline of Russia have emerged in recent years, likely as a result of reductions in summer sea ice in the Chukchi Sea (Kochnev 2004, pp. 284–288; Ovsyanikov *et al.* 2007, pp. 1–4; Kavry *et al.* 2008, p. 248–251; Figure 1 in Garlich-Miller *et al.* 2011).

In 2007, 2009, and 2010, walruses were also observed hauling out in large numbers with mixed sex and age groups along the Chukchi Sea coast of Alaska in late August, September, and October (Thomas *et al.* 2009, p. 1; Service 2010, unpublished data). Monitoring studies conducted in association with oil and gas exploration suggest that the use of coastal haulouts along the Arctic coast of Alaska during the summer months is dependent upon the availability of sea ice. For example, in 2006 and 2008, walruses foraging off the Chukchi Sea coast of Alaska remained with the ice pack over the continental shelf during the months of August, September, and October. However in 2007, 2009, and 2010, the pack ice retreated beyond the continental shelf and large numbers of walruses hauled out on land at several locations between Point Barrow and Cape Lisburne, Alaska (Ireland *et al.* 2009, p. xvi; Thomas *et al.* 2009, p. 1; Service 2010, unpublished data; Figure 1 in Garlich-Miller *et al.* 2011).

Transitory coastal haulouts have also been reported in late fall (October–November) along the southern Chukchi Sea coast, coinciding with the southern migration. Mixed herds of walruses frequently come to shore to rest for a few days to weeks along the coast before continuing on their migration to the Bering Sea. Cape Lisburne, Alaska, and Capes Serdtse-Kamen' and Dezhnev, Russia, are the most consistently used haulouts in the Chukchi Sea at this time of year (Garlich-Miller and Jay 2000, pp. 58–67). Large mixed herds of walruses have also been reported in late fall and early winter at coastal haulouts in the northern Bering Sea at the Punuk Islands and Saint Lawrence Island, Alaska; Big Diomede Island, Russia; and King Island, Alaska, prior to the formation of sea ice in offshore breeding and feeding areas (Fay and Kelly 1980, p. 226; Garlich-Miller and Jay 2000, pp. 58–67; Figure 1 in Garlich-Miller *et al.* 2011).

Vital Rates

Walruses have the lowest rate of reproduction of any pinniped species (Fay 1982, pp. 172–209). Although male walruses reach puberty at 6–7 years of age, they are unlikely to successfully compete for access to females until they reach full body size at 15 years of age or older (Fay 1982, p. 33; Fay *et al.* 1984, p. 96). Female walruses attain sexual maturity at 4–7 years of age (Fay 1982, pp. 172–209), and the median age of first birth ranges from approximately 8 to 10 years of age (Garlich-Miller *et al.* 2006, pp. 887–893). Because gestation lasts 15–16 months, it extends through the following breeding season and thus, the minimum interval between successful births is 2 years. Ovulation may also be suppressed until the calf is weaned, raising the birth interval to 3 years or more (Garlich-Miller and Stewart 1999, p. 188). The age of sexual maturity and birth rates may be density-dependent (Fay *et al.* 1989, pp. 1–16; Fay *et al.* 1997, pp. 537–565; Garlich-Miller *et al.* 2006, pp. 892–893).

The low birth rate of walruses is offset in part by considerable maternal investment in offspring (Fay *et al.* 1997, p. 550). Assumed survival rates through the first year of life range from 0.5 to 0.9 (Fay *et al.* 1997, p. 550). Survival rates for juveniles through adults (*i.e.,* 4–20 years old) have been assumed to be as high as 0.96 to 0.99 per cent (DeMaster 1984, p. 78; Fay *et al.* 1997, p. 544), declining to zero by 40 to 45 years (Chivers 1999, p. 240). Using published estimates of survival and reproduction, Chivers (1999, pp. 239–247) developed an individual age-based model of the Pacific walrus population, which yielded a maximum population growth rate of 8 percent, but cautioned this should not be considered to be an estimate of the maximum growth rate (Chivers 1999, p. 239). Thus, the 8 percent figure remains theoretical because age-specific survival rates for free-ranging walruses are poorly known.

Abundance

Based on large sustained harvests in the 18th and 19th centuries, Fay (1982, p. 241) speculated that the pre-

exploitation population was represented by a minimum of 200,000 animals. Since that time, population size is believed to have fluctuated in response to varying levels of human exploitation. Large-scale commercial harvests are believed to have reduced the population to 50,000–100,000 animals in the mid-1950s (Fay *et al.* 1997, p. 539). The population apparently increased rapidly in size during the 1960s and 1970s in response to harvest regulations that limited the take of females (Fay *et al.* 1989, p. 4). Between 1975 and 1990, visual aerial surveys jointly conducted by the United States and Russia at 5-year intervals produced population estimates ranging from 201,039 to 290,000. Efforts to survey the Pacific walrus population were suspended by both countries after 1990, due to unresolved problems with survey methods that produced population estimates with unknown bias and unknown—but presumably large—variances that severely limited their utility (Speckman *et al.* 2010, p. 3).

In 2006, a joint U.S.-Russian survey was conducted in the pack ice of the Bering Sea, using thermal imaging systems to detect walruses hauled out on sea ice and satellite transmitters to account for walruses in the water (Speckman *et al.* 2010, p. 4). The number of walruses within the surveyed area was estimated at 129,000, with 95-percent confidence intervals of 55,000 to 507,000 individuals. This is a minimum estimate, as weather conditions forced termination of the survey before much of the southwest Bering Sea was surveyed; animals were observed in that region as the surveyors returned to Anchorage, Alaska. Table 1 provides a summary of survey results.

TABLE 1—ESTIMATES OF PACIFIC WALRUS POPULATION SIZE, 1975–2006.

Year	Population size (with range or confidence interval) [a]	Reference
1975	214,687	(Udevitz *et al.* 2001, p. 614).
1980	250,000–290,000	(Johnson *et al.* 1982, p. 3; Fedoseev 1984, p. 58).
1985	242,366	(Udevitz *et al.* 2001, p. 614).
1990	201,039	(Gilbert *et al.* 1992, p. 28).
2006	129,000 (50,000–500,000)	(Speckman *et al.* 2010).

[a]Due to differences in methods, comparisons of estimates across years (population trends) are not possible. Most estimates did not provide a range or confidence interval.

We acknowledge that these survey results suggest to some that the walrus population may be declining; however, we do not believe the survey methodologies support such a definitive conclusion. Resource managers in Russia have concluded that the population has declined, and accordingly, have reduced harvest quotas in recent years (Kochnev 2004, p. 284; Kochnev 2005, p. 4; Kochnev, 2010, pers. comm.), based in part on the lower abundance estimate generated from the 2006 survey results. However, past survey results are not directly comparable among years due to differences in survey methods, timing of surveys, segments of the population surveyed, and incomplete coverage of areas where walruses may have been present (Fay *et al.* 1997, p. 537); thus, these results do not provide a basis for determining trends in population size (Hills and Gilbert 1994, p. 203; Gilbert 1999, pp. 75–84). Whether prior estimates are biased low or high is unknown, because of problems with detecting individual animals on ice or land, and in open water, and difficulties counting animals in large, dense groups (Speckman *et al.* 2010, p. 33). In addition, no survey has ever been completed within a timeframe that could account for the redistribution of individuals (leading to double counting or undercounting), or before weather conditions either delayed the effort or completely terminated the survey before the entire area of potentially occupied habitat had been covered (Speckman *et al.* 2010). Due to these general problems, as well as seasonal differences among surveys (fall or spring) and technological advancements that correct for some problems, we do not believe the survey results provide a reliable basis for estimating a population trend.

Changes in the walrus population have also been investigated by examining changes in biological parameters over time. Based on evidence of changes in abundance, distributions, condition indices, and life-history parameters, Fay *et al.* (1989, pp.1–16) and Fay *et al.* (1997, pp. 537–565) concluded that the Pacific walrus population increased greatly in size during the 1960s and 1970s, and postulated that the population was approaching, or had exceeded, the carrying capacity of its environment by the early 1980s. Harvest increased in the 1980s: changes in the size, composition, and productivity of the sampled walrus harvest in the Bering Strait Region of Alaska over this time frame are consistent with this hypothesis (Garlich-Miller *et al.* 2006, p. 892). Harvest levels declined sharply in the early 1990s, and increased reproductive rates and earlier maturation in females occurred, suggesting that density-dependent regulatory mechanisms had been relaxed and the population was likely below carrying capacity (Garlich-Miller *et al.* 2006, p. 893). However, Garlich-Miller *et al.* (2006, pp. 892–893) also noted that there are no data concerning the trend in abundance of the walrus population or the status of its prey to verify this hypothesis, and that whether density-dependent changes in life-history parameters might have been mediated by changes in population abundance or changes in the carrying capacity of the environment is unknown.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth the procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this 12-month finding, we considered and evaluated the best available scientific and commercial information. Information pertaining to the Pacific walrus in relation to the five

factors provided in section 4(a)(1) of the Act is discussed below.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a particular stressor to evaluate whether the species may respond to that stressor in a way that causes actual impacts to the species. If there is exposure to a stressor and the species responds negatively, the stressor may be a threat and we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act. However, the identification of stressors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that these stressors are operative threats that act on the species to the point that the species meets the definition of endangered or threatened under the Act. Also, because an individual stressor may not be a threat by itself, but could be in conjunction with one or more other stressors, our process includes considering the combined effects of stressors.

To inform our analysis of threats to the Pacific walrus, we also took into consideration the results of two Bayesian network modeling efforts; one conducted by the Service (Garlich-Miller *et al.* 2011), and the other conducted by the U.S. Geological Survey (USGS) (Jay *et al.* 2010b). Although quantitative, empirical data can be used in Bayesian networks, when primarily qualitative data are available, such as for the Pacific walrus, the models are well suited to formalizing and quantifying the opinions of experts (Marcot *et al.* 2006, p. 3063). Bayesian network models (also known as Bayesian belief networks, reflecting the importance of expert opinion) graphically display the relevant stressors, the interactions among stressors, and the cumulative impact of those stressors as they are integrated through the network. In general terms, the network is composed of input variables that represent key environmental correlates (*e.g.,* sea-ice loss, harvest, shipping) and response variables, (*e.g.,* population status). Although we did not rely on the results of the Bayesian models as the sole basis for our conclusions in this finding, the models corroborated the results of our threats analysis. Results of the models are presented in the five-factor analysis below, where pertinent.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The following potential stressors that may affect the habitat or range of the Pacific walrus are discussed in this section: (1) Loss of sea ice due to climate change; and (2) effects on prey species due to ocean warming and ocean acidification.

Effects of Global Climate Change on Sea-Ice Habitats

The Pacific walrus depends on sea ice for several aspects of its life history. This section describes recent observations and future projections of sea-ice conditions in the Bering and Chukchi Seas through the end of the 21st century. Following this presentation on the changing ice dynamics, we examine how these changing ice conditions may affect the Pacific walrus population.

The Arctic Ocean is covered primarily by a mix of multi-year sea ice, whereas more southerly regions, such as the Bering Sea, are seasonal ice zones where first-year ice is renewed every winter. The observed and projected effects of global warming vary in different parts of the world, and the Arctic and Antarctic regions are increasingly recognized as being extremely vulnerable to current and projected effects. For several decades, the surface air temperatures in the Arctic have warmed at approximately twice the global rate (Christensen *et al.* 2007, p. 904). The observed and projected effects of climate change are most extreme during summer in northern high-latitude regions, in large part due to the ice-albedo (reflective property) feedback mechanism, in which melting of snow and sea ice lowers surface reflectivity, thereby further increasing surface warming from absorption of solar radiation.

Since 1979 (the beginning of the satellite record of sea-ice conditions), there has been an overall reduction in the extent of Arctic sea ice (Parkinson *et al.* 1999, p. 20837; Comiso 2002, p. 1956; Stroeve *et al.* 2005, pp. 1–4; Comiso 2006, pp. 1–3; Meier *et al.* 2007, p. 428; Stroeve *et al.* 2007, p. 1; Comiso *et al.* 2008, p. 1; Stroeve *et al.* 2008, p. 13). Although the decline is a year-round trend, far greater reductions have been noted in summer sea ice than in winter sea ice. For example, from 1979 to 2009, the extent of September sea ice seen Arctic wide has declined 11 percent per decade (Polyak *et al.* 2010, p. 1797). In recent years, the trend in Arctic sea-ice loss has accelerated (Comiso *et al.* 2008, p. 1). In September 2007, the extent of Arctic Ocean sea ice reached a record low, approximately 50 percent lower than conditions in the 1950s through the 1970s, and 23 percent below the previous record set in 2005 (Stroeve *et al.* 2008, p. 13). Minimum sea-ice extent in 2010 was the third lowest in the satellite record, behind 2007 and 2008 (second lowest), and most of this loss occurred on the Pacific side of the Arctic Ocean.

Of long-term significance is the loss of over 40 percent of Arctic multi-year sea ice over the last 5 years (Kwok *et al.* 2009, p. 1). Since 2004, there has been a reversal in the volumetric and areal contributions between first-year ice and multi-year ice in regards to the total volume and area of the Arctic Ocean that they cover, with first-year ice now predominating (Kwok *et al.* 2009, p. 16). Export of ice through Fram Strait, together with the decline in multi-year ice coverage, suggests that recently there has been near-zero replenishment of multi-year ice (Kwok *et al.* 2009, p. 16). The area of the Arctic Ocean covered by ice predominantly older than 5 years decreased by 56 percent between 1982 and 2007 (Polyak *et al.* 2010, p. 1759). Within the central Arctic Ocean, old ice has declined by 88 percent, and ice that is at least 9 years old has essentially disappeared (Markus *et al.* 2009, p. 13: Polyak *et al.* 2010, p. 1759). In addition, from 2005 to 2008 there was a thinning of 0.6 m (1.9 ft) in multi-year ice thickness. It is likely that the rapid decline of sea ice in 2007 was in part the result of thinner and lower coverage, of the multi-year ice (Comiso *et al.* 2008, p. 6). It would take many years to restore the ice thickness through annual growth, and the loss of multi-year ice makes it unlikely that the age and thickness composition of the ice pack will return to previous climatological conditions with continued global warming. Further loss of sea ice will be a major driver of changes across the Arctic over the next decades, especially in late summer and autumn (NOAA 2010, p. 77503).

Due to asymmetric geography of the Arctic and the scale of weather patterns, there is considerable regional variability in sea-ice cover (Meier *et al.* 2007, p. 430), and although the early loss of summer sea ice and volumetric ice loss in the Arctic applies directly to the Chukchi Sea, it cannot be directly extrapolated to the seasonal ice zone of the Bering Sea (NOAA 2010, p. 77503). The contrasts between the two are dramatic: The Bering Sea is one of the most stable in terms of sea ice, especially in the winter, and the Chukchi Sea has had some of the most dramatic losses of summer sea ice

(Meier *et al.,* p. 431). Below, we describe the sea-ice conditions in the Bering and Chukchi Seas as they occur presently, as well as recent trends and projections for the future.

In March and April, at maximal sea-ice extent, the Chukchi Sea is typically completely frozen, and ice cover in the Bering Sea extends southward to a latitude of approximately 58–60 degrees north (Boveng *et al.* 2008, pp. 33–52). The Bering Sea spans the marginal sea-ice zone, where ice gives way to water at the southern edge, and around the peripheries of persistent polynyas. Sea ice in the Bering Sea is highly dynamic and largely a wind-driven system (Sasaki and Minobe 2005, pp. 1–2). Ice cover is comprised of a variety of first-year ice thicknesses, from young, very thin ice to first-year floes that may be upwards of 1.0-m (3.3-ft) thick (Burns *et al.* 1980, p. 100; Zhang *et al.* 2010, p. 1729). Depending on wind patterns, a variable (but relatively minor) fraction of ice that drifts south through the Bering Strait could be comprised of some thicker ice floes that originated in the Chukchi and Beaufort Seas (Kozo *et al.* 1987, pp. 193–195).

Ice melt in the Bering Sea usually begins in late April and accelerates in May, with the edge of the ice moving northward until it passes through the Bering Strait, typically in June. The Bering Sea remains ice free for the duration of the summer. Ice continues to retreat northward through the Chukchi Sea until September, when minimal sea-ice extent is reached.

Freeze-up begins in October, with the ice edge progressing southward across the Chukchi Sea. The ice edge usually reaches the Bering Strait in November and advances through the Strait in December. The ice edge continues to move southward across the Bering Sea until its maximal extent is reached in March. There is considerable year-to-year variation in the timing and extent of ice retreat and formation (Boveng *et al.* 2008, p. 37; Douglas 2010, p. 19).

Within various regions of the Arctic, there is substantial variation in the monthly trends of sea ice (Meier *et al.* 2007, p. 431). In the Bering Sea, statistically significant monthly reductions in the extent of sea ice over the period 1979–2005 were documented for March (−4.8 percent), October (−42.9 percent), and November (−20.3 percent), although the overall annual decline (−1.9 percent) is not statistically significant (Meier *et al.* 2007, p. 431). The Bering Sea declines were greatest in October and November, the period of early freeze-up. In the Chukchi Sea, statistically significant monthly reductions were also documented for 1979 to 2005 for May (−0.19 percent), June (−4.3 percent), July (−6.7 percent), August (−15.4 percent), September (−26.3 percent), October (−18.6 percent), and November (−8.0 percent): The overall annual reduction (−4.9 percent) is statistically significant (Meier *et al.* 2007, p. 431). In essence, the Chukchi Sea has shown declines in all months when it is not completely ice-covered, with greatest declines in months of maximal melt and early freeze-up (August, September, and October).

During the period 1979–2006, the September sea-ice extent in the Chukchi Sea decreased by 26 percent per decade (Douglas 2010, p. 2). In recent years, sea ice typically has retreated from continental shelf regions of the Chukchi Sea in August or September, with open water conditions persisting over much of the continental shelf through late October. In contrast, during the preceding 20 years (1979–1998), broken sea-ice habitat persisted over continental shelf areas of the Chukchi Sea through the entire summer (Jay and Fischbach 2008, p. 1).

From 1979 to 2007, there was a general trend toward earlier onset of ice melt and later onset of freeze-up in 9 of 10 Arctic regions analyzed by Markus *et al.* (2009, pp. 1–14), the exception being the Sea of Okhotsk. For the entire Arctic, the melt season length has increased by about 20 days over the last 30 years, due to the combined earlier melt and later freeze-up. The largest increases, of over 10 days per decade, have been seen for Hudson Bay, the East Greenland Sea, and the Laptev/East Siberian Seas. From 1979 to 2007, there was a general trend toward earlier onset of ice melt and later onset of freeze-up in both the Bering and Chukchi Seas: For the Bering Sea, the onset of ice melt occurred 1.0 day earlier per decade, while in the Chukchi/Beaufort Seas ice melt occurred 3.5 days earlier per decade. The onset of freeze-up in the Bering Sea occurred 1.0 day later per decade, while freeze-up in the Chukchi/Beaufort Seas occurred 6.9 days later per decade (Markus *et al.* 2009, p. 11).

Later freeze-up in the Arctic does not necessarily mean that less seasonal sea ice forms by winter's end in the peripheral seas, such as the Bering and Chukchi Seas (Boveng *et al.* 2008, p. 35). For example, in 2007 (the year when the record minimal Arctic summer sea-ice extent was recorded), the Chukchi Sea did not freeze until early December and the Bering Sea remained largely ice-free until the middle of December (Boveng *et al.* 2008, p. 35). However, rapid cooling and advancing of sea ice in late December and early January resulted in most of the eastern Bering Sea shelf being ice-covered by mid-January, an advance of 900 km (559 mi), or 30 km per day (19 mi per day). Maximum ice extent occurred in late March, with ice covering much of the shelf, resulting in a near record maximum ice extent. Ice then slowly retreated, and the Bering Sea was not ice-free until almost July. Therefore, winter ice conditions are not necessarily related to the summer-fall ice conditions of the previous year.

Model Projections of Future Sea Ice

The analysis and synthesis of information presented by the Intergovernmental Panel on Climate Change (IPCC) in its Fourth Assessment Report (AR4) in 2007 represents the scientific consensus view on the causes and future of climate change. The IPCC AR4 used state-of-the-art Atmosphere-Ocean General Circulation Models (GCMs) and a range of possible future greenhouse gas (GHG) emission scenarios to project plausible outcomes globally and regionally, including projections of temperature and Arctic sea-ice conditions through the 21st century.

The GCMs use the laws of physics to simulate the main components of the climate system (the atmosphere, ocean, land surface, and sea ice) and to make projections as to the response of these components to future emissions of GHGs. The IPCC used simulations from about 2 dozen GCMs developed by 17 international modeling centers as the basis for the AR4 (Randall *et al.* 2007, pp. 596–599). The GCM results are archived as part of the Coupled Model Intercomparison Project–Phase 3 (CMIP3) at the Program for Climate Model Diagnosis and Intercomparison (PCMDI). The CMIP3 GCMs provide projections of future effects that could result from climate change, because they are built on well-known dynamical and physical principles, and they plausibly simulate many large-scale aspects of present-day conditions. However, the coarse resolution of most current climate models dictates careful application on smaller spatial scales in heterogeneous regions.

The IPCC AR4 used six "marker" scenarios from the Special Report on Emissions Scenarios (SRES) (Carter *et al.* 2007, p. 160) to develop climate projections spanning a broad range of GHG emissions through the end of the 21st century under clearly stated assumptions about socioeconomic factors that could influence the emissions. The six "marker" scenarios are classified according to their emissions as "high" (A1F1, A2),

"medium" (A1B and B2) and "low" (A1T, B1). The SRES made no judgment as to which of the scenarios were more likely to occur, and the scenarios were not assigned probabilities of occurrence (Carter *et al.* 2007, p. 160). The IPCC focused on three of the marker scenarios—B1, A1B, and A2—for its synthesis of the climate modeling efforts, because they represented "low," "medium," and "high," scenarios; this choice stemmed from the constraints of available computer resources that precluded realizations of all six scenarios by all modeling centers (Meehl *et al.* 2007, p. 753). With regard to these three emissions scenarios, the IPCC Working Group I report noted: "Qualitative conclusions derived from these three scenarios are in most cases also valid for other SRES scenarios" (Meehl *et al.* 2007, p. 761). It is important to note that the SRES scenarios do not contain additional climate initiatives (*e.g.,* implementation of the United Nations Framework Convention on Climate Change or the emissions targets of the Kyoto Protocol) beyond current mitigation policies (IPCC 2007, p. 22). The SRES scenarios do, however, have built-in emissions reductions that are substantial, based on assumptions that a certain amount of technological change and reduction of emissions would occur in the absence of climate policies; recent analysis shows that two-thirds or more of all the energy efficiency improvements and decarbonization of energy supply needed to stabilize GHGs is built into the IPCC reference scenarios (Pielke *et al.* 2008, p. 531).

There are three main contributors to divergence in GCM climate projections: Large natural variations, across-model differences, and the range-in-emissions scenarios (Hawkins and Sutton 2009, p. 1096). The first of these, variability from natural variation, can be incorporated by averaging the projections over decades, or, preferably, by forming ensemble averages from several runs of the same model.

The second source of variation is model to model differences in the way that physical processes are incorporated into the various GCMs. Because of these differences, projections of future climate conditions depend, to a certain extent, on the choice of GCMs used. Uncertainty in the amount of warming out to mid-century is primarily a function of these model-to-model differences. The most common approach to address the uncertainty and biases inherent in individual models is to use the median or mean outcome of several predictive models (a multi-model ensemble) for inference. Excluding models that poorly simulate observational data is also a common approach to reducing the spread of uncertainty among projections from multi-model ensembles.

The third source of variation arises from the range in plausible GHG emissions scenarios. Conditions such as surface air temperature and sea-ice area are linked in the IPCC climate models to GHG emissions by the physics of radiation processes. When CO_2 is added to the atmosphere, it has a long residence time and is only slowly removed by ocean absorption and other processes. Based on IPCC AR4 climate models, expected global warming—defined as the change in global mean surface air temperature (SAT)—by the year 2100 depends strongly on the assumed emissions of CO_2 and other GHGs. By contrast, warming out to about 2040–2050 will be largely due to emissions that have already occurred and those that will occur over the next decade (Meehl 2007, p. 749). Thus, conditions projected to mid-century are less sensitive to assumed future emission scenarios. For the second half of the 21st century, however, and especially by 2100, the choice of the emission scenario becomes the major source of variation among climate projections and dominates over natural variability and model-to-model differences (IPCC 2007, pp. 44–46).

Because the SRES group and the IPCC made no judgment on the likelihood of any of the scenarios, and the scenarios were not assigned probabilities of occurrence, one option for representing the full range of variability in potential outcomes, would be to evaluate projections from all models under all marker scenarios for which sea-ice projections are available to the scientific community—A2, A1B, and B1. Another typical procedure for projecting future outcomes is to use an intermediate scenario, such as A1B, to predict changes, or one intermediate and one high scenario (*e.g.,* A1B and A2) to capture a range of variability.

Several factors suggest that the A1B scenario may be a particularly appropriate choice of scenario to use for projections of sea-ice declines in the Arctic and its marginal seas. First, the A1B scenario is widely used in modeling because it is a "medium" emissions scenario characterized by a future world of very rapid economic growth, global population that peaks in mid-century and declines thereafter, rapid introduction of new and more efficient technologies, and development of energy technologies that are balanced across energy sources, and it contains no assumption of mitigation policies that may or not be realized. Thus, there are a number of studies in the published sea-ice literature that use the A1B scenario and can, therefore, be used for comparative purposes (*e.g.,* Overland and Wang 2007; Holland *et al.* 2010; Wang *et al.* 2010). Second, both the A1B and A2 scenarios project similar declines in hemispheric sea-ice extent out to 2100 (Meehl *et al.* 2007, Figure 10.13, p. 771); thus, little new understanding is gained by using projections from both scenarios (see discussion of Douglas 2010 in subsequent paragraphs). Third, model projections based on the B1 scenario appear to be overly conservative (Meehl *et al.* 2007, Figure 10.13, p. 771), in that sea ice is declining even faster than the decline forecasted by the A1B scenario (see discussion at end of this section). Fourth, current global carbon emissions appear to be tracking slightly above (Raupach *et al.* 2007, Figure 1, p. 10289; LeQuere *et al.* 2009, Figure 1a, p. 2; Global Carbon Project 2010 at *http://www.globalcarbonproject.org/carbonbudget/09/files/GCP2010_CarbonBudget2009_29November2010.pdf*) or slightly below (Manning *et al.* 2010, Figure 1, p. 377) the A1B trajectory at this point in time. It may be reasonable to project this or a higher trend in global carbon emissions into the near future (Garnaut *et al.* 2008, Figure 5, p. 392; Sheehan 2008, Figure 2, p. 220; but see caveat by van Vuuren *et al.* 2010). Fifth, there is a growing body of opinion that stabilizing GHG emissions at levels well below the A1B scenario (*e.g.,* at 450 parts per million (ppm), equivalent to a 2 degree Celsius increase in temperature) will be difficult in the absence of substantial policy-mandated mitigation (*e.g.,* Garnaut *et al.* 2007, p. 398; den Elzen and Höhne 2008, p. 250; Pielke *et al.* 2008, pp. 531–532; Macintosh 2009, p. 3; den Elzen *et al.* 2010, p. 314; Tomassini *et al.* 2010, p. 418; Anderson and Bows 2011, p. 20), largely as a result of continuing high emissions in certain developed countries, and recent and projected growth in the economies and energy demands of rapidly developing countries (*e.g.,* Garnaut *et al.* 2008, p. 392; Auffhammer and Carson 2008, p. 1; Pielke *et al.* 2008, p. 532; U.S. Energy Information Administration 2010, pp. 123–124, 128). Because of these factors, we conclude that sea-ice projections developed by using the A1B forcing scenario provide an appropriate basis for evaluating potential impacts to habitat and related impacts to the Pacific walrus population in the future.

Our analysis of sea-ice response to global warming within the range of the

Pacific walrus (Bering and Chukchi Seas) carefully considered the synthesis of GCM projections presented by Douglas (2010). We provide a broad overview of the methods and findings of the report by Douglas (2010), details of which are available in the full report.

Douglas (2010, pp. 4–5) quantified sea-ice projections (from the A2 and A1B scenarios) by 18 CMIP3 GCM models prepared for the IPCC fourth reporting period, as well as 2 GCM subsets which excluded models that poorly simulated the 1979–2008 satellite record of Bering and Chukchi sea-ice conditions. Analyses focused on the annual cycle of sea-ice extent within the range of the Pacific walrus population, specifically the continental shelf waters of the Bering and Chukchi Seas. Models were selected for the two subsets, respectively, when their simulated mean ice extent and seasonality during 1979–2008 were within two standard deviations (SD2) and one standard deviation (SD1) of the observed means. In consideration of observations of ice-free conditions across the Chukchi Sea in recent years in late summer, any models that failed to simulate at least 1 ice-free month in the Chukchi Sea were also excluded from the Chukchi Sea subset ensembles. Ice observations and the projections of individual GCMs were pooled over 10-year periods to integrate natural variability (Douglas 2010, p. 5).

To quantify projected changes in monthly sea-ice extent, Douglas (2010, p. 31) compared future monthly sea-ice projections for the Bering and Chukchi Seas at mid-century (2045–2054) and late-century (2090–2099) with two decades from the observational record (1979–1988 and 1999–2008). The earliest observational period (1979–1988), which coincides with a timeframe during which the Pacific walrus population was considered to be occupying most of its historical range (Fay 1982, pp. 7–21), provides a useful baseline for examining projected changes in sea-ice habitats.

Douglas (2010, p. 7) found that projected median sea-ice extents under both the A1B and A2 forcing scenarios are qualitatively similar in the Bering and Chukchi Seas in all seasons throughout the 21st century. This finding is consistent with the generally similar declines in hemispheric sea-ice extent between the A1B and A2 scenarios out to 2100 (Meehl *et al.* 2007, Figure 10.13, p. 771). Thus, our decision to focus on ice projections by the A1B forcing scenario (as described above) is further substantiated, as there would be little insight gained by considering the A2 scenario.

The analysis of Douglas (2010, pp. 24, 31) yields mid-century projections that indicate sea-ice extent in the Bering Sea will decline for all months when sea ice has historically been present, i.e., for October through June. The most pronounced reductions in Bering Sea ice extent at mid-century in terms of the percent change from baseline conditions are expected in the months of June and November, which reflects an increasingly early onset of ice-free or nearly ice-free conditions in the early summer and later onset of sea-ice development in the fall. In June, the projected extent of sea ice is −63 percent of the 1979–1988 baseline level, while the projected extent for November is approximately is −88 percent of the baseline level. By late century, substantial declines in Bering Sea ice extent are projected for all months, with losses ranging from 57 percent in April, to 100 percent loss of sea ice in November (Douglas 2010, p. 31). The onset of substantial freezing in the Bering Sea is projected to be delayed until January by late century, with little or no ice projected to remain in May by the end of the century (Douglas 2010, pp. 8, 24, 31).

Historically, sea-ice cover has persisted, to at least some extent, over continental shelf waters of the Chukchi Sea all 12 months of the year, although the extent of sea ice has varied by month. For example, for the 1979–1988 period, the median extent of sea ice varied from about 50 percent in September to essentially 100 percent from late November through early May (Douglas 2010, p. 19). A pattern of extensive sea-ice cover (approaching 100 percent) in late winter and early spring (February–April) is expected to persist through the end of the century.

Projections of sea-ice loss during June in the Chukchi Sea are relatively modest; however, the sea ice is projected to retreat rapidly during the month of July (Douglas 2010, p. 12). Model subset medians project a 2-month ice-free season at mid-century and a 4-month ice-free season at the end of the century, centered around the month of September (Douglas 2010, pp. 8, 22, 24), with some models showing up to 5 months ice-free by end of the century (Douglas 2010, pp. 12, 22, 24). In the most recent observational decade (1999–2008), the southern extent of the Arctic ice pack has retreated and advanced through the Bering Strait in the months of June and November, respectively. By the end of the century, these transition months may shift to May (1 month earlier) and January (2 months later), respectively (Douglas 2010, pp. 12, 25–26).

The projected loss of sea ice involves uncertainty. In discussing this, Douglas 2010 (p. 11) states, in part: "Ice-free conditions in the Chukchi Sea are attained for a 3-month period (August–October) at the end of the century (fig 7) with almost complete agreement among models of the SD2 subset (fig 12). Consequently, a higher degree of confidence can accompany hypotheses or decisions premised on this outcome and timeframe." Douglas also notes there is greater confidence in projections that the Chukchi Sea will continue to be completely ice covered during February–April at the end of century, and that large uncertainties are prevalent during the melt and freeze seasons, particularly June, November, and December (Douglas 2010, p. 11).

Several other investigations have analyzed model projections of sea-ice change in the Bering and Chukchi Seas and reported results that are consistent with those of Douglas (2010). Wang *et al.* (2010, p. 258) investigated sea-ice projections to mid-century for the Bering Sea using a subset of models selected on the basis of their ability to simulate sea-ice area in the late 20th century. Their projections show an average decrease in March–April sea-ice coverage of 43 percent by the decade centered on 2050, with a reasonable degree of consistency among models. Boveng *et al.* (2008, pp. 39–40) analyzed a subset of IPCC AR4 GCM models (selected for accuracy in simulating observed ice conditions) to evaluate spring (April–June) conditions in the Bering Sea out to 2050. Their analysis suggested that by mid-century, a modest decrease in the extent of sea ice in the Bering Sea is expected during the month of April, and that ice cover in May will remain variable, with some years having considerably reduced ice cover. June sea-ice cover in the Bering Sea since the 1970s has been consistently low or absent. Their models project that by 2050, ice cover in the Bering Sea will essentially disappear in June, with only a rare year when the ice cover exceeds 0.05 million sq km (0.03 million sq mi) (Boveng *et al.* 2008, pp. 39–40), a projection similar to that reported by Douglas (2010, p. 24).

Boveng *et al.* (2009, pp. 44–54) used a subset of IPCC AR4 models to further investigate sea-ice coverage in the eastern Bering Sea (the area of greatest walrus distribution in the Bering Sea), Bering Strait, and the Chukchi Sea out to 2070. For the eastern Bering Sea, they projected that sea-ice coverage will decline in the spring and fall, with fall declines exceeding those of spring. By 2050, average sea-ice extent in November and December would be

approximately 14 percent of the 1980–1999 mean, while sea-ice extent from March to May would be about 70 percent of the 1980–1999 mean. For the Bering Strait region, the model projections indicated a longer ice-free period by 2050, largely as a result of decreasing ice coverage in November and December. By 2050, they project that the March–May sea-ice extent in the Bering Strait region would be 80 percent of the 1980–1999 mean, while November ice extent would be 20 percent of the mean for that reference period. For the Chukchi Sea, Boveng *et al.* (2009, pp. 49–50) reported a projected reduction in sea-ice extent for November by 2050, a slight decline for June by 2070, and a clear reduction for November and December by 2070.

Several authors note that sea-ice extent in the Arctic is decreasing at a rate faster than projected by most IPCC-recognized GCMs (Stroeve *et al.* 2007, p. 1; Overland and Wang 2007, p. 1; Wang and Overland 2009, p. 1; Wang *et al.* 2010, p. 258), suggesting that GCM projections of 21st century sea-ice losses may be conservative (Douglas 2010, p. 11, and citations therein) and that ice-free conditions in September in the Arctic may likely be achieved sooner than projected by most models using the A1B forcing scenario. In describing the "faster than forecast" situation, Douglas notes that the minimum ice extents in the Arctic for the summers of 2007–2009 were well below the previous record set in 2005, and concurs that serious consideration must be given to the possibility that the CMIP3 GCM projections collectively yield conservative time frames for sea-ice losses in this century (Douglas 2010, p. 11); i.e., the projected changes he reports for the range of the Pacific walrus may occur sooner than the model projections indicate.

In conclusion, the actual loss of sea ice in recent years in the Arctic has been faster than previously forecast, current GHG emissions are at or above those expected under the A1B scenario that we (and most scientists studying Arctic sea ice) relied on, models converge in predicting the extended absence of sea ice in the Chukchi Sea at the end of the century (Douglas 2010, pp. 12, 29), and there has been a marked loss of sea ice over the Chukchi Sea in the past decade. The best scientific information available gives us a high level of confidence that despite some uncertainty among the models, the projections are generally consistent and provide a reliable basis for us to conclude that sea-ice loss in the range of the Pacific walrus has a high likelihood of continuing.

Effects of Changing Sea-Ice Conditions on Pacific Walruses

The Pacific walrus is an ice-dependent species. Walruses are poorly adapted to life in the open ocean and must periodically haul out to rest. Floating pack ice creates habitat from which breeding behavior is staged (Fay *et al.* 1984, p. 81), and it provides a platform for calving (Fay 1982, p. 199), access to offshore feeding areas over the continental shelf of the Bering and Chukchi Seas, passive transportation among feeding areas (Ray *et al.* 2006, pp. 404–407), and isolation from terrestrial predators and hunters. In this section, we first analyze the effects of sea-ice loss on breeding and calving, because these are essential life-history events that depend on ice in specific seasons. In the second part of this section, we analyze how the anticipated increasing use of coastal haulouts due to the loss of sea-ice habitat may cause localized prey depletion and affect walrus foraging, as well as increase their susceptibility to trampling, predation, and hunting.

Effects of Sea-Ice Loss on Breeding and Calving

Breeding

During the January-to-March breeding season, walruses congregate in the Bering Sea pack ice (Fay 1982, pp. 8–11, 193; Fay *et al.* 1984, pp. 89–99), where the ice creates the stage for breeding. Females congregate in herds on the ice and the bulls station themselves in the water alongside the herd and perform visual and acoustical displays (Fay 1982, p. 193). Breeding aggregations have been reported southwest of St. Lawrence Island, Alaska, south of Nunivak Island, Alaska, and south of the Chukotka Peninsula in the Gulf of Anadyr, Russia (Fay 1982, p. 21; Mymrin *et al.* 1990, pp. 105–113). It is unlikely that breeding is tied to a specific geographic location, because of the large seasonal and inter-annual variability in sea-ice cover in the Bering Sea at this time of year. Fay *et al.* (1984, p. 80) indicate probable changes in the locations of breeding aggregations based on differing amounts of sea ice. We anticipate that seasonal pack ice will continue to form across large areas of the northern Bering Sea, primarily in January–March, and will persist in most years through April (Douglas 2010, p. 25).

The distribution of walruses during the winter breeding season will likely shift in the future in response to changing patterns of sea-ice development. Core areas of winter abundance south of Saint Lawrence Island and the Gulf of Anadyr will likely continue to have adequate ice cover to support breeding aggregations through mid-century, as the extent of sea ice will still be relatively substantial, although slightly diminished from the current extent (Douglas 2010, p. 25). Walruses currently wintering in Northern Bristol Bay will likely shift their distribution northward in response to the projected loss of seasonal pack ice in this region (Douglas 2010, p. 25). By the end of the century, winter sea-ice extent across the Bering Sea is expected to be greatly reduced, and the median sea-ice edge is projected to be farther to the north (Douglas 2010, p. 25). Based on these projections, core areas of winter abundance and breeding aggregations will likely shift farther north. Potentially, the breeding aggregations may shift into areas north of the Bering Strait in the southern Chukchi Sea in some years by the end of the century (Douglas 2010, pp. 24, 28).

Although the location of winter breeding aggregations will likely shift in response to projected reductions in sea-ice extent, sea-ice platforms for herds of females will persist during the breeding season; therefore, we conclude that suitable conditions for breeding will likely persist into the foreseeable future. We have no information that indicates that the specific location of the ice is important, and sea ice is expected to remain over shallow, food-rich areas. Therefore, we do not consider changes in sea-ice extent during the winter breeding season to be a threat now or in the foreseeable future.

Calving

Female walruses typically give birth to a single calf in May on sea ice, shortly before or during the northward spring migration through the Bering Strait. By mid-century, ice extent in the Bering Strait Region is projected to be reduced during the May calving season, and by end of century, the Bering Sea is projected to be largely sea-ice-free during the month of May (Douglas 2010, p. 25). As is the case with breeding, the birth of a calf and the natal period in the weeks that follow are probably not tied to specific geographic locations. It is reasonable to assume that suitable ice conditions for calving and post-calving activity on sea ice will persist into the foreseeable future, even though the location of favorable ice conditions is likely to shift further to the north over time.

We conclude that changes in sea ice during the spring calving season (April–May) are not a threat now or in the foreseeable future. We have no

information that indicates the specific location of the ice is important, and sea ice would remain over shallow, food-rich areas.

Summary of Effects of Sea-Ice Loss on Breeding and Calving

Breeding and calving activities utilize ice as a platform in the months of January through May. Based on our current understanding of these activities, the specific location of the ice is not important. Although sea-ice extent is projected to move northward over time, sea ice is expected to persist in these months and be available for these life history functions. Therefore, we do not consider changes in sea-ice extent to be a threat to breeding or calving activities now or in the foreseeable future.

Effects of Increasing Dependence on Coastal Haulouts Due to Sea-Ice Loss

We begin this discussion with a summary of sea-ice loss projections and recent observations. We follow with an analysis of the potential effects to Pacific walrus from an increasing dependence on coastal haulouts, particularly in the Chukchi Sea, and examine the use of coastal haulouts by Atlantic walrus as a potential analog for Pacific walrus coastal haulout use. We analyze potential effects of increased dependency on coastal haulouts resulting from the loss of sea-ice habitats. Some of the effects to Pacific walrus that we have identified as a result of increasing dependence on coastal haulouts (i.e., trampling, predation, and hunting) would typically be discussed under other Factors. These effects are discussed in this section in the context of responses to declining sea ice; however, it should be noted that we also discuss predation under Factor C (*Disease or Predation*), and hunting under Factor B (*Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*) and Factor D (*The Inadequacy of Existing Regulatory Mechanisms*).

Summary of Sea-Ice Loss Projections

Sea ice has historically persisted over continental shelf regions of the Chukchi Sea through the entire melt season. Over the past decade, sea ice has begun to retreat beyond shallow continental shelf waters in late summer. The recent trend of rapid ice loss from continental shelf regions of the Chukchi Sea in July and August is projected to persist, and will likely accelerate in the future (Douglas 2010, p. 12). The onset of ice formation in the fall over continental shelf regions in the Chukchi and Bering Seas is expected to be delayed, and by mid-century (2045–2054), ice-free conditions over most continental shelf regions of the Chukchi Sea are projected to persist for 2 months (August–September). By late century, ice-free (or nearly sea-ice-free) conditions may persist for 3 months, and extend to 4 to 5 months in some years (Douglas 2010, pp. 8, 12, 22, 27). The average number of ice-free months in the Bering Sea is projected to increase from the approximately 5.5 months currently, to approximately 6.5 and 8.5 months at mid- and end of century, respectively (Douglas 2010, pp. 12, 27).

Observed and Expected Responses of Pacific Walruses to Declining Sea-Ice Habitats

Adult male walruses make greater use of coastal haulouts during ice-free seasons than do females and dependent young, and consequently, have a broader distribution during ice-free seasons. Several thousand bulls remain in the Bering Sea through the ice-free summer months, where they make foraging excursions from coastal haulouts in Bristol Bay, Alaska and the Gulf of Anadyr, Russia. The size of these haulouts has changed over time; for example, at Round Island, the number of hauled out walruses grew from about 3,000 animals in the late 1950s to about 12,000 in the early 1980s (Jay and Hills 2005, p. 193), and has subsequently declined to 2,000–5,000 animals in the past decade (Sell and Weiss 2010, p. 12). The reasons for changes in walrus haulout use in the Bering Sea are poorly understood. Factors that could affect use of haulouts include; prey abundance and distribution, walrus density, and physical alteration or chronic disturbance at the haulouts (Jay and Hills 2005, p. 198). Tagged males traveled up to 130 km (81 mi) to feed from haulout sites in Bristol Bay (Jay and Hills 2005, p. 198). Because the benthic densities are poorly documented, it is not possible to link the changes in haulout use by males to prey depletion. However, non-use of areas with shallow depths closer to the haulouts suggests prey was not adequate for effective foraging (Jay and Hills 2005, p. 198). Males have an advantage over females in that they are bigger and stronger and have no responsibilities related to the care of calves, and thus, can travel as far as necessary to locate food. Currently, males utilize terrestrial haulouts for 5 months or more (Jay and Hills 2005, p. 198). It is unlikely that the projected increase in ice-free months in the Bering Sea will alter male behavior or survival rates at terrestrial haulouts because the adult males that utilize Bering Sea haulouts do not rely on sea ice as a foraging platform. Indirect effects of global climate change on walrus prey species in this region are considered separately below in the section: *Effects of Global Climate Change on Pacific Walrus Prey Species.*

Most of the Pacific walrus population (adult females, calves, juveniles, and males that have not remained at coastal haulouts in the Bering Sea) migrate northward in spring following the retreating pack ice through the Bering Strait to summer feeding areas over the continental shelf in the Chukchi Sea. Historically, sufficient pack-ice habitat has persisted over continental shelf regions of the Chukchi Sea through the summer months such that walruses in the Chukchi Sea did not rely on coastal haulouts with great frequency or in large numbers. Over the past decade, however, sea ice has begun to retreat north beyond shallow continental shelf waters of the Chukchi Sea in late summer. This has caused walruses to relocate to coastal haulouts, which they use as sites for resting between foraging excursions. The number of walruses using land-based haulouts along the Chukchi Sea coast during the summer months, and the duration of haulout use, has increased substantially over the past decade, with up to several tens of thousands of animals hauling out at some locations along the coast of Russia during ice-free periods (Ovsyanikov *et al.* 2007, pp. 1–2; Kochnev 2008, p. 17–20, Kavry *et al.* 2008, p. 248–251). Coastal haulouts have also begun to form along the Arctic coast of Alaska in recent years (2007, 2009, and 2010) when sea ice retreated north of the continental shelf in late summer (Service 2010, unpublished data). The occupation of terrestrial haulouts along the Chukchi Sea coast for extended periods of time in late summer and fall represents a relatively new and significant change from traditional habitat use patterns. The consequences of this observed and projected shift in habitat use patterns is the primary focus of our analysis.

As sea ice withdraws from offshore feeding areas over the continental shelf of the Chukchi Sea, walruses are expected to become increasingly dependent on coastal haulouts as a foraging base during the summer months. With a delay the onset of ice formation in the fall, and in the absence of sea-ice cover in the southern Chukchi Sea and northern Bering Sea in the summer, walruses will likely remain at coastal haulouts for longer periods of time until sea ice reforms in the fall or early winter. By the end of the century, dependence on Chukchi Sea coastal haulouts by mixed groups of walruses

for resting and as a foraging base may extend from July into early winter (December–January), when there may be up to a 2-month delay in freeze-up (Douglas 2010, pp. 12, 22). This expectation is consistent with observations made by Russian scientists that some of the coastal haulouts along the southern Chukchi Sea coast of Russia have persisted in recent years into December (Kochnev 2010, pers. comm.).

Increased dependence on coastal haulouts creates the following potential impacts for walruses: Changes in foraging patterns and prey depletion; increased vulnerability to mortality or injury due to trampling, especially for calves, juveniles, and females; greater vulnerability to mortality or injury from predation; and greater vulnerability to mortality due to hunting. Each is discussed in detail below.

Changes in Foraging Patterns and Prey Depletion

The loss of seasonal pack ice from continental shelf areas of the Chukchi Sea is expected to reduce access to traditional foraging areas across the continental shelf and increase competition among individuals for food resources in areas close to haulouts. Information regarding the density of walrus prey items accessible from coastal haulouts is limited; however, some haulouts have supported sizable concentrations of animals (up to several tens of thousands of animals) for periods of up to 4 months in recent years (Kochnev 2010, pers. comm.). Many walrus prey species are slow growing and potentially vulnerable to overexploitation, and intensive foraging from coastal haulouts by large numbers of walruses may eventually result in localized prey depletion (Ray *et al.* 2006, p. 412). A walrus requires approximately 29 to 74 kg (64 to 174 lbs) of food per day (Fay 1982, p. 160), and may consume 4,000 to 6,000 clams in one feeding bout (Ray *et al.* 2006, pp. 408, 412); therefore, when large numbers of walruses are concentrated on coastal haulouts, a large amount of prey (whether clams or other types of prey) must be available to support them.

The presence of large numbers of walruses at a coastal haulout over an extended time period could eventually lead to localized prey depletion. The most likely response to localized prey depletion will be for walruses to seek out and colonize other terrestrial haulouts that have suitable foraging areas (Jay and Hills 2005, p. 198). However, prey densities along the Arctic coast are not uniform (Grebmeier *et al.* 1989, p. 257; Feder *et al.* 1994, pp. 176–177; Grebmeier *et al.* 2006b, p. 346), and many coastal areas which provide the physical features of a suitable haulout, may not have sufficient food sources. A visual comparison of areas of high benthic production (*e.g.,* Springer *et al.* 1996, p. 209; Dunton *et al.* 2005, p. 3468; Grebmeier *et al.* 2006b, p. 346) and areas that have supported large terrestrial haulouts of walruses (*e.g.,* Cape Inkigur, Cape Serdtse-Kamen) indicates that walruses have historically selected sites near areas of very high benthic productivity. Benthic productivity along part of the western shore of Alaska (i.e., along the eastern edge of the Chukchi Sea) is low because of the nutrient-poor waters of the Alaska Coastal Current, especially for instance, in the Kotzebue Sound (Dunton *et al.* 2005, p. 3468; Dunton *et al.* 2006, p. 369; Grebmeier *et al.* 2006b, p. 346). Consequently, the number of sites with adequate food resources to support large aggregations of walruses is likely limited.

A consequence of prey depletion could be an increased energetic cost to locate sufficient food resources (Sheffield and Grebmeier 2009, p. 770; Jay *et al.* 2010b, pp. 9–10). Energetic costs to walruses will increase if they have to travel greater distances to locate prey, or foraging efficiency is reduced as a consequence of lower prey densities (Sheffield and Grebmeier 2009, p. 770; Jay *et al.* 2010b, pp. 9–10). Observations by Russian scientists at haulouts along the coast of Chukotka (along the western side of the Chukchi Sea) in recent years suggest that rates of calf mortality and poor body condition of adult females are inversely related to the persistence of sea ice over offshore feeding areas and the length of time that animals occupy coastal haulouts (Nikiforov *et al.* 2007, pp. 1–2; Ovsyanikov *et al.* 2007, pp. 1–3; Kochnev 2008, pp. 17–20; Kochnev *et al.* 2008, p. 265). Over time, poor body condition could lead to lower reproductive rates, greater susceptibility to disease or predation, and ultimately higher mortality rates (Kochnev 2004, pp. 285–286; Kochnev *et al.* 2008, p. 265; Sheffield and Grebmeier 2009, p. 770).

The energetic cost of swimming a long distance is demonstrated by the observations made in the summer of 2007, when the melt season in the Chukchi Sea began slowly, and then sea-ice retreat accelerated rapidly in July and August. The continental shelf of the Chukchi Sea was sea-ice-free by mid-August; the ice edge eventually retreated hundreds of miles north of the shelf, and ice did not re-form over the continental shelf until late October (National Snow and Ice Data Center, 2007). Ovsyanikov *et al.* (2007, pp. 2–3) reported that many of the walruses arriving at Wrangel Island, Russia, in August 2007 were emaciated and weak, some too exhausted to flee or defend themselves from polar bears patrolling the coast. The authors attributed the poor condition of these animals to the rapid retreat of sea ice off of the shelf in July to waters too deep for walrus to feed. They also noted that the exhausted walruses could not find enough food near the island for recovery (Ovsyanikov *et al.* 2007, p. 3).

Females with dependent young are likely to be disproportionally affected by prey depletion and increased reliance on coastal haulouts as a foraging base. Females with dependent young require two to three times the amount of food needed by nonlactating females (Fay 1982, p. 159). Over the past decade, females and dependent calves have responded to the loss of sea ice in late summer by occupying coastal haulouts along the coast of Chukotka, Russia, and more recently (2007–2010) haulouts along the coast of Alaska. Females typically nurse their calves between short foraging forays from sea-ice platforms situated over productive forage areas (Ray *et al.* 2006, pp. 404–407). Drifting ice provides walrus passive transport and access to new foraging areas with minimal effort. In 2007, radio-tagged females traveled on average, 30.7 km (19 mi) on foraging trips from several haulouts located along the Chukotka coastline (Kochnev *et al.* 2008, p. 265). Although we do not know the average distance of foraging trips taken from an ice platform, in general, we would expect them to be relatively short, because when the ice is over productive prey areas, the female only has to dive to the bottom and back up to the ice (Ray *et al.* 2006, pp. 406–407). Because calves do not have the swimming endurance of adults, if sufficient prey is not located within the swimming distance of the calf, the female either may not be able to obtain adequate nutrition or the calf may be abandoned when the female travels to locations beyond the swimming capability of the calf (Cooper *et al.* 2006, pp. 98–102). Lack of adequate prey for females could eventually lead to reduced body condition, lower reproductive success, and potentially death. Abandoned calves could face increased mortality from drowning, starvation, or predation.

In summary, by the end of the 21st century, ice-free conditions are expected to persist across the continental shelf of the Chukchi Sea for a period of up to several months (Douglas 2010). Based

on the observed responses of walruses to periods of low ice cover in the Chukchi Sea in recent years, we expect walruses to become increasingly dependent on coastal haulouts as a foraging base, with animals restricted to coastal haulouts for most of the summer and into the fall and early winter. Walruses have the ability to use land in addition to ice as a resting site and foraging base, which will provide them alternate, if not optimal (as explained above), resting habitat. However, given the concentration of large numbers of animals in relatively small areas, the large amount of prey needed to sustain each walrus, and the increasing length of time coastal haulouts will have to be used due to sea-ice loss, the increased dependence on coastal haulouts is expected to result in increased competition for food resources in areas accessible from the coastal haulouts. Because of the energetic demands of lactation and limited mobility of calves, female walruses with dependent young are likely to be disproportionally affected by changes in habitat use patterns. Because near-shore food resources are unlikely to be able to support the current population, walruses will be required to swim farther to obtain prey, which will increase energetic costs. Accordingly, near-shore prey depletion will likely result in a population decline over time. It is unlikely that the projected increase in ice-free months in the Bering Sea will alter the behavior or survival rates of males at terrestrial haulouts because these males do not rely on sea ice as a foraging platform. In addition, males have an advantage over females in that they are bigger and stronger and have no responsibilities related to the care of calves, and thus, can travel as far as necessary to forage.

The degree to which depletion of food resources near coastal haulouts will limit population size will depend on a variety of factors, including: The location of coastal walrus haulouts, the number of animals utilizing the haulouts, the duration of time walruses occupy the haulouts, and the robustness of the prey base within range of those haulouts. However, it is highly unlikely that the current population can be sustained from coastal haulouts alone. In particular, females and their calves will be susceptible to the increased energetic demands of foraging from coastal haulouts. We do not anticipate effects to males using coastal haulouts in the Bering Sea, because their current behavior can continue unaltered into the future. We do not have evidence that prey depletion is currently having a population-level effect on the Pacific walrus. Our concern is based on projections of continued and more extensive sea-ice loss that will force the animals onto land. Therefore, we conclude that loss of sea-ice habitat, leading to dependence on coastal haulouts and localized prey depletion, will contribute to other negative impacts associated with sea-ice loss, and is a threat to the Pacific walrus in the foreseeable future.

Increased Vulnerability to Disturbances and Trampling

Another consequence of greater reliance on coastal haulouts is increased levels of disturbances and increased rates of mortalities and injuries associated with trampling. Walruses often flee land or ice haulouts in response to disturbances. Disturbance can come from a variety of sources, either anthropogenic (*e.g.,* hunters, airplanes, ships) or natural (*e.g.,* predators) (Fay *et al.* 1984, pp. 114–118, Kochnev 2004, p. 286). Haulout abandonment represents an increase in energy expenditure and stress, and disturbance events at densely packed coastal haulouts can result in intra-specific trauma and mortalities (COSEWIC 2006, pp. 25–26). Although disturbance-related mortalities at all-male haulouts in the Bering Sea are relatively uncommon (Fay and Kelly 1980, p. 244; Kochnev 2004, p. 285), the situation at mixed haulouts is different; because of their smaller size, calves, juveniles, and females are more susceptible to trampling injuries and mortalities (Fay and Kelly 1980, pp. 226, 244). Females likely avoid using terrestrial haulouts because their offspring are vulnerable to predation and trampling (Nikiforov *et al.* 2007, pp. 1–2; Ovsyanikov *et al.* 2007, pp. 1–3; Kochnev 2008, pp. 17–20; Kochnev *et al.* 2008, p. 265).

When walruses are disturbed on ice floes, escape into the water is relatively easy because fewer animals are concentrated in one area. In comparison, aggregations of walruses on land are often very large in number, densely packed, and "layered" several animals deep (Nikiforov *et al.* 2007, p. 2). The presence of some large males in groups using Chukchi Sea coastal haulouts increases the danger to calves, juveniles, and females. Consequently, the probability of direct mortality or injury due to trampling during stampedes is greater at terrestrial haulouts than it is on pack ice (USFWS 1994, p. 12). Also, whether on ice or land, calves may be abandoned as a result of disturbance to a haulout (Fay *et al.* 1984, p. 118).

In addition, sources of disturbance are expected to be greater at terrestrial haulouts than in offshore pack ice habitats, because the level of human activity such as hunting, fishing, boating, and air traffic is far greater along the coast. Haulout abandonment has been documented from these sources (Fay *et al.* 1984; p. 114; Kochnev 2004, pp. 285–286). There is also a greater chance of disturbance from terrestrial animals (Kochnev 2004, p. 286). As sea ice declines, and both polar bears and walruses are increasingly forced onto land bordering the Chukchi Sea, we anticipate that there will be greater interaction between the two species, especially during the summer. We expect that one outcome of increased interactions will be increased walrus mortality due to predation (discussed below). Of equal, or more importance than predation is the disturbance caused at a haulout through the arrival or presence of a polar bear, which can cause stampeding. Repeated stampeding also increases energy expenditure and stress levels, and may cause walruses to abandon the haulout (COSEWIC 2006, p. 25).

Losses that can occur when large numbers of walruses use terrestrial haulouts are illustrated by observations in 2007, along the coast of Chukotka, Russia. In response to summer sea-ice loss in 2007, walruses began to arrive at coastal haulouts in July, a month earlier than previously recorded (Kochnev 2008, pp. 17–20). Coastal aggregations ranged in size from 4,500 up to 40,000 animals (Ovsyanikov *et al.* 2007, pp. 1–2; Kochnev 2008, p. 17–20, Kavry *et al.* 2008, p. 248–251). Hunters from the Russian coastal villages of Vankarem and Ryrkaipii reported more than 1,000 walrus carcasses (mostly calves of the year and aborted fetuses) at coastal haulouts near the communities in September 2007 (Nikiforov *et al.* 2007, p. 1; Kochnev 2008, pp. 17–20). Noting the near absence of calves amongst the remaining animals, Kochnev (2008, pp. 17–20) estimated that most of the 2007 cohort using the site had been lost. Approximately 1,500 walrus carcasses (predominately adult females) were also reported near Cape Dezhnev in late October (Kochnev 2007, pers. comm.). Russian investigators estimate that between 3,000 and 10,000 animals died along the Chukotka coastline during the summer and fall of 2007, primarily from trampling associated with disturbance events at the haulouts (Kochnev 2010, pers. comm.).

Relatively few large mortality events at coastal haulouts have been documented in the past, but they have occurred (Fay 1982, p. 226). For

example, Fay and Kelly (1980, p. 230) examined several hundred walrus carcasses at coastal haulouts on St. Lawrence Island and the Punuk Islands in the fall of 1978. Approximately 15 percent of those carcasses were aborted fetuses, 24 percent were calves, and the others were older animals (mostly females) ranging in age from 1 to 37 years old. The principal cause of death was trampling, possibly from disturbance-related stampedes or battling bulls. As walruses become increasingly dependent on coastal haulouts, interactions with humans and predators are expected to increase and mortality events are likely to become increasingly common. Long-term or chronic levels of disturbance related mortalities at coastal haulouts are likely to have a more significant population effect over time.

We recognize that Atlantic walruses (including females and calves) utilize coastal haulouts to a greater extent than Pacific walruses, foraging from shore along a relatively narrow coastal shelf; a situation that is similar to what Pacific walrus may experience in the future during ice-free months in the Chukchi Sea. However, Atlantic walrus occupy an area with abundant remote islands that are free or nearly free from disturbance from humans or terrestrial mammals. In essence, their insular habitats function in a manner analogous to the pack ice of the Pacific walrus, providing a refugium from disturbance. In contrast, when Pacific walruses are restricted to terrestrial haulouts, they face disturbance from a variety of terrestrial predators and scavengers, including bears, wolverines, wolves, and feral dogs, and higher levels of anthropogenic disturbances, because their haulouts are at the edge of continental land masses and there are very few islands in the Bering and Chukchi Seas. Sea ice, which has typically acted as a refugium from disturbance for Pacific walruses, particularly for females and young in the Chukchi Sea, will be lost entirely, or almost entirely, for increasingly long time periods annually in the foreseeable future. Therefore, although use of coastal haulouts is a form of adaptability available to Pacific walruses, it comes with negative impacts that are not associated with coastal haulouts for Atlantic walruses.

In summary, we anticipate that Pacific walruses will become increasingly dependent on coastal haulouts as sea ice retreats earlier off the continental shelf and the Bering and Chukchi Seas become ice-free for increasingly longer periods of time. The protection normally provided to females and calves by the dispersal of smaller groups of animals across a wide expanse of sea ice will be lost during periods of ice-free or nearly ice-free conditions. Significant mortality events from trampling have been documented at large haulouts, and we anticipate that they will continue with much greater frequency into the foreseeable future, resulting in increased mortality, particularly of calves and females. Therefore, we conclude that disturbances and trampling at haulouts is a threat to the Pacific walrus now and in the foreseeable future.

Increased Vulnerability to Predation and Hunting

As Pacific walruses become more dependent on coastal haulouts, they will become more susceptible to predation and hunting (Kochnev 2004, p. 286). Although hunting and predation are discussed separately below (see Factors B and C, respectively), we also consider them here due to their relationship to increased loss of sea-ice habitat.

Because of their large size and tusks, adult walruses are much less susceptible to predation than are young animals or females. Females likely avoid using terrestrial haulouts because their offspring are vulnerable to predation (Kochnev 2004, p. 286; Ovsyanikov *et al.* 2007, pp. 1–4; Kelly 2009, p. 302). Apparently, some polar bear routinely rush herds to cause a stampede, expecting that some calves will be left behind (Nikulin 1941; Popove 1958, 1960; as cited in Fay *et al.* 1984, p. 119). As sea ice declines in the foreseeable future, increased use of terrestrial habitats by both polar bears and walruses will likely lead to increased interaction between them, and most likely an increase in mortality, particularly of calves. We conclude that loss of sea ice, which will force increased overlap between these two species, will increase mortality from polar bears through direct take or indirect take due to trampling during stampedes. See the section on predation in Factor C below, for further information.

Large concentrations of walruses on shore for longer periods of time could result in increased harvest levels if the terrestrial haulouts form near coastal villages and environmental conditions allow access to haulouts. Kochnev (2004, pp. 285–286) notes that many of the haulouts along the Chukotka coast are situated near coastal villages, and hunting activities at the haulouts can result in stampedes and cause movements from one haulout to another. Some communities in Chukotka situated in close proximity to the new haulouts have responded by developing hunting restrictions to limit disturbances to resting animals (Patrol 2008, p. 1; Kavry 2010, pers. comm.; Kochnev 2010 pers. comm.). See the section on Subsistence Hunting in Factor B below, for further information.

Summary of the Effects of Sea-Ice Loss on Pacific Walruses

The Pacific walrus is an ice-dependent species. Changes in the extent, volume, and timing of the sea-ice melt and onset of freezing in the Bering and Chukchi Seas have been documented and described earlier in this finding, there are reliable projections that more extensive changes will occur in the foreseeable future. We expect these changes in sea ice will cause significant changes in the distribution and habitat-use patterns of Pacific walruses. At this time we anticipate that breeding behavior in winter and calving in the early spring will not be impacted by expected changes to sea-ice conditions, although the locations where these events occur will most likely change as the location of available sea ice shifts to the north.

With the loss of summer sea ice, the most obvious change, which has already been observed, will be a greater dependence on terrestrial haulouts by both sexes and all age groups. Although walruses of both sexes are capable of using terrestrial haulouts, historically, adult males have used terrestrial haulouts, particularly in the Bering Sea, to a much greater extent than females, calves, and juveniles. The loss of summer sea ice means that walruses of both sexes, but females and their young in particular, will be using coastal haulouts for longer periods of time. This change is particularly notable in the Chukchi Sea, which has historically had sufficient sea ice in the summer so that females and calves could remain over the shallow continental shelf throughout the summer. Since approximately 2005, the Chukchi Sea has become ice-free or nearly so during part of the summer. This condition is projected to increase over time, and may occur faster than forecast. The consequences of this shift from sea ice to increasing use of land include: Risk of localized prey depletion; increased energetic costs to reach prey, resulting in decreased body condition; calf abandonment; increased mortality from stampedes, especially to females, juveniles, and calves; and potentially increased exposure to predation and hunting. These events are expected to reduce survivorship.

As large numbers of animals are concentrated at coastal haulouts, prey

may be locally depleted, and greater distances will be required to obtain it. Although males at haulouts in the Bering Sea function for several months each year from terrestrial haulouts, females with calves do not typically use terrestrial haulouts, and we expect the loss of sea ice to have a greater impact on them through the higher energetic cost of obtaining food. It is likely that these factors will lead to a population decline over time, as fewer walruses can be supported by the resources available from terrestrial haulouts. In the foreseeable future, as the duration of ice-free periods over offshore continental shelf regions of the Chukchi Sea increases from 1 to up to 5 months (July through November), we expect the effects of prey depletion near terrestrial haulouts will be heightened.

Periodic ice-free conditions, as are currently occurring, are expected to lead to higher mortality rates, primarily through trampling at haulouts when walruses congregate in large numbers. Although of concern, if these events happen sporadically, as has been the case in the past, the population may be able to recover between harsh years. Although trampling mortalities have been documented in the past, increasing use of terrestrial haulouts, the higher probability of disturbance occurring at these haulouts, and in the near-term, the very large numbers of animals using particular haulouts, increases the probability that mortality from trampling will become a more regular event.

The increasing reliance of both polar bears and walruses on terrestrial environments during ice free periods will likely result in increased interactions between these two species. Polar bear predation and associated disturbances at densely crowded coastal haulouts will likely contribute to increased mortality levels, particularly of calves, and may displace animals from preferred feeding areas. Hunting activity at coastal haulouts does not appear to be a significant source of mortality at the present time, but may become more of a factor in the future. Local hunting restrictions at coastal haulouts have been established in some communities in Chukotka to reduce disturbance-related mortalities. The efficacy of efforts to mitigate sources of anthropogenic disturbances at coastal walrus haulouts (including hunting, boating and air traffic) will influence the degree to which these factors will affect the Pacific walrus population. See Factors B and C for further discussion on harvest and predation.

In conclusion, the loss of sea-ice habitat creates several stressors on the Pacific walrus population. These stressors include: localized prey depletion; increased energetic costs to reach prey, resulting in decreased body condition; calf abandonment; increased mortality from stampedes, especially to females, juveniles, and calves; and increased exposure to predation and hunting. Because the Pacific walrus range is large, and the animals are not all in the same place at the same time, not all stressors are likely to affect the entire population in a given year. However, all stressors represent potential sources of increased mortality over the current condition, in which these stressors occur infrequently. In the foreseeable future, as the frequency of sea-ice loss in the summer and fall over the continental shelves increases to a near-annual event and the length of time ice is absent over the continental shelf increases from 1 to up to 5 months, we expect the effects on walruses to be heightened and a greater percentage of the population to be affected. Increased direct and indirect mortality, particularly of calves, juveniles, and females, will result in a declining population over time. Consequently, we conclude that the destruction, modification, and curtailment of sea-ice habitat is a threat to the Pacific walrus.

Outcome of Bayesian Network Analyses

Both the Service and USGS Bayesian network analyses (Garlich-Miller *et al.* 2011; Jay *et al.* 2010b) considered changes in sea ice projected through the 21st century. In both cases, the results indicate that expected loss of sea ice is an important risk factor for Pacific walrus population status over time. The USGS analysis deals more directly with projected outcomes of the Pacific walrus population, including the influence of sea-ice loss under different potential conditions (Jay *et al.* 2010b, p. 40). For the normative sea ice run (see Jay *et al.* 2010b for details), the probability of Pacific walruses becoming vulnerable, rare, or extirpated increases over time, from approximately 22 percent in 2050, to about 35 percent by 2075, and 40 percent in 2095 (Jay *et al.* 2010b, p. 40). A "worst case" influence run was also evaluated. For the worst case, model outputs were selected that have both the greatest number of ice-free months and the least ice extent for the Bering and Chukchi Seas and, therefore, represent the worst possible situation. The outcome for the worst case influence run for sea ice indicated that the probability of Pacific walruses becoming vulnerable, rare, or extirpated approximately doubles at mid-century to 40 percent, and reaches approximately 45 percent at 2075 (Jay *et al.* 2010b, p. 40). At the end of 21st century, the probability of Pacific walruses becoming vulnerable, rare, or extirpated in both the worst case scenario and the normative run are essentially equal, at about 40 percent; an outcome that is due to the projected amount of sea-ice loss being basically the same under the worst case and normative case by the end of the century. We note, however, that the models and emissions scenarios used by the IPCC in 2007 were the basis for this analysis. Thus, it is possible that the "worst case scenario" reflects the "faster than forecast" loss of sea ice that may be realized if sea-ice loss continues on the current downward trend that began in 1979 (National Snow and Ice Data Center, 2010). Regardless of which trajectory will actually occur, the modeling efforts show that the future status of the Pacific walrus is linked to sea ice, which already is declining substantially, and more rapidly than previously projected.

Effects of Global Climate Change on Pacific Walrus Prey Species

The shallow, ice-covered waters of the Bering and Chukchi Seas provide habitat that supports some of the highest benthic biomass in the world (Grebmeier *et al.* 2006a, p. 1461; Ray *et al.* 2006, p. 404). Sea-ice algae, pelagic (open ocean) primary productivity, and the benthos (organisms that live on or in the sea floor) are tightly linked through the sedimentation of organic particles (Grebmeier *et al.* 2006b, p. 339). Sea-ice algae provide a highly concentrated and high-quality food source for plankton food webs in the spring, which translates to high-quality food for the benthos such as clams (Grebmeier *et al.* 2006b, p. 339; McMahon *et al.* 2006, pp. 2–11; Gradinger 2009, p. 1211). Because zooplankton, which also feed on the algae, have correspondingly low populations at this time in the spring, much of the primary productivity of algae falls to the sea floor, where it is available to the benthic invertebrates (Grebmeier *et al.* 2006b, p. 339).

Spatial distribution and abundance in biomass in benthic habitat across the Bering and Chukchi Seas is influenced by a variety of ecological, oceanographic, and geomorphic features. In the subarctic region of the Bering Sea (from the Bering Strait south to latitude 50 degrees), benthic organisms are preyed upon by demersal fish (living near the bottom of the water column) and epifaunal invertebrates (those organisms living on top of the sea floor rather than in it), whose distribution is limited to the north by cold water (less than 0 °C (32 °F))

resulting from seasonal sea-ice cover, forming a temperature-mediated ecological boundary. In the absence of demersal fish and predatory invertebrates, benthic-feeding whales, walrus, and sea-birds are the primary consumers in the Arctic region of the Bering Sea (Grebmeier *et al.* 2006b, pp. 1461–1463).

Within the Arctic region of the Bering Sea, marginal sea-ice zones and areas of polynyas appear to be "hot spots" of high benthic diversity and productivity (Grebmeier and Cooper 1995, p. 4439). Benthic biomass is particularly high in the northern Bering Sea, the southern Chukchi Sea, and the Gulf of Anadyr. However, the high diversity and productivity of the benthic communities is not seen in the Southern Beaufort Sea shelf and areas of the eastern Chukchi Sea, which are influenced by the nutrient-poor Alaska coastal current (Fay *et al.* 1977, p. 12; Grebmeier *et al.* 1989, p. 261; Feder *et al.* 1994, p. 176; Smith *et al.* 1995, p. 243; Grebmeier *et al.* 2006b, p. 346; Bluhm and Gradinger 2008, p. 2).

Ocean Warming

For the last several decades, surface air temperatures throughout the Arctic, over both land and water, have warmed at a rate that exceeds the global average, and they are projected to continue on that path (Comiso and Parkinson 2004, pp. 38–39; Christensen *et al.* 2007, p. 904; Lawrence *et al.* 2008, p. 1; Serreze *et al.* 2009, pp. 11–12). In addition, the subsurface and surface waters of the Arctic Ocean and surrounding seas, including the Bering and Chukchi Seas have warmed (Steele and Boyd 1998, p. 10419; Zhang *et al.* 1998, p. 1745; Overland and Stabeno 2004, p. 309; Stabeno *et al.* 2007, pp. 2607–2608; Steele *et al.* 2008, p. 1; Mueter *et al.* 2009, p. 96). There are several mechanisms working in concert to cause these increases in ocean temperature, including: Warmer air temperatures (Comiso and Parkinson 2004, pp. 38–39; Overland and Stabeno 2004, p. 310), an increase in the heat carried by currents entering the Arctic from both the Atlantic (Drinkwater *et al.,* p. 25; Zhang *et al.* 1998, p. 1745) and Pacific Oceans (Stabeno *et al.* 2007, p. 2599; Woodgate *et al.* 2010, p. 1–5), and a shorter ice season, which decreases the albedo (reflective property) of ice and snow (Comiso and Parkinson 2004, p. 43; Moline *et al.* 2008, p. 271; Markus *et al.* 2009, p. 13). Due to their biological characteristics which include tolerance of considerable variations in temperature, direct effects to walrus are not anticipated with warmer ocean temperatures. Nevertheless, changes in the thermal dynamics of ocean conditions may affect walrus indirectly through impacts to their prey base. Changes to density, abundance, distribution, food quality, and species of benthic invertebrates may occur primarily through changes in habitat related to sea ice.

Walruses are the top predator of a relatively simple food web in which the primary constituents are bacteria, sea-ice algae, phytoplankton (tiny floating plants), and benthic invertebrates (Horner 1976, p. 179; Lowry and Frost 1981, p. 820; Grebmeier and Dunton 2000, p. 65; Dunton *et al.* 2006, p. 370; Aydin and Mueter 2007, p. 2507). Sea ice is important to the Arctic food webs because: (1) It is a substrate for ice algae (Horner 1976, pp. 168–171; Kern and Carey Jr. 1983, p. 161; Grainger *et al.* 1985, pp. 25–27; Melnikov 2000, pp. 79–81; Gradinger 2009, p. 1201); (2) it influences nutrient supply and phytoplankton bloom dynamics (Lovvorn *et al.* 2005, p. 136); and (3) it determines the extent of the cold-water pool on the southern Bering shelf (Aydin and Mueter 2007, p. 2503; Coyle *et al.* 2007, p. 2900; Stabeno *et al.* 2007, p. 2615; Mueter and Litzow 2008, p. 309).

In the spring, ice algae form up to a 1-cm- (0.4-in-) thick layer on the underside of the ice, but are also found at the ice surface and throughout the ice matrix (Horner 1976, pp. 168–171; Cota and Horne 1989, p. 111; Gradinger *et al.* 2005, p. 176; Gradinger 2009, p. 1207). Ice algae can be released into the water through water turbulence below the ice, through brine drainage through the ice, or when the algal mats are sloughed as the ice melts (Cota and Horne 1989, p. 117; Renaud *et al.* 2007, p. 7). As noted above, sea-ice algae provide a highly concentrated food source for the benthos and the plankton (organisms that float or drift in the water) food web that is initiated once the ice melts (Grebmeier *et al.* 2006b, p.339; McMahon *et al.* 2006, pp. 1–2; Renaud *et al.* 2007, pp. 8–9; Gradinger 2009, p. 1211). Areas of high primary productivity support areas of high invertebrate mass, which is food for walruses (Grebmeier and McRoy 1989, p. 87; Grebmeier *et al.* 2006b, p. 332; Bluhm and Gradinger 2008, p. S87).

Spring ice melt plays an important role in the timing, amount, and fate of primary production over the Bering Sea shelf, with late melting (as occurs now) leading to greater delivery of food from primary production to the benthos and earlier melting (as is projected to occur in the future) contributing food primarily to the pelagic system (Aydin and Mueter 2007, p. 2505; Coyle *et al.* 2007, p. 2901). When ice is present from late March to May (as occurs now), cold surface temperatures, thinning ice, and low-salinity melt water suppress wind mixing, and cause the water column to stratify, creating conditions that promote a phytoplankton bloom. The burst of phytoplankton, seeded in part by ice algae, persists until ocean nutrients are drawn down. Because it is early in the season and water temperatures are cold, zooplankton populations are still low. Consequently, the pulse of phytoplankton production is not consumed by zooplankton, but instead sinks to the sea floor, where it provides abundant food for the benthos (Coyle and Cooney 1988, p. 177; Coyle and Pinchuk 2002, p. 177; Hunt and Stabeno 2002, p. 11; Lovvorn *et al.* 2005, p. 136; Renaud *et al.* 2007, p. 9). Blooms form a 20- to 50-km- (12–31 mi-) wide belt off the ice edge and progress north as the ice melts, creating a zone of high productivity. In colder years in the Bering Sea, when the ice extends to the shelf edge, there is greater nutrient resupply through shelf-edge eddies and tidal mixing, creating a longer spring bloom (Tynan and DeMaster 1997, pp. 314–315).

The blooms that occur near the ice edge make up approximately 50 to 65 percent of the total primary production in Arctic waters (Coyle and Pinchuk 2002, p. 188; Bluhm and Gradinger 2008, p. S84). High benthic abundance and biomass correspond to areas with high deposition of phytodetritus (dead algae) (Grebmeier *et al.* 1989, pp. 253–254; Grebmeier and McRoy 1989, p. 79; Tynan and DeMaster 1997, p. 315). Regions with the highest masses of benthic invertebrates occur in the northern Bering Sea southwest of St. Lawrence Island, Alaska; in the central Gulf of Anadyr, Russia, north and south of the Bering Strait; at a few offshore sites in the East Siberian Sea; and in the northeast sector of the Chukchi Sea (Grebmeier and Dunton 2000, p. 61; Dunton *et al.* 2005, pp. 3468, 3472; Carmack *et al.* 2006, p. 165; Grebmeier *et al.* 2006b, pp. 346–351; Aydin and Mueter 2007, pp. 2505–2506; Bluhm and Gradinger 2008, p. S86). As noted above, the biomass of benthic invertebrates is much less in the eastern Chukchi Sea, which is under the influence of the nutrient-poor Alaska Coastal Current (Dunton *et al.* 2006, p. 369).

When the ice melts early (before mid-March, as projected for the future), conditions that promote the phytoplankton bloom do not occur until late May or June (Stabeno *et al.* 2007, p. 2612). The difference in timing is important, because when the bloom

occurs later in the spring the surface water temperatures are 2.2 °C (3.6 °F) to more than 5 °C (9.4 °F) warmer (Hunt and Stabeno 2002, p. 11); this, in turn, is an important influence on the metabolism of zooplankton. In cold temperatures, zooplankton consume less than 2 percent of the phytoplankton production (Coyle and Cooney 1988, pp. 303–305; Coyle and Pinchuk 2002, p. 191). Warmer temperatures result in increased zooplankton growth rates, reduction in their time to maturity, and increased production rates (Coyle and Pinchuk 2002, p. 177; Hunt and Stabeno 2002, pp. 12–14). Zooplankton are efficient predators of phytoplankton, and when they are abundant, they can remove nearly all the phytoplankton available (Coyle and Pinchuk 2002, p. 191). Zooplankton are the primary food for walleye pollock (*Theragra chalcogramma*) and other planktivorous fishes (Hunt and Stabeno 2002, pp. 14–15). Consequently, when zooplankton populations are high, instead of the primary production being transmitted to the benthos, it becomes tied up in pelagic food webs. While this may be beneficial for fish-eating mammals, it reduces the amount of food delivered to the benthos and, thus, may reduce the amount of prey available to walrus (Tynan and DeMaster 1997, p.316; Carmack *et al.* 2006, p. 169; Grebmeier *et al.* 2006a, p. 1462). Most models project that sea-ice melt in the Bering Sea will occur increasingly early in the future, and will be 1 month earlier by the end of the century (Douglas 2010, p. 12). This is consistent with recent trends over the past two decades, and particularly in the past few years. Based on our current understanding of food web dynamics in the Bering Sea, this shift in timing would favor a shift to pelagic food webs over benthic production, consequently reducing the amount of prey available to walrus.

The importance of ice algae is not only in its role in seeding the spring phytoplankton bloom, but also in its nutritional value. As food supply to the benthos is highly seasonal, synchrony of reproduction with algal inputs insures adequate high-quality food for developing larvae or juveniles of benthic organisms (Renaud *et al.* 2007, p. 9). Ice algae have high concentrations of essential fatty acids, some of which cannot be synthesized by benthic invertebrates and, therefore, must be ingested in their diet (Arrigo and Thomas 2004, p. 477; Klein Breteler *et al.* 2005, pp. 125–126; McMahon *et al.* 2006, pp. 2, 5). Fatty acids in marine fauna play an integral role in physiological processes, including reproduction (Klein Breteler *et al.* 2005, p. 126). Because ice algae are a much better source of essential fatty acids than phytoplankton, a loss in sea ice could change the quality of food supplied to areas that currently support high levels of benthic biomass. These changes may affect the success of invertebrate reproduction and recruitment, which, in turn, may affect the quantity and quality of food available to walrus (Witbaard *et al.* 2003, p. 81; McMahon *et al.* 2006, pp. 10–12). By the end of the century, the March (winter maximum) extent of sea ice is projected to be approximately half of contemporary conditions (Douglas 2010, p. 8). We expect ice algae will persist where ice is present; however, because of the reduced ice extent, current areas of high benthic productivity may be reduced or shift northward.

The eastern and western Bering Sea shelves are fueled by nutrient-rich water supplied from the deep water of the Bering Sea (Sambrotto *et al.* 1984, pp. 1148–1149; Springer *et al.* 1996, p. 205). Concentrations of nitrate, phosphate, and silicate are among the highest recorded in the world's oceans and contribute to the high benthic productivity (Sambrotto *et al.* 1984, p. 1148; Grebmeier *et al.* 2006a, p. 1461; Aydin and Mueter 2007, p. 2504). High productivity on the northern Bering-Chukchi shelf is supported by the delivery of nutrient-rich water via the Anadyr Current that flows along the western edge of the Bering Sea and through the Bering Strait (Springer *et al.* 1996, p. 206; Aydin and Mueter 2007, p. 2504). Thus, the movement of highly productive water onto the northern Bering Sea shelf supports persistent hot spots of high benthic productivity, which in turn support large populations of benthic-feeding birds, walrus, and gray whales (Aydin and Mueter 2007, p. 2506). This contrasts with the southern subarctic region of the Bering Sea, which is south of the current range of the Pacific walrus, where the benthic mass is largely consumed by upper tropic-level demersal fish and epifaunal invertebrates whose northern distribution is limited by a pool of cold, near-freezing water in the northern region of the Bering Sea.

Benthic productivity on the northern Bering Sea shelf has decreased over the last two decades, coincident with a reduction of northward flow of the Anadyr current through the Bering Strait (Grebmeier *et al.* 2006a, p. 1462). Because of recent warming trends, the northern Bering Sea shelf may be undergoing a transition from an Arctic to a more subarctic ecosystem with a reduction in benthic prey populations and an increase in fish populations (Overland and Stabeno 2004, p. 310; Grebmeier *et al.* 2006a, pp. 1462–1463). The Bering Sea is a transition area between Arctic and subarctic ecosystems, with the boundary between the two loosely concurrent with the extent of the winter sea-ice cover (Overland and Stabeno 2004, p. 309). In the eastern Bering Sea, reductions in sea ice have been responsible for shrinking a large subsurface pool of cold water with water temperatures less than 2 °C (3.6 °F) (Stabeno *et al.* 2007, p. 2605; Mueter and Litzow 2008, p. 313). The southern edge of the cold pool, which defines the boundary region between the Arctic and subarctic communities, has retreated approximately 230 km (143 mi) north since the early 1980s (Mueter and Litzow 2008, p. 316).

The northward expansion of warmer water has resulted in an increase in pelagic species as subarctic fauna have colonized newly favorable habitats (Overland and Stabeno 2004, p. 309; Mueter and Litzow 2008, pp. 316–317). Walleye pollock, a species common in the subarctic, which avoid temperatures less than 2° C (3.6 °F), have now moved northward into the former Arctic zone. Arctic cod (*Boreogadus saida*), which prefer cold temperatures, have also moved north to remain in colder temperatures (Stabeno *et al.* 2007, p. 2605). Because of the redistribution of these species, benthic fauna will be facing a new set of predators (Coyle *et al.* 2007, pp. 2901–2902). The evidence suggests that warming on the Bering Sea shelf could alter patterns of energy flow and food web relationships in the benthic invertebrate community, leading to overall reductions in biomass of benthic invertebrates (Coyle *et al.* 2007, p. 2902).

Continued changes in the extent, thickness, and timing of the melt of sea ice are expected to create shifts in production and species distributions (Overland and Stabeno 2004, p. 316). Because some residents of the benthos are very long lived, it may take many years of monitoring to observe change (Coyle *et al.* 2007, p. 2902). Many simultaneous changes (*e.g.,* ocean currents, temperature, sea-ice extent, and wind patterns) are occurring in walrus-occupied habitats, and thus may impact walrus' prey base. Rapid warming might cause a major restructuring of regional ecosystems (Carmack and Wassmann 2006, p. 474; Mackenzie and Schiedek 2007, p. 1344). Mobile species such as fishes have the ability to move to areas of thermal preference and follow key forage species (Mueter *et al.* 2009, p. 106); immobile

species such as bivalves must cope with the conditions where they are.

Projections by Douglas (2010, pp. 7, 23) indicate that the March (yearly maximum) sea-ice extent in the Bering Sea will be about 25 percent less than the 1979–1988 average by mid-century, and 60 percent less by the end of the century. In addition, spring melt of sea ice will occur increasingly earlier, and on average will be one month sooner by the end of the century (Douglas 2010, p. 8). As described above, the earlier spring melt may lead to a change in the food web dynamics that favors pelagic predators, which feed on zooplankton, over the delivery of high quantities of quality food to benthic invertebrates. In addition, reductions in the extent of the winter sea-ice cover may lead to a further or more permanent expansion of the subarctic ecosystem northward into the Arctic. Although there is uncertainty about the specific consequences of these changes, the best available scientific information suggests that because of the likely decreases in the quantity and quality of food delivered to benthic invertebrates, and because of a potential increase in predators from the south, the amount and distribution of preferred prey (bivalves) available to walrus in the Bering Sea will likely decrease in the foreseeable future as a result of the loss of sea ice and ocean warming. The extent to which this decrease may result in a curtailment of the range of the Pacific walrus or limit the walrus population in the future is unknown, and at this time we do not have sufficient information to predict it with reliability. The implications of the available information, however, are that impacts may include modification of habitat that could contribute to a reduction in the range of the Pacific walrus at the southern edge of its current distribution, as well as a possible reduction in the walrus population because of reduced prey. Although our conclusion is based on the best available science, we recognize that its validity rests on ecological hypotheses that are currently being tested.

Ocean Acidification

Since the beginning of the industrial revolution in the mid-18th century, the release of carbon dioxide (CO_2) from human activities ("anthropogenic CO_2") has resulted in an increase in atmospheric CO_2 concentrations, from approximately 280 to approximately 390 ppm currently, with 30 percent of the increase occurring in the last three decades (NOAA, *http://www.climatewatch.noaa.gov/2009/articlesclimate-change-atmospheric-carbon-dioxide,* downloaded 20 July 2010).

The global atmospheric concentration of CO_2 is now higher than experienced for more than 800,000 years (Lüthi *et al.* 2008, p. 379; Scripps 2011, p. 4). Over the industrial era, the ocean has been a sink for anthropogenic carbon emissions, absorbing about one-third of the atmospheric CO_2 (Feely *et al.* 2004, p. 362; Canadell *et al.* 2007, pp. 18867–18868). When CO_2 is absorbed by seawater, chemical reactions occur that reduce seawater pH (a measure of acidity) and the concentration of carbonate ions, in a process known as "ocean acidification."

Ocean acidification is a consequence of rising atmospheric CO_2 levels (The Royal Society 2005, p.1; Doney *et al.* 2008, p. 170). Seawater carbonate chemistry is governed by a series of chemical reactions (CO_2 dissolution, acid/base chemistry, and calcium carbonate dissolution) and biologically mediated reactions (photosynthesis, respiration, and calcium carbonate precipitation) (Wootton *et al.* 2008, p. 18848; Bates and Mathis 2009, p. 2450). The marine carbonate reactions allow the ocean to absorb CO_2 in excess of potential uptake based on carbon dioxide solubility alone (Denman *et al.* 2007, p. 529). Consequently, the pH of ocean surface waters has already decreased (become more acid) by about 0.1 units since the beginning of the industrial revolution (Caldeira and Wickett, 2003, p. 365; Orr *et al.* 2005, p. 681).

The absorption of carbon dioxide by seawater changes the chemical equilibrium of the inorganic carbon system and reduces the concentration of carbonate ions. Carbonate ions are required by organisms like clams, snails, crabs, and corals to produce calcium carbonate, the primary component of their shells and skeletons. Decreasing concentrations of carbonate ions may place these species at risk (Green *et al.* 2004, p. 729–730; Orr *et al.* 2005, p. 685; Gazeau *et al.* 2006 p. 1; Fabry *et al.* 2008, p. 419–420; Comeau *et al.* 2009, p. 1877; Ellis *et al.* 2009, p. 41). Two forms of calcium carbonate produced by marine organisms are aragonite and calcite. Aragonite, which is 50 percent more soluble in seawater than calcite, is of greatest importance in the Arctic region because clams, mussels, snails, crustaceans, and some zooplankton use aragonite in their shells and skeletons (Fritz 2001, p. 53; Fabry *et al.* 2008, p. 417; Steinacher *et al.* 2009, p. 515).

When seawater is saturated with aragonite or calcite, the formation of shells and skeletons is favored; when undersaturated, the seawater becomes corrosive to these structures and it becomes physiologically more difficult for organisms to construct them (Orr *et al.* 2005, p. 685; Gazeau *et al.* 2007, p. 2–5; Fabry *et al.* 2008, p. 415; Talmage and Gobler 2009, p. 2076; Findlay *et al.* 2010, pp. 680–681). The waters of the Arctic Ocean and adjacent seas are among the most vulnerable to ocean acidification, with undersaturation of aragonite projected to occur locally within a decade (Orr *et al.* 2005, p. 683; Chierici and Fransson 2009, pp. 4972–4973; Steinacher *et al.* 2009, p. 522). To date, aragonite saturation has decreased in the top 50 m (164 ft) in the Canadian Basin (Yamamoto-Kawai *et al.* 2009, p. 1099), and under-saturated waters have been documented on the Mackenzie shelf (Chierici and Fransson 2009, p. 4974), Chukchi Sea (Bates and Mathis 2009, p. 2441), and Bering Sea (Fabry *et al.* 2009, p. 164).

Factors that contribute to undersaturation of seawater with aragonite or calcite are: upwelling of carbon dioxide-rich subsurface waters; increased carbon dioxide concentrations from anthropogenic CO_2 uptake; cold water temperatures; and fresher, less saline water (Feely *et al.* 2008, p. 1491; Chierici and Fransson 2009, p. 4966; Yamamoto-Kawai *et al.* 2009, p. 1099). The loss of sea ice (causing greater ocean surface to be exposed to the atmosphere), the retreat of the ice edge past the continental shelf break that favors upwelling, increased river runoff, and increased sea ice and glacial melt are forces that favor undersaturation (Yamamoto-Kawai *et al.* 2009, pp. 1099–1100; Bates and Mathis 2009, pp. 2446, 2449–2450). The projected increase of 3 to 5 months of ice-free conditions in the Bering and Chukchi Seas by Douglas (2010, p. 7) indicates the potential for increased CO_2 absorption in the Arctic over the next century beyond what would occur from predicted CO_2 increases alone. However, there are opposing forces that may mitigate undersaturation to some extent, including photosynthesis by phytoplankton that may increase with reduced sea ice, and warmer ocean temperatures (Bates and Mathis 2009, p. 2451). However, according to Steinacher *et al.* (2009, p. 530), the question is not whether undersaturation will occur in the Arctic, but how large an area will be affected, how many months of the year it will occur, and how large its magnitude.

Because acid-base balance is critical for all organisms, changes in carbon dioxide concentrations and pH can affect reproduction, larval development, growth, behavior, and survival of all marine organisms (Green *et al.* 1998, p.

23; Kurihara and Shirayama 2004, pp. 163–165; Berge *et al.* 2006, p. 685; Fabry *et al.* 2008, pp. 420–422; Kurihara 2008, pp. 277–282; Pörtner 2008, pp. 209–211; Ellis *et al.* 2009, pp. 44–45; Talmage and Gobler 2009, p. 2076; Findlay *et al.* 2010, pp. 680–681). Pörtner (2008, p. 211) suggests that heavily calcified marine groups may be among those with the poorest capacity to regulate acid-base status. Although some animals have been shown to be able to form a shell in undersaturated conditions, it comes at an energetic cost which may translate to reduced growth rate (Talmage and Gobler 2009, p. 2075; Findlay *et al.* 2010, p. 679; Gazeau *et al.* 2010, p. 2938), muscle wastage (Pörtner 2008, p. 210), or potentially reduced reproductive output. Because juvenile bivalves have high mortality rates, if aragonite undersaturation inhibits planktonic larval bivalves from constructing shells (Kurihara 2008, p. 277) or inhibits them from settling (Hunt and Scheibling 1997, pp. 274, 278; Green *et al.* 1998, p. 26; Green *et al.* 2004, p. 730; Kurihara 2008, p. 278), the increased mortality would likely have a negative effect on bivalve populations.

The effects of ocean acidification on walrus may be through changes in their prey base, or indirectly through changes in the food chain upon which their prey depend. Walruses forage in large part on calcifying invertebrates (Ray *et al.* 2006, pp. 407–409; Sheffield and Grebmeier 2009, pp. 767–768; also see discussion of diet, above). Aragonite undersaturation has been documented in the area occupied by Pacific walrus (Bates and Mathis 2009, p. 2441; Fabry *et al.* 2009, p. 164), and it is projected to become widespread in the future (Steinacher 2009, p. 530; Frölicher and Joos 2010, pp. 13–14). Thus, it is possible that mollusks and other calcifying organisms may be negatively affected through a variety of mechanisms, described above. While the effects of observed ocean acidification on the marine organisms are not yet documented, the progressive acidification of oceans is expected to have negative impacts on marine shell-forming organisms in the future (The Royal Society 2005, p. 21; Denman *et al.* 2007, p. 533; Doney *et al.* 2009, p. 176; Kroeker *et al.* 2010, p. 9).

Uncertainty regarding the general effects of ocean acidification has been summarized by the Royal Society (2005, p. 23): "Organisms will continue to live in the oceans wherever nutrients and light are available, even under conditions arising from ocean acidification. However, from the data available, it is not known if organisms at the various levels in the food web will be able to adapt or if one species will replace another. It is also not possible to predict what impacts this will have on the community structure and ultimately if it will affect the services that the ecosystems provide." Consequently, although we recognize that effects to calcifying organisms, which are important prey items for Pacific walrus, will likely occur in the foreseeable future from ocean acidification, we do not know which species may be able to adapt and thrive, or the ability of the walrus to depend on alternative prey items. As noted in the introduction, the prey base of walrus includes over 100 taxa of benthic invertebrates from all major phyla (Sheffield and Grebmeier 2009, pp. 761–777). Although walruses are highly adapted for obtaining bivalves, they also have the potential to switch to other prey items if bivalves and other calcifying invertebrate populations decline. Whether other prey items would fulfill walrus nutritional needs over their life span is unknown (Sheffield and Grebmeier 2009, p. 770), and there also is uncertainty about the extent to which other suitable non-bivalve prey might be available, due to uncertainty about the effects of ocean acidification and the effects of ocean warming.

Both Bayesian network models (Garlich-Miller *et al.* 2010; Jay *et al.* 2010b) indicate that ocean warming and ocean acidification are likely to have little effect on Pacific walrus future status, but these conclusions were primarily because of the high degree of uncertainty associated with these factors. As described above, our analysis indicates that earlier melting of ice in the spring, a decreased extent of ice in winter and spring, and warming of the ocean may lead to changes in the distribution, quality, and quantity of food available to Pacific walrus over time. In addition, in the future, ocean acidification has the potential to have a negative impact on calcifying organisms, which currently represent a large portion of the walrus' diet. The best available science does not indicate that either of these factors will have a positive impact on the availability, quality, or quantity of food available to the walrus in the future. However, we are also unable to predict to what extent these factors may limit the Pacific walrus population in the future, in terms of reduction in its range or abundance, or the extent to which the walrus may be able to adapt to a changing prey base. Therefore, we conclude that ocean warming and ocean acidification are not threats to the Pacific walrus now or in the foreseeable future, although we acknowledge that the general indications are that impacts appear more likely to be negative than positive or neutral.

Summary of Factor A

We have analyzed the effects of the loss of sea ice, ocean warming, and ocean acidification as related to the present or threatened destruction, modification, or curtailment of the habitat or range of the Pacific walrus. Although we are concerned about the changes to walrus prey that may occur from ocean acidification and warming, and theoretically we understand how those stressors might operate, ocean dynamics are very complex and the changing conditions and related outcomes for these stressors are too uncertain at this time for us to conclude that these stressors are a threat to Pacific walrus now or in the foreseeable future.

Because of the loss of sea ice, Pacific walruses will be forced to rely on terrestrial haulouts to a greater and greater extent over time. Although coastal haulouts have been traditionally used by males, in the future both sexes and all ages will be restricted to coastal habitats for a much greater period of time. This will expose all individuals, but especially calves and females to increased stress, energy expenditure, and death or injury from disturbance-caused stampedes from terrestrial haulouts. Calf abandonment, and increased energy expenditure for females and calves is likely to occur from prey depletion near terrestrial haulouts. Increased energy expenditure could lead to decreased condition and decreased survival. In addition, there may be a small increase in direct mortality or injury of calves and females due to increased predation or hunting as a result of greater use of terrestrial haulouts. Although some of these stressors are acting on the population currently, we anticipate that their magnitude will increase over time as sea-ice loss over the continental shelf occurs more frequently and more extensively. Due to the projected increases in sea-ice habitat loss and the resultant stressors associated with increased dependence on coastal haulouts, as described above, we do not anticipate the projected Pacific walrus population decline to stabilize in the foreseeable future. Rather, the best scientific information available leads to a conclusion that the Pacific walrus will be increasingly at risk. Through our analysis, we have concluded that loss of sea ice, with its concomitant changes to walrus distribution and life-history

patterns, will lead to a population decline. Therefore, we conclude, based on the best scientific and commercial data available, that the present or threatened destruction, modification, or curtailment of its habitat or range is a threat to Pacific walrus.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The following potential factors that may result in overutilization of Pacific walrus are considered in this section: (1) Recreation, scientific, or educational purposes; (2) U.S. import/export; (3) commercial harvest; and (4) subsistence harvest. Under Factor A, we also discuss the potential increase in subsistence hunting associated with increasing dependence of Pacific walrus on coastal haulouts caused by the loss of sea-ice habitat.

Recreation, Scientific, or Educational Purposes

Overutilization for recreational, scientific, or educational purposes is currently not considered a threat to the Pacific walrus population. Recreational (sport) hunting has been prohibited in the United States since 1979. Russian legislation also prohibits sport hunting of Pacific walruses. The Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.)* (MMPA), allows the Service to issue a permit authorizing the take of walrus for scientific purposes in the United States, provided that the research will further a bona fide and necessary or desirable scientific purpose. The Service must consider the benefits to be derived from the research and the effects of the taking on the stock, and must consult with the public, experts in the field, and the United States Marine Mammal Commission.

Similarly, any take for an educational purpose is allowed by the MMPA only after rigorous review and with appropriate justification. No permits authorizing the take of walrus for educational and public display purposes have been requested in the United States since the 1990s. The Service has worked with the public display community to place stranded animals, which the Service has determined cannot be returned to the wild, at facilities for educational and public display purposes. By placing stranded walruses, which would otherwise be euthanized, at facilities that are able to care for and display the animals, we believe needs for the domestic public display community in the United States have been, and will continue to be, met. The Russian Federation intermittently authorizes the taking of walrus from the wild for scientific and educational purposes. For example, in 2009, a collection permit was issued for take of up to 40 walrus calves from the wild to be used for public display. This take was included in the subsistence harvest quota, and is therefore considered sustainable. We have no information that would lead us to believe this level of take from the wild will increase in the foreseeable future.

Based on the above, we conclude that utilization of walrus for recreational, scientific, or educational purposes is not a threat to the Pacific walrus population. Protections and regulatory mechanisms in both the United States and the Russian Federation have stopped recreational hunting. In the United States, the MMPA has effectively ensured that any removal for scientific or educational purposes has a bona fide and necessary or desirable scientific basis. In the Russian Federation, take for scientific or educational purposes is controlled by a quota. We believe the United States and the Russian Federation will continue to ensure that any future removal of walrus for recreational, scientific, or educational purposes will be consistent with the long-term conservation of the species. Therefore, we have determined, based on the best scientific and commercial data available, that the utilization of Pacific walrus for recreational, scientific, or educational purposes is not a threat to the species now or in the foreseeable future.

United States Import/Export

Based on data from the Service's Law Enforcement Management Information System (LEMIS), in 2008 more than 16,000 walrus parts, products, and derivatives (ivory jewelry, carvings, bone carvings, ivory pieces, and tusks) were imported into or exported from the United States. Over 98 percent of those specimens were from walrus that had originated in the United States. Most of these specimens were identified as fossilized bone and ivory shards, principally dug from historic middens on St. Lawrence Island, or carvings from such. Therefore, the harvest of the source animals predates adoption of the MMPA in 1972, and does not represent a threat to the species.

Since the passage of the MMPA in 1972, ivory and bone can only be exported from the United States after it has been legally harvested, and substantially altered to qualify as an Alaska Native handicraft and as a personal effect or as part of a cultural exchange. Trade in raw post-MMPA walrus ivory is closely monitored by the Service through existing import/export regulations (Garlich-Miller *et al.* 2011, Section 3.5.1 "International Agreements").

Most of the walrus parts imported into or exported from the United States are derived from historic ivory and bone shards, and parts from newly harvested walrus are subject to the MMPA requirements that limit U.S. trade to Alaska Native handicrafts. Therefore, we have determined, based on the best scientific and commercial data available, that United States Import/Export is not considered to be a threat to the Pacific walrus now or in the foreseeable future.

Commercial Harvest

Commercial harvest of the Pacific walrus is prohibited in the U.S., and has not occurred in Russia since 1991 (see discussion below). Pacific walrus ivory and meat was available on the commercial market starting in the seventeenth century (Fay 1957, p. 435; Elliot 1982, p. 98). Since then, commercial harvest levels have varied in response to population size and economic demand. Several of the larger reductions in the Pacific walrus population have been attributed to unsustainable harvest levels, largely driven by commercial hunting (Fay 1957, p. 437; Bockstoce and Botkin 1982, p. 183). Harvest regulations enacted in the United States and Russia in the 1950s and 1960s that reduced the size of the harvest and provided protection to females and calves allowed the population to recover and peak in the 1980s (Fay *et al.* 1989, p. 1).

Commercial harvest of marine mammals in U.S. waters is currently prohibited by the MMPA. Commercial harvest was last conducted in Russia in 1991 (Garlich-Miller and Pungowiyi 1999, p. 59). Russian legislation still allows for a commercial harvest, although a decree from the Russian Fisheries Ministry allocating a commercial harvest quota would be required prior to resumption of harvest (Kochnev 2010, pers. comm.). Quota recommendations are determined by sustainable removal levels, which are based on the total population and productivity estimates (Garlich-Miller and Pungowiyi 1999 p. 32). Therefore, any potential future commercial harvest in Russia is unlikely to become a threat to the population.

Commercial hunting of Pacific walrus is banned in the United States. Regulatory protections in the Russian Federation have been effective in ensuring that any removal for commercial purposes is consistent with

long-term conservation of the species. Therefore, we have determined, based on the best scientific and commercial data available, that commercial harvest is not a threat to Pacific walrus either now or in the foreseeable future.

Subsistence

Pacific walrus have been an important subsistence resource for coastal Alaskan and Russian Natives for thousands of years (Ray 1975, p. 10). In 1960, the State of Alaska restricted the subsistence harvest of female walrus to seven per hunter per year in an effort to recover the population from a reduced state. Concurrently, Russia also implemented harvest quotas and prohibited shooting animals in the water (to reduce lost animals) (Fay *et al.* 1989, p. 4). In 1961, the State of Alaska further reduced the quota to five females per hunter per year, still allowing an unlimited number of males to be hunted. The limit of five adult females per hunter remained in effect until 1972, when passage of the Marine Mammal Protection Act transferred management responsibility to Federal control (Fay *et al.* 1997, p. 548). As a result of reducing the numbers of females harvested, the population increased substantially through the 1960s and 1970s, and by 1980 was probably approaching the carrying capacity of the habitat (Fay *et al.* 1989, p. 4).

Total harvest removals (combined commercial and subsistence harvests in the United States and Russia), including estimates of animals struck and lost, for the 1960s and 1970s averaged 5,331 and 5,747 walrus per year. Between the years of 1976 and 1979, the State of Alaska managed the walrus population under a federally imposed subsistence harvest quota of 3,000 walrus per year. Relinquishment of management authority by Alaska to the Service in 1979 lifted this harvest quota (the MMPA conditionally exempts Alaska Natives from the take prohibitions; i.e., subsistence harvest must not be conducted in a wasteful manner), which may have also contributed to the increased harvest rates in subsequent years (USFWS 1994, p. 2). Specifically, the 1980s saw an increase in harvest, with a total removal estimate averaging 10,970 walrus per year (Service, unpublished data). The increased harvest rates in this decade may reflect several factors, including the absence of a harvest quota (USFWS 1994, p. 2), commercial harvest in Russia, and increased availability of walruses to subsistence hunters coinciding with the population reaching carrying capacity (Fay and Kelly 1989, p. 1; Fay *et al.* 1997, p. 558). The increase in harvest in the 1980s was accompanied by an increase in the proportion of females harvested, and may have caused a population decline (Fay *et al.* 1997, p. 549). Harvest levels in the 1990s were about half those of the previous decade, averaging 5,787 walrus per year. The 2000–2008 average annual removal, which was 5,285 walrus per year, was about 9 percent lower than the removal in the 1990s (Service, unpublished data). In the United States for the years 2004–2008, the communities of Gambell and Savoonga on St. Lawrence Island, Alaska, have accounted for 84 percent of the reported U.S. harvest and 43 percent of the harvest rangewide (Garlich-Miller, *et al.* 2011, Section 3.3.1.4 "Regional Harvest Patterns"). The St. Lawrence Island average reported harvest, not corrected for animals that are struck and lost or hunter noncompliance with the Marking Tagging and Reporting Program, (the struck and lost correction and the MTRP are discussed below) for 2004–2008 is 988 animals (Service, unpublished data).

The lack of information on population status or trends makes it difficult to quantify sustainable removal levels for the Pacific walrus population (Garlich-Miller *et al.* 2011, Section 3.3.1.5 "Harvests Sustainability"). Recent (2003–2007) annual harvest removals in the United States and Russia have ranged from 4,960 to 5,457 walrus per year, representing approximately 4 percent of the minimum population estimate of 129,000 animals (FWS 2010, p. 2). These levels are lower than those experienced in the early 1980s (8,000–10,000 per year) that led to a population decline (Fay *et al.* 1989 pp. 3–4). Chivers *et al.* (1999, p. 239) modeled walrus population dynamics and estimated the maximum net productivity rate (*Rmax*) for the Pacific walrus population at 8 percent per year. Wade (1998, p. 21) notes that one half of *Rmax* (4 percent for Pacific walruses) is a reasonably conservative (i.e., sustainable) potential biological removal (PBR) level for marine mammal populations below carrying capacity, because it provides a reserve for population growth or recovery. The PBR level, as defined under the MMPA, is the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. Changes in productivity rates or population size could eventually result in unsustainable harvest levels if harvest rates do not adjust in concert with changes in population status or trend.

There are no Statewide harvest quotas in Alaska; however, some local harvest management programs have been developed. Round Island, within the Walrus Island State Game Sanctuary, was a traditional hunting area of several Bristol Bay communities prior to the development of the game sanctuary. Access to Round Island is controlled by the State of Alaska via a permit system. To continue the traditional hunt, the local communities proposed a cooperative agreement, which resulted in a quota of 20 walrus and a 40-day hunting season in the fall (Chythlook and Fall 1998, p. 5). The management agreement was negotiated by the Service, Bristol Bay Native Association/Qayassiq Walrus Commission, the Eskimo Walrus Commission, and Alaska Department of Fish and Game (ADFG), and sanctioned in a signed memorandum of understanding. The State of Alaska issues hunting access permits only during the open season. If the quota is reached, additional hunting access could be denied and existing permits could be revoked. Recent harvests at Round Island have ranged from zero to two walruses per year. No walrus were harvested on Round Island in 2009 or 2010. Bristol Bay hunters also hunt elsewhere in the area without restriction, and may be shifting hunting efforts to islands outside the State game sanctuary as the monetary cost of traveling to Round Island is often prohibitive.

With an interest in reviving traditional law, advancing the idea of self-regulation of the subsistence harvest, and initiating a local management infrastructure due to concern about changing sea-ice dynamics and the walrus population, the Native Villages of Gambell and Savoonga on St. Lawrence Island have recently formed Marine Mammal Advisory Committees (MMAC), and implemented local ordinances establishing a limit of four walruses per hunting trip. Walruses that are struck and lost (wounded and not retrieved), as well as calves, do not count against this limit. In addition, there is no limit on the number of trips, so the effectiveness of this ordinance in limiting total harvest is dependent on the total number of hunting trips. Factors such as subsistence needs, social mores, distance of walrus from the village, weather, success of previous trips, needs of immediate and extended family members, and monetary cost of making a trip all play a part in the number of trips a hunting party makes. The spring hunting season of 2010 was

the first to have the trip-limit ordinances in place. We estimate that 91 percent of the hunting trips were in compliance with the ordinance by taking no more than four adult/subadult walrus per trip (Service, unpublished data).

Subsistence harvest reporting in the United States is required under section 109(i) of the MMPA, and is administered through a Marking, Tagging, and Reporting Program (MTRP) codified at 50 CFR 18.23(f). The MTRP requires Alaska Native hunters to report the harvest of walrus and present the ivory for tagging within 30 days of harvest. The Service also administers the Walrus Harvest Monitor Project (WHMP), which is an observer-based data-collection program conducted in the communities of Gambell and Savoonga during the spring harvest. This program is designed to collect harvest data and biological samples. Not all harvest in the United States is reported through the MTRP (regulatory program). The Service uses the WHMP (observer-based) harvest data to supplement MTRP data to develop a correction factor for noncompliance to estimate the number of walrus harvested, but not reported through the MTRP. The MTRP-reported harvest data (Statewide) is corrected for noncompliance (unreported harvest), and that total is then corrected to account for animals struck and lost (estimated at 42 percent of the walrus that are shot). Current accuracy of the struck and lost estimate is unknown and should be re-estimated (USFWS 2010, p. 4). Compliance rates with the MTRP vary considerably from year to year, with estimates ranging from a low of 60 percent to a high of 100 percent.

Subsistence harvest in Chukotka, Russia, is controlled through a quota system. An annual subsistence quota is issued through a decree by the Russian Federal Fisheries Agency. Quota recommendations are based on sustainable removal levels (approximately 4 percent of the population based on population and productivity estimates) (Garlich-Miller and Pungowiyi 1999 p. 32). Because the population is shared with the United States, Russian quota recommendations have generally been 2 percent or less of the estimated total population (Garlich-Miller and Pungowiyi 1999, p. 32; Kochnev 2010, pers. comm.). Russian harvest quotas are set annually and recent quota reductions in Russia of approximately 57 percent from 2003–2010 have been in response to a presumed population decline based in part on observed haulout mortalities from trampling and results from various population surveys. According to Kochnev (2004, p. 286), all the Pacific walrus haulouts of the Arctic coast of Chukotka, Russia, are characterized by a high disturbance level. The majority of these haulouts in Chukotka are near coastal villages, and used by local subsistence hunters (Kochnev 2004, p. 286).

The harvest reporting program in Russia is administered by the Russian Agricultural Department. The harvest in Russia has been traditionally conducted by hunting teams from each village. Team leaders are required to submit two harvest reports per month. However, walrus hunting by individual hunters (those not part of a harvest team) has increased since the inception of the Russian Federation, and there is no official mechanism for individuals to report their harvest; as a result, Russian harvest estimates are biased low to an unknown degree (Kochnev 2010, pers. comm.). In addition, the Russians do not adjust their harvest estimates for animals that are struck and lost. The Service assumes that the Russian struck and lost rate is comparable to the U.S. rate, and applies the struck and lost correction factor of 42 percent to the Russian harvest data when estimating total subsistence harvest levels. This correction provides a more accurate estimate of the number of animals removed from the population due to harvest.

Subsistence removals of walrus in the United States are closely tied to social and traditional customs, subsistence needs, sea-ice dynamics, weather, and monetary costs related to hunting. We predict that the range-wide walrus population will be smaller in the future, due to changes in summer sea-ice cover and associated impacts; thus, fewer walrus overall will be available for harvest. However, in the Bering Strait region, winter and spring sea ice is expected to persist through mid-century; walrus will likely continue to be locally abundant in numbers that would enable harvest to continue at levels similar to current ones, over time. Because these animals would be available to local subsistence hunters around St. Lawrence Island and other Bering Strait villages, the Pacific walrus would remain an important subsistence resource. Subsistence harvest of walrus is extremely important to several Alaska Native cultures. The primary factor influencing the number of walrus harvested each year will be the general availability of walruses in the Bering Strait region.

Given current and projected sea-ice conditions, and without additional Tribal, State or Federal hunting regulations to limit or restructure the harvest, we do not expect harvest pressure in the Bering Strait region to change appreciably in the foreseeable future (Garlich-Miller *et al.* 2011, Section 3.3.1.4.1 "Climate Change"). The St. Lawrence Island Tribal Governments and subsistence hunters have recently taken steps to modify their harvest patterns through the formation of Marine Mammal Advisory Committees, and the adoption of local ordinances limiting the number of walrus harvested per hunting trip by Tribal members. These are substantial efforts on the part of the Tribes and subsistence hunters, and the Service looks forward to continuing to work through the co-management structure (which allows for cooperative efforts between the Service, Alaska Natives, and State agencies; MMPA sec. 119(b)(4)) to ensure that the harvest of the Pacific walrus remains sustainable for future generations. However, the current measures to regulate the subsistence harvest do not limit the harvest of females or provide limits on the total number of walruses harvested and, therefore, are not wholly sufficient to ensure that harvest in the Bering Strait region will be sustainable long term. The tribal ordinances are structured in such a way that the Marine Mammal Advisory Committees could enact additional regulations in the future to address efficiency (reduce the number of animals that are struck and lost), restructure the sex ratio of the harvest, or impose quotas upon their Tribal members, or enact other measures to manage the harvest.

In the Bristol Bay and the Yukon-Kuskokwim regions of Alaska, levels of subsistence harvest of walrus may decline slightly, in light of declines in southern Bering Sea ice in the winter (subsistence hunters search for walrus that are resting on ice floes) and a recent trend of fewer male walrus remaining in Bristol Bay during the summer. However, harvest in these regions is already so low—averaging 5 and 18 walrus reported as harvested per year, respectively, for 2004 through 2008 (Service, unpublished data)—that it likely does not have an appreciable effect on the population. Future harvest patterns and levels are not anticipated to change significantly in either region (Garlich-Miller *et al.* 2011, Section 3.3.1.4.1 "Climate Change").

In the North Slope region of Alaska, reported subsistence harvest averaged 48 walrus per year from 2004–2008. As summer sea ice in the Chukchi Sea recedes out over deep arctic basin waters, it is anticipated that coastal haulouts will form along the Chukchi coast into the foreseeable future. Large

concentrations of walrus on shore for longer periods of time could afford opportunity for additional harvest. The potential for hunting activity to create a stampede resulting in injuries or mortalities, or to displace animals from preferred forage areas (Kochnev 2004, p. 285) is of greater concern than the direct mortalities associated with harvest. Although the potential for increased harvest exists, we do not expect the harvest to increase based on the fact that these communities' subsistence focus is on bowhead and beluga whales, due to a strong cultural connection and tradition as a whaling culture. North Slope coastal communities also have access to a wider array of resources than island communities and rely much more heavily on other marine mammals, seabirds, fish and terrestrial mammals to meet their subsistence needs (MMS 2007, p. IV–186). Due to the presence of the oil industry, North Slope communities also have a stronger economic base than the Bering Strait communities, and therefore do not rely as heavily on ivory carving as a source of cash in the local economy.

As stated above, barring additional Tribal or Federal regulations governing harvest, we predict that subsistence harvest is likely to continue at or near current levels, even as the walrus population declines in response to loss of summer sea ice. This is because walrus are expected to continue to remain locally abundant and available for subsistence harvest in the Bering Strait region in the winter and spring. Over time, depending on how quickly the population declines, future harvest levels will need to be reduced as population size declines, or subsistence harvest will become unsustainable. Therefore, we have determined that if subsistence harvest continues at current levels, as expected, it represents a threat to the walrus population in the foreseeable future. Although it is difficult to quantify sustainable removal levels because of the lack of information on Pacific walrus population status and trends, we have determined that the current harvest of approximately 4 percent is at a sustainable level based on a minimum population estimate of 129,000. Therefore, we do not consider the current level of subsistence harvest to be a threat to Pacific walrus at the present time. Our identification of subsistence harvest as a threat to the species in the foreseeable future is tied to expected population declines related to threats associated with reduced summer sea ice, and is based on the best scientific and commercial data available, including scientific projections to the end of the 21st century.

Although we have suggested that overall harvest must adjust with population size, there are strategies other than a numerical quota that could be utilized in an effort to assure sustainability over the long term. The co-management structure and the St. Lawrence Island Tribal ordinances provide an effective means to address improvements in hunting efficiency, and modification of the sex structure of the harvest. Improving hunting efficiency by reducing the number of animals which are struck and lost could potentially reduce the total number of walrus removed from the population due to subsistence harvest. Adult breeding-age females are the most important cohort of the population. An overall reduction in the number of females removed annually while still allowing an unlimited number of males to be harvested has had a positive effect on a declining population in the past and could be an effective means of managing harvests for sustainability into the future.

Our conclusion that subsistence harvest is a threat in the foreseeable future is supported by the BN models prepared by the Service and USGS. The sensitivity analyses of both models identified subsistence harvest as one of the major drivers of model predictions. The two models involved different assumptions relative to subsistence harvest levels. In the Service model, we assumed, for the reasons described above, that subsistence harvest levels would remain relatively constant over time, even as the walrus population declined in response to reduced sea-ice conditions. In the USGS model, Jay *et al.* (2010b, p. 15) assumed that future harvest rates would be proportional to walrus population size. However, these authors acknowledge that if in the future, the walrus population declines, but harvest continues at the current level, the population-level stress caused by the harvest would effectively increase (Jay *et al.* 2010b, p. 16), thereby amplifying the impact of subsistence harvest on the population. In the Service model, maintaining the harvest at replacement levels (sustainable) reduced the probabilities of negative effects by about 19 percent compared to a higher harvest (Garlich-Miller *et al.* 2011, Table 8). Results from the USGS model suggest that although minimizing harvest from current levels may have little positive effect on population outcomes in the future, harvests of high (greater than 4 percent of the population) and very high levels (greater than 6 percent) could add significantly to the adverse effects of future sea-ice conditions on population outcomes through the end of the century (Jay *et al.* 2010b, p. 16).

Summary of Factor B

As discussed above, scientific and educational utilization of walruses is currently at low levels, regulated both domestically and in the Russian Federation, and is not a threat to the Pacific walrus now or in the foreseeable future. Recreational (sport) hunting of Pacific walrus is prohibited under the MMPA and by Russian legislation; therefore, it is not a threat to the Pacific walrus now or in the foreseeable future. United States import/export is not a threat to the Pacific walrus now or in the foreseeable future because Pacific walrus specimens exported from or imported into the United States consist mostly of fossilized bone and ivory shards, and any other walrus ivory can only be imported into or exported from the United States after it has been legally harvested and substantially altered to qualify as a Native handicraft. Commercial hunting of Pacific walrus in the United States is prohibited under the MMPA. Commercial hunting in Russia has not occurred since 1991 and could not resume unless a harvest quota based on sustainability were established; therefore, it is unlikely that Russian commercial harvest will be a threat to the Pacific walrus population.

Over the past 50 years, Pacific walrus population annual harvest removals have varied from 3,200 to 16,000 per year. Over the past decade, subsistence harvest removals in the United States and Russia have averaged approximately 5,000 per year. Recent harvest levels are significantly lower than historical highs, although the lack of information on population status and trend make it difficult to quantify sustainable removal levels. Anticipated reductions in population size in response to losses in sea-ice habitats and associated impacts underscore the need for reliable population information as a basis for evaluating the sustainability of future harvest levels. Research leading to a better understanding of population responses to changing ice conditions and modeling efforts to examine the impact of various removal levels are currently under way by USGS and others.

Subsistence harvest levels in Russia are presently controlled under a quota system based upon the 2006 population estimate. The Russian quota has been reduced recently in response to the loss of several thousand calves at terrestrial haulouts as a result of trampling events in recent years and their belief that the

population is in decline. Although the subsistence walrus harvest in Alaska is not regulated under a quota system, the MMPA provides for the development of voluntary co-management agreements with Alaska Native organizations. Notably, hunting ordinances were implemented in 2010 in Alaska's two primary hunting communities, providing a promising mechanism for self regulation of harvests. While it is premature to evaluate the efficacy of such local ordinances over the long term, the recent establishment of these local management programs offers a tangible framework for additional harvest management, as necessary. The existing harvest reporting and monitoring programs provide information on harvest program effectiveness and also provide data on harvest trends and composition. In conjunction with information on population status and trends, this information will be used to evaluate future harvest management strategies. Additionally, a multi-party agreement between the Service, State of Alaska, and two Alaska native groups includes a defined hunting season and a quota for the Round Island State Game Sanctuary.

We wish to underscore the importance of the efforts the Alaska Native community has undertaken to manage subsistence harvest, and we are hopeful that community-based harvest regulations to improve efficiency (reduce animals that are struck and lost), adjust the sex structure of the harvest (reduce the overall take of females), or limit the total number of walrus taken will be developed in the future. The Service prefers to develop community-based harvest regulations. To that end, we will continue working directly with the subsistence hunting community and the Eskimo Walrus Commission to continually refine harvest monitoring and reporting and to share information on population status and trend from both traditional ecological knowledge and western science. We recognize that to improve our ability to manage the walrus harvest, the refinement of methods to estimate walrus abundance and trend, productivity, and habitat carrying capacity is needed. Our longstanding co-management agreement between the Service and the Eskimo Walrus Commission provides an important forum for continued dialogue about these harvest-related issues and a mechanism for developing further harvest management options.

In summary, although the Service supports efforts by subsistence communities to implement voluntary programs with the goal of sustainable Pacific walrus harvests, we acknowledge that there are currently no regulatory mechanisms in place to assure the sustainability of subsistence harvests. In the absence of such regulatory mechanisms, we do not expect harvest levels in the Bering Strait region to change appreciably in the foreseeable future. Subsistence harvest is predicted to continue at similar levels, independent of future walrus population trends. Barring additional Tribal or Federal harvest management actions, we anticipate that the proportion of animals harvested will increase relative to the overall population, and this continued level of subsistence harvest will become unsustainable. Therefore, although we do not identify current subsistence harvest as a threat to the walrus population at the present time, we have determined that this continued level of subsistence harvest will become a threat to the walrus population, as it declines in the foreseeable future. Based on the best scientific and commercial data available, we find that overutilization in the form of subsistence harvest at current levels, is likely to threaten the Pacific walrus in the foreseeable future.

Factor C. Disease or Predation

Future disease and predation dynamics may be tied to environmental changes associated with changes in sea ice and other environmental parameters that influence disease vectors and exposure, and predation opportunities. Our ability to reliably predict the potential level and influence of disease and predation is tied to our ability to predict environmental change and is related to our understanding of sea-ice dynamics. Under Factor A, we also discussed the potential increase in predation by polar bears associated with increasing dependence of Pacific walrus on coastal haulouts caused by the loss of sea-ice habitat.

Disease

Infectious viruses and bacteria have the capacity to impact marine mammals, particularly when first introduced to a population (Duignan *et al.* 1994, p. 90; Osterhaus *et al.* 1997, p. 838; Ham-Lamme *et al.* 1999, p. 607; Calle *et al.* 2002, p. 98; Burek *et al.* 2008, p. 129). Pacific walrus have had exposure to several pathogens, such as Caliciviruses (Fay *et al.* 1984, p. 140; Smith *et al.* 1983, p. 86; Barlough *et al.* 1986, p. 166), Leptospirosis (Calle *et al.* 2002, p. 96), and Influenza A virus (Calle *et al.* 2002, p. 95–96), none of which have resulted in large die-offs of animals.

Additionally, the introduction of new viruses to populations of marine mammals may be the result of changing distribution patterns of the host (Duignan *et al.* 1994, p. 90; Dobson and Carper 1993; p. 1096). For example, phocine distemper virus (PDV) was recently found in the North Pacific (Goldstein *et al.,* 2009 p. 2009), and while antibodies to PDV have been found in Atlantic walrus (Duignan *et al.* 1994, p. 90; Nielson *et al.* 2000, p. 510), as yet there has been no evidence of exposure in Pacific walruses.

Parasites are common among pinnipeds, and their infestations result in various effects to individuals and populations, ranging from mild to severe (Fay 1982, p. 228; Dubey 2003, p. 275). For example, the ectoparasite *Antarctophthirus trichchi* is an anopluran (sucking) louse that lives in the skin folds of walruses (Fay 1982, p. 228), causing external itching, but no serious health issues (Fay 1982, p. 228).

Endoparasites, protozoa, and helminthes (microorganisms and parasitic worms) also may impact populations, as they rely on locating suitable hosts to complete all or part of their life cycle. Of the 17 species of helminthes known to parasitize Pacific walrus, 2 species are endemic (Fay 1982, p. 228; Rausch 2005, p. 134): The cestode *Diphyllobothrium fayi,* found only in the small intestine, and the nematode *Anisakis rosmari,* found only in stomachs (Heptner and Naumov 1976, p. 52).

Trichinella spiralis nativa (Rausch *et al.* 2007, p. 1249) infects Pacific walruses at a rate of about 1.5 percent (Bukina and Kolevatova 2007, p. 14). While the possibility of contracting Trichinosis from infected walrus has been an issue of concern to some subsistence hunters for decades, *Trichinella* does not appear to cause any ill effects in walrus (Rausch *et al.* 2007, p. 1249).

The intracellular parasite *Toxoplasma gondii* is a significant cause of encephalitis in sea otters and harbor seals (Dubey *et al.* 2003, p. 276), and heart, liver, intestine and lung lesions in sea lions (Dubey *et al.* 2003, p. 281). It has been isolated from at least 10 species of marine mammals, including walrus (Dubey *et al.* 2003, p. 278). Of the 53 Pacific walruses tested between 1976 and 1998, about 5.6 percent were positive for *T. gondii* (Dubey *et al.* 2003, p. 278). *T. gondii* has also been documented in some walrus prey (*e.g.,* seals and bivalves; Fay 1982, p. 146; Lowry and Fay 1984, p. 12; Dubey *et al.* 2003, p. 278; Lindsay *et al.* 2004, p. 1055; Jensen *et al.* 2009, p. 1); however, it will not likely play a significant role in the health of the Pacific walrus population, because they have a history

of exposure and no large walrus mortality events have been attributed to this organism.

Neospora caninum is a protozoan parasite that was found in 3 of 53 walruses (Dubey *et al.* 2003, p. 281). The health implication for *N. caninum* exposure in walruses is unknown, but the potential for exposure appears low.

In summary, the occurrence and effects of diseases and parasites on Pacific walrus appear to be minor in terms of potential population-level effects. Several diseases and parasites appear at chronically low levels; however, no outbreaks resulting in large die-offs have been observed. A changing climate may increase exposure of walrus to new organisms. Additionally, increased use of terrestrial haulouts may escalate the risk of transmission of disease (Fay 1974, p. 394). This potential stressor is part of the USGS Bayesian network model, which linked lower-shelf ice availability to walrus crowding and incidence of disease and parasites in the population, by increasing the walrus haulout sizes and concentrating their locations (Jay *et al.* 2010b, p. 9). However, sensitivity analysis did not identify disease and predation as having a significant effect on model outcomes (Jay *et al.* 2010b, p. 86). In addition, increased exposure to disease or parasites has yet to be documented, and there are no clear transmission vectors that would change the level of exposure. At this time, disease and parasites are not considered to be threats to the Pacific walrus population, and no evidence exists that they will be in the foreseeable future.

Predation

Because of their large size and formidable tusks, adult walruses have few natural predators. Polar bears (*Ursus maritimus*) and killer whales (*Orcinus orca*) tend to prey on walruses only opportunistically and focus primarily on younger animals.

However, when suitable sea-ice platforms are not available, Pacific walruses haul out onto land, where they become vulnerable to terrestrial predators and associated stampede events. Walrus carcasses accumulating at coastal haulouts provide scavenging opportunities that may attract bears (Ovsyanikov 2003, p. 13). Brown bears, wolverines, and feral dogs have also been observed scavenging at coastal haulouts in Chukotka, Russia, in recent years (Kochnev 2010, pers. comm.) and contribute to disturbances at these haulout sites. Programs have been established in recent years at some coastal haulouts in Chukotka, Russia, to mitigate disturbance-related mortalities that include collection of walrus carcasses and establishment of polar bear feeding areas away from the haulouts and villages (Kavry 2010, pers. comm.).

The increase in walrus carcasses at coastal haulouts in Chukotka in recent years is likely playing an important role in shifting habitat-use patterns of some polar bears and their progeny (Kochnev 2006, p. 1). Walrus carcasses now represent an important food resource for polar bears on Wrangel Island in autumn and early winter (Kochnev 2002, p. 137). Polar bears begin to appear near walrus haulouts on Wrangel Island in early August, about a month prior to the arrival of walruses (Kochnev 2002, p. 137). In the 1990s, the number of polar bears coming ashore on Wrangel Island peaked in late October, averaging 50 bears (Kochnev 2002, p. 137). However, in 2007, approximately 500–600 polar bears were stranded on Wrangel Island (Ovsyanikov and Menyushina 2007, p. 1), along with herds of walruses (up to 15,000 in one group); some of the walruses were in poor condition and polar bears were able to kill them relatively easily. At least 11 cases of polar bear predation on motherless calves were also observed (Ovsyanikov *et al.* 2007, p. 1).

Because the summer/fall open-water period is projected to increase in the foreseeable future, polar bears are also predicted to spend more time on land. As a result, we anticipate that there will be greater interaction between the two species, and terrestrial walrus haulouts may become important feeding areas for polar bears. The presence of polar bears along the coast during the ice-free season will likely influence patterns of haulout use by walrus, and may play a significant role in the selection of coastal haulout sites (Garlich-Miller *et al.* 2011, Section 3.4.2.1 "Polar Bears"). We anticipate walrus to respond to this expected increase in interaction with polar bears by shifting to other coastal haulout locations. However, if walrus are forced to move to other locations to avoid predation by polar bears, the walrus may be displaced from preferred haulout locations with adequate prey resources to other areas that may or may not have less-suitable foraging habitat. It is also possible that walrus will be forced to move to different haulout locations more frequently, with increased energetic costs to them. Kochnev (2004, p. 286) asserted that when Pacific walrus migrate in autumn, from haulout to haulout on the Arctic coast of Chukotka, Russia, the increased pressure from humans and animal predators prevents walruses from getting adequate rest at the coastal haulouts, and some of the animals die in stampedes caused by disturbance events. The magnitude of these potential energetic costs would be determined by the frequency and distance of the shifts in location. Although predation by polar bears on Pacific walrus has been observed, no population-level effects have been documented to date; therefore, polar bear predation is not currently a threat to the Pacific walrus. As sea ice declines and Pacific walrus spend more time on coastal haulouts, however, it is likely that polar bear predation will increase. However, we cannot reliably predict the level of such predation. Although we have identified these issues as stressors for Pacific walrus, we are not able to conclude with sufficient reliability that they will rise to the level of a threat to the Pacific walrus population in the foreseeable future.

Although sea-ice habitats also provide some protection against killer whales, which have limited ability to penetrate far into the ice pack, accounts of killer whale predation on walrus have been observed by Russian scientists and Alaskan Natives (Fay 1982, pp. 216–220). Some observers suggest that killer whales primarily prey upon the youngest animals, and instances of killer whale predation on adult walruses have also been documented (Fay and Stoker 1982, p. 2). The mortality from killer whale predation is unknown, but an interpretation of an examination of 52 walrus carcasses that washed ashore on St. Lawrence Island in 1951 (Fay 1982, p. 220) suggested that 17 walrus (33 percent) died from injuries consistent with killer whale predation. Fay and Kelly reported that 2 of 15 (13 percent) animals they examined had likely been killed by killer whales (Fay and Kelly 1980, p. 235). The potential for killer whales to expand their range and begin to target walruses at northern haulouts exists; however, this remains speculative at this time. Reduced availability of sea ice may lead to walruses spending more time in the water where they may be more susceptible to predation by killer whales (Boveng *et al.* 2009, p. 169). However, there is no evidence that killer whale predation has ever limited the Pacific walrus population, and there is no evidence of increased presence of killer whales in the Bering or Chukchi seas; therefore, killer whale predation is not a threat to the Pacific walrus now and is unlikely to be a threat in the foreseeable future.

Sensitivity analyses of both BN models found that disease and predation had very little effect on model outcomes. For the Service model, disease and predation altered model

outcomes by 1.2 and 2.2 percent, respectively (Garlich-Miller *et al.* 2011, Table 8). For the USGS model, disease and predation accounted for less than 1 percent of entropy (variation) reduction (Jay *et al.* 2010b, p. 85–86).

Summary of Factor C

Disease and predation are not considered to represent threats to the Pacific walrus population at this time. Although a changing climate may increase exposure of walrus to new pathogens, there are no clear transmission vectors that would change levels of exposure, and no evidence exists that disease will become a threat in the foreseeable future. As walruses and polar bears become increasingly dependent on coastal haulouts, we expect interactions between the two species to increase. The presence of polar bears stranded along the coast during the ice-free season will likely influence patterns of haulout use and may play a significant role in the selection of coastal haulout sites. There is no evidence that killer whale predation has ever limited the Pacific walrus population, and there is no evidence of increased presence of killer whales in the Bering or Chukchi seas. The net effect of future predation levels on the population cannot be reliably predicted, because of uncertainties relative to distribution of walrus and their potential predators and the amount of potential overlap, and the degree to which these predators would target Pacific walrus. The best available scientific information indicates that the effect of predation on Pacific walrus may be a source of concern in the foreseeable future, particularly at the localized scale, where walrus congregate at coastal haulouts. However, we do not anticipate predation to be a threat to the entire population. Therefore, we conclude, based on the best scientific and commercial data available, that disease and predation are not threats to the Pacific walrus now, nor are they likely to become threats to the population in the foreseeable future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

In determining whether the inadequacy of regulatory mechanisms constitutes a threat to the Pacific walrus, we focused our analysis on the specific laws and regulations aimed at addressing the two primary threats to the walrus–the loss of sea-ice habitat under Factor A and subsistence harvest under Factor B. These specific regulatory mechanisms are described below. Although none of the other stressors on walrus rise to the level of a threat, we also provide an overview of additional laws and regulations containing protective measures for the walrus.

Regulatory Mechanisms To Address Sea-Ice Loss

As explained under Factor A, a primary threat to the survival of the Pacific walrus is the projected loss of sea-ice habitat due to a warming climate and its consequences for walrus populations. Currently, there are no regulatory mechanisms in place that effectively address GHG emissions, climate change, and associated sea-ice loss.

National and international regulatory mechanisms to comprehensively address the causes of climate change are continuing to be developed. International efforts to address climate change began with the United Nations Framework Convention on Climate Change (UNFCCC), which was signed in May 1992. The UNFCCC states as its objective the stabilization of GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system, but it does not impose any mandatory and enforceable restrictions on GHG emissions. The Kyoto Protocol, negotiated in 1997, became the first agreement added to the UNFCCC to set GHG emissions targets for signatory counties, but the targets are not mandated. The Climate Change Act of 2008 established a long-term target to cut emissions in the United Kingdom (UK) by 80 percent by 2050 and by 34 percent in 2020 compared to 1990 levels, but the law does not pertain to any emissions outside the UK. Other international laws, regulations, or other legally binding requirements imposing limits on GHG emissions to further the goals set forth in the UNFCCC and the Kyoto Protocol have not yet been adopted.

In the United States, efforts to address climate change focus on the Clean Air Act and a number of voluntary actions and programs. Specifically, the Clean Air Act of 1970 (42 U.S.C. 7401 *et seq.*), as amended, requires the Environmental Protection Agency (EPA) to develop and enforce regulations to protect the general public from exposure to airborne contaminants hazardous to human health. In 2007, the Supreme Court ruled that gases that cause global warming are "pollutants" under the Clean Air Act, and that the EPA has the authority to regulate carbon dioxide and other heat-trapping gases (*Massachusetts et al.* v. *EPA* 2007 (Case No. 05–1120)). On December 29, 2009, the EPA adopted a regulation to require reporting of greenhouse gas emissions from fossil fuel suppliers and industrial gas suppliers, direct greenhouse gas emitters, and manufacturers of heavy duty and off-road vehicles and engines (EPA 2009, p. 56260). The rule does not actually regulate greenhouse gas emissions, however; but it merely requires that emissions above certain thresholds be monitored and reported (EPA 2009, p. 56260). On December 7, 2009, the EPA found that the current and projected concentrations of six greenhouse gases in the atmosphere threaten public health and welfare under section 202(a) of the Clean Air Act. This finding by itself does not impose any requirements on any industry or other entities to limit greenhouse gas emissions. While the finding could be considered a prerequisite for any future regulations developed by the EPA to reduce GHG emissions, no such regulations exist at this time. In addition, it is unknown whether any regulations will be adopted in the future as a result of the finding, or how effective such regulations would be in addressing GHG emissions and climate change.

Summary of Regulatory Mechanisms To Address Sea-Ice Loss

Based on our analysis (above), we conclude that there are no known regulatory mechanisms in place at the national or international level that are likely to effectively reduce or limit GHG emissions. This conclusion is corroborated by the projections we used to assess risks to sea ice from GHG emissions, as described earlier in this finding. Therefore, the lack of mechanisms to regulate GHG emissions is already included in our risk assessment in Factor A, which shows that, without additional regulation, GHG emissions and corresponding sea-ice losses are likely to increase in the foreseeable future. Thus, we conclude that regulatory mechanisms do not currently exist to effectively address the loss of sea-ice habitat.

Regulatory Mechanisms To Ensure Harvest Sustainability

While current harvest levels are considered sustainable, subsistence harvest has been identified as a threat to the Pacific walrus within the foreseeable future. As explained in Factor B, subsistence harvest is expected to continue at current levels, while the walrus population is projected to decline with the continued loss of sea ice and associated impacts. Barring additional Tribal or Federal regulations, we anticipate that the proportion of animals harvested will increase relative

to the overall population. As a result, the current level of subsistence harvest will likely become unsustainable in the foreseeable future. To address this threat, regulatory mechanisms will need to be developed and implemented to ensure that future harvest levels are reduced in proportion to the declining walrus population such that subsistence harvest levels are sustainable. To determine whether such regulatory mechanisms currently exist, we evaluated the various international and domestic laws and regulations, cooperative agreements, and local ordinances relevant to the subsistence harvest of walrus.

In Russia, the Pacific walrus is a protected species managed primarily by the Fisheries Department within the Ministry of Agriculture. The subsistence harvest of walrus in Russia is authorized, but it is controlled through a quota system. Under the Russian "Law on Fishery and Protection of Aquatic Biological Resources," the harvest of walrus is based upon the total annual catch (TAC) of walrus (Food and Agriculture Organization of the United Nations 2007, p. 4). The TAC takes into account the total population and productivity, based in part on the recommendations of scientists from the Pacific Research Fisheries Center (Chukotka Branch-ChukotTINRO) regarding a sustainable removal level (Kochnev, 2010 pers. comm.). The 2010 quota has been set at 1,300 animals (Kochnev, 2010 pers. comm.).

In the United States, section 101(b) of the MMPA (16 U.S.C. 1371(b)) provides an exemption for the continued nonwasteful harvest of walrus by coastal Alaska Natives for subsistence and handicraft purposes. Pursuant to Section 101(b)(3), regulations limiting the subsistence harvest of walrus may be adopted, but only if a determination is first made that the species or stock has been depleted, following notice and determination by substantial evidence on the record following an agency hearing before an administrative law judge. To date, no determination has ever been made that the species or stock has been depleted, and thus, no regulations establishing limits on the subsistence harvest of Pacific walrus in the United States have been adopted.

Subsistence harvest reporting in the United States is required under section 109(i) of the MMPA. This requirement is administered through the Marking, Tagging, and Reporting Program (MTRP) and requires Alaska Native hunters to report the harvest of all walrus and present the ivory for tagging within 30 days of harvest. Since its implementation in 1988, the Service has used the program to improve its understanding of subsistence harvest by recruiting, training, and outfitting village residents to collect harvest data and tag tusks. Pursuant to the program, the Service has also maintained a walrus harvest reporting database and developed and implemented important outreach and education programs.

In addition to the MTRP, the Service also administers the Walrus Harvest Monitoring Program, which is an observer-based data collection program conducted in the communities of Gambell and Savoonga during the spring harvest. The program is designed to collect basic biological information on harvested walrus, collect biological samples for research, and supplement the MTRP data set, to allow the Service to more accurately account for the unreported segment of the harvest. The Service law enforcement office simultaneously conducts an enforcement program designed to enforce the nonwasteful take provision of the MMPA.

Some local harvest management programs have been adopted in addition to the above subsistence harvest data collection programs. Through a 1997 cooperative agreement between the Service, Bristol Bay Native Association/Qayassiq Walrus Commission, the Eskimo Walrus Commission, and ADFG, the subsistence harvest of walrus at Round Island, a traditional hunting area now located within the Walrus Island State Game Sanctuary, is restricted to a 40-day fall hunting season and a quota of 20 walrus (Chythlook and Fall 1998, pp. 4, 5). The harvest level in this area has ranged from zero to two per year and represents a very minor portion of the harvest in the United States.

Similarly, out of a desire to revive traditional law, to advance the idea of self regulation of the subsistence harvest, and to initiate a local management infrastructure, the Native villages of Gambell and Savoonga on St. Lawrence Island have recently formed Marine Mammal Advisory Committees (MMAC) and implemented local ordinances establishing a limit of four walruses per hunting trip. The scope of these ordinances is limited, however, as walruses that are struck and lost and walrus calves do not count against this limit of four walruses per trip, and the number of trips is not restricted. Additionally, there is no quota on the total number of walruses that may be harvested.

Summary of Regulatory Mechanisms To Ensure Harvest Sustainability

After evaluating the laws, regulations, cooperative agreements, and local ordinances described above, we conclude that adequate regulatory mechanisms are not currently in place to address the threat that continued levels of subsistence harvest pose to the Pacific walrus as the population declines in the foreseeable future. The Russian harvest is currently regulated with a quota system, based on the sustainability of the harvest. In Alaska, no Statewide quota exists. An annual quota does exist on Round Island, but the number of walrus harvested in this area is miniscule in relation to the overall harvest. In the Bering Strait Region, where the vast majority of U.S. harvest (84 percent) and 43 percent of the rangewide harvest occurs, local ordinances recently adopted by two Native villages reflect the appreciation of the Native community for the important role of self-regulation in managing the subsistence harvest, and will serve as a starting point for future cooperative efforts and the development of harvest management strategies in the future. There are currently no tribal, Federal, or State regulations in place to ensure the likelihood that, as the population of walrus declines in response to changing sea-ice conditions, the subsistence harvest of walrus will occur at a reduced and sustainable level. As a result, we conclude that current regulatory mechanisms are inadequate to prevent subsistence harvest from becoming unsustainable in the foreseeable future. Therefore, we conclude that current regulatory mechanisms do not remove or reduce the threat to the Pacific walrus from future subsistence harvest.

Regulatory Mechanisms To Address Other Stressors

A number of regulatory mechanisms directed specifically at protecting and conserving the walrus and its habitat are in place at the international, national, and local level. These mechanisms may be useful in minimizing the adverse effects to walrus from potential stressors other than sea-ice loss and subsistence harvest, such as the take of walrus for scientific or educational purposes, commercial harvest, human disturbance, and oil spills. Because none of these other stressors rise to the level of a threat to the Pacific walrus, we acknowledge that the protections discussed here are not essential to our determination of the adequacy of existing regulatory mechanisms to address threats to the walrus.

International Agreements

The Convention on International Trade in Endangered Species of Wild Fauna and Flora

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is a treaty aimed at protecting species that are or may be affected by international trade. The CITES regulates international trade in animals and plants by listing species in one of three appendices. The level of monitoring and regulation to which an animal or plant species is subject depends on the appendix in which the species is listed. At the request of Canada, the walrus was listed at the species level in Appendix III, which includes species that are subject to regulation in at least one country, and for which that country has asked the other CITES Party countries for assistance in controlling and monitoring international trade in that species. For exportation of walrus specimens from Canada, an export permit may be issued by the Canadian Management Authority if it finds that the specimen was legally obtained. The import of walrus specimens into countries that are parties to CITES requires the presentation of a certificate or origin and, if the import was from Canada, an export permit. All countries within the range of the walrus—that is, the United States (Pacific walrus); the Russian Federation (Pacific and Laptev Walrus), Canada, Norway, Greenland (Denmark), and Sweden (Atlantic walrus) are members to the CITES and have provisions in place to monitor international trade in walrus specimens.

Domestic Regulatory Mechanisms

Marine Mammal Protection Act of 1972

The Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.)* (MMPA) was enacted to protect and conserve marine mammals so that they continue to be significant functioning elements of the ecosystem of which they are a part. The MMPA sets forth a national policy to prevent marine mammal species or population stocks from diminishing to the point where they are no longer a significant functioning element of the ecosystems.

The MMPA places an emphasis on habitat and ecosystem protection. The habitat and ecosystem goals set forth in the MMPA include: (1) Management of marine mammals to ensure they do not cease to be a significant element of the ecosystem of which they are a part; (2) protection of essential habitats, including rookeries, mating grounds, and areas of similar significance "from the adverse effects of man's action"; (3) recognition that marine mammals "affect the balance of marine ecosystems in a manner that is important to other animals and animal products," and that marine mammals and their habitats should therefore be protected and conserved; and (4) direction that the primary objective of marine mammal management is to maintain "the health and stability of the marine ecosystem." Congressional intent to protect marine mammal habitat is also reflected in the definitions section of the MMPA. The terms "conservation" and "management" of marine mammals are specifically defined to include habitat acquisition and improvement.

The MMPA established a general moratorium on the taking and importing of marine mammals, as well as a number of prohibitions that are subject to a number of exceptions. Some of these exceptions include take for scientific purposes, for purposes of public display, and for subsistence use by Alaska Natives, as well as unintentional take incidental to conducting otherwise lawful activities. The Service, prior to issuing a permit authorizing the taking or importing of a walrus, or a walrus part or product, for scientific or public display purposes, reviews each request, provides an opportunity for public comment, and consults with the U.S. Marine Mammal Commission (MMC), as described at 50 CFR 18.31. The Service has determined that there is sufficient rigor under the regulations at 50 CFR 18.30 and 18.31 to ensure that any activities so authorized are consistent with the conservation of this species and are not a threat to the species.

Take is defined in the MMPA to include the "harassment" of marine mammals. "Harassment" includes any act of pursuit, torment, or annoyance that "has the potential to injure a marine mammal or marine mammal stock in the wild" (Level A harassment), or "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) (16 U.S.C. 1362(18)(A)).

The MMPA contains provisions for evaluating and permitting incidental take of marine mammals, provided the total take would have no more than a negligible effect on the population or stock. Specifically, under Section 101(a)(5) of the MMPA, citizens of the United States who engage in a specified activity other than commercial fishing (which is specifically and separately addressed under the MMPA) within a specified geographical region may petition the Secretary of the Interior to authorize the incidental, but not intentional, taking of small numbers of marine mammals within that region for a period of not more than 5 consecutive years (16 U.S.C. 1371(a)(5)(A)). The Secretary "shall allow" the incidental taking if the Secretary finds that "the total of such taking during each five-year (or less) period concerned will have no more than a negligible impact on such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses" (16 U.S.C. 1371(a)(5)(A)(i)). If the Secretary makes the required findings, the Secretary also prescribes regulations that specify: (1) Permissible methods of taking; (2) means of affecting the least practicable adverse impact on the species, their habitat, and their availability for subsistence uses; and (3) requirements for monitoring and reporting. (16 U.S.C. 1371(a)(5)(A)(ii)). The regulatory process does not authorize the activities themselves, but authorizes the incidental take of the marine mammals in conjunction with otherwise legal activities.

Regulations authorizing the nonlethal incidental take of walrus from certain oil and gas activities in the Beaufort and Chukchi Seas are currently in place. These regulations are based on a determination that the effects of such activities, including noise, physical obstructions, human encounters, and oil spills, are likely to be sufficiently limited in time and scale that they would have no more than a negligible impact on the stock (USFWS 2008, pp. 33212, 33226). General operating conditions required to be imposed in specific authorizations include: (1) Restrictions on industrial activities, areas, and time of year; (2) restrictions on seismic surveys to mitigate potential cumulative impacts on resting, feeding, and migrating walrus; and (3) development of a site-specific plan of operation and a site-specific monitoring plan to enumerate and document any animals that may be disturbed. These and other safeguards and coordination with industry called for under the MMPA have been useful in helping to minimize industry effects on walrus.

A similar process exists for the promulgation of regulations authorizing the incidental take of small numbers of marine mammals where the take will be limited to harassment (16 U.S.C. 1371(a)(5)(D)). These authorizations, referred to as Incidental Harassment Authorizations, are limited to 1 year and require a finding by the Department that the taking will have no more than a negligible impact on the species or stock

and will not have immitigable adverse impact on the availability of such species or stock for taking for subsistence uses. There are currently no incidental harassment authorizations in place for the walrus.

As discussed under Factor E, shipping and anthropogenic noises are expected to increase in the Chukchi and Beaufort Seas in the future, and could impact the walrus or its habitat. Under the MMPA, however, disturbance of walrus from such otherwise lawful human activity is generally prohibited. While the MMPA does allow for the incidental taking of walrus, any such authorizations for increasing shipping activities or anthropogenic noise from industry would be required to be based on a determination that impacts to the Pacific walrus would be negligible and would not have an immitigable adverse impact on the availability of Pacific walrus for the taking for subsistence uses, consistent with the procedures outlined previously regarding the promulgation of take regulations and incidental harassment authorizations.

Similarly, the potential for commercial fishing to expand into the Chukchi and Beaufort Seas could impact the Pacific walrus, as discussed later in this finding. However, the MMPA has protections in place to limit any potential incidental impacts of future commercial fisheries. Specifically, section 118 of the MMPA (16 U.S.C. 1387) calls for commercial fisheries to reduce any incidental mortality or serious injury of marine mammals to insignificant levels approaching zero. In its 2004 report to Congress regarding the commercial fisheries' progress toward reducing mortality and serious injury of marine mammals, the National Oceanic and Atmospheric Administration (NOAA) concluded that: (1) Most fisheries have achieved levels of incidental mortality consistent with the Zero Mortality Rate Goal; (2) substantial progress has been made in reducing incidental mortality through Take Reduction Plans; and (3) additional information will be needed for most fisheries and stocks of marine mammals to accurately assess whether mortality incidental to commercial fishing is at insignificant levels approaching a zero mortality and serious injury rate (NOAA 2004, Executive Summary). Thus, while commercial fishing could expand in the future, such expansions would need to be consistent with existing fisheries elsewhere in the United States that must limit their impacts to marine mammals.

Outer Continental Shelf Lands Act

The Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 331 *et seq.*) established Federal jurisdiction over submerged lands on the outer continental shelf (OCS) seaward for 5 km (3 mi) in order to expedite exploration and development of oil and gas resources. The OCSLA is implemented by the Bureau of Ocean Energy, Management, Regulation and Enforcement (formerly the Minerals Management Service) of the Department of the Interior. The OCSLA mandates that orderly development of OCS energy resources be balanced with protection of human, marine, and coastal environments. Specifically, Title II of the OCSLA provides for the cancellation of leases or permits if continued activity is likely to cause serious harm to life, including fish and other aquatic life. It also requires economic, social, and environmental values of the renewable and nonrenewable resources to be considered in management of the OCS. Through consistency determinations, any license or permit issued under the OCSLA must be consistent with State coastal management plans (see also the Coastal Zone Management Act below). Thus, the OCSLA helps to increase the likelihood that projects on the OCS do not adversely impact Pacific walruses or their habitats.

Oil Pollution Act of 1990

The Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701) provides enhanced capabilities for oil spill response and natural resource damage assessment by the Service. The OPA requires the Service to consult on developing a fish and wildlife response plan for the National Contingency Plan, provide input to Area Contingency Plans, review Facility and Tank Vessel Contingency Plans, and conduct damage assessments for the purpose of obtaining damages for the restoration of natural resources injured from oil spills. However, we note that there are limited abilities to respond to a catastrophic oil spill event described in the plan (Alaska Regional Response Team 2002, pp. G–71, G–72). The U.S. Coast Guard, despite planning efforts, has limited offshore capability to respond in the event of a large oil spill in northern or western Alaska, and we only marginally understand the science of recovering oil in broken ice (O'Rourke 2010, p. 23).

Coastal Zone Management Act

The Coastal Zone Management Act of 1972 (CZMA) (16 U.S.C. 1451 *et seq.*) was enacted to "preserve, protect, develop, and where possible, to restore or enhance the resources of the Nation's coastal zone." The CZMA provides for the submission of a State program subject to Federal approval. The CZMA requires that Federal actions be conducted in a manner consistent with the State's Coastal Zone Management Plan (CZMP) to the maximum extent practicable. Federal agencies planning or authorizing an activity that affects any land or water use or natural resource of the coastal zone must provide a consistency determination to the appropriate State agency. The CZMA applies to walrus habitats of northern and western Alaska. In Alaska, consistency determinations are reviewed for compliance with the Alaska Coastal Management Program (Alaska Stat. section 46.39–40). The Alaska Coastal Management Plan is developed in partnership with Alaska's natural resource agencies, the Alaska Department of Environmental Conservation, the ADFG, and the Department of Natural Resources (Alaska Coastal Management Plan 2005, p. A85). The CZMA applies to walrus habitats of northern and western Alaska by ensuring that any permitted actions are consistent with the State of Alaska's CZMP, which, among other things, sets standards that require exposed high energy coasts to be managed so as to avoid, minimize, or mitigate significant adverse impacts to the mix and transport of sediments. As such, these requirements provide potential protection to current or future coastal haulouts.

Alaska National Interest Lands Conservation Act

The Alaska National Interest Lands Conservation Act of 1980 (ANILCA) (16 U.S.C. 3101 *et seq.*) created or expanded National Parks and National Wildlife Refuges in Alaska, including the expansion of the Togiak National Wildlife Refuge (NWR) and the Alaska Maritime NWR. One of the purposes of these National Wildlife Refuges under the ANILCA is the conservation of marine mammals and their habitat. Walrus haulouts at Cape Peirce and Cape Newenham are located within Togiak NWR while haulouts at Cape Lisburne occur in the Alaska Maritime NWR. Access to the Cape Peirce is tightly controlled through a permitted visitor program. Refuge staff require that visitors must remain out of sight, downwind, and a minimum of 107 m (100 yards) from walruses. Visitors are advised that disturbances to walruses or seals are a violation of the MMPA (Miller 2010, pers. comm.). Cape Newenham has no established refuge visitor program, because public access is

extremely limited due to the presence of Department of Defense lands surrounding the Cape. As discussed under Factor A above, the change in the nature and location of walrus haulouts in response to changing ice conditions is anticipated into the foreseeable future. Significant portions of the Chukchi Sea coastal zone in Alaska are National Wildlife Refuge lands created under ANILCA, and they have the ability to provide haulout locations that are free from human disturbance.

Marine Protection, Research and Sanctuaries Act

The Marine Protection, Research and Sanctuaries Act (MPRSA) (33 U.S.C. 1401 *et seq.*) was enacted in part to "prevent or strictly limit the dumping into ocean waters of any material that would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities." The MPRSA does not itself regulate the take of walrus; however, it does help maintain water quality, which likely benefits walrus prey.

Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson Fishery Conservation and Management Act in 1976 (renamed the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA)) (16 U.S.C. 1800 *et seq.*) established the North Pacific Fishery Management Council (NPFMC), one of eight regional councils established by the MSFCMA to oversee management of the U.S. fisheries. With jurisdiction over the 2,331,000-sq-km (900,000-sq-mi) Exclusive Economic Zone (EEZ) off Alaska, the NPFMC has primary responsibility for groundfish management in the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands (BSAI), including Pacific cod (*Gadus macrocephalus*), pollock, mackerel (*Pleurogrammus monopterygius*), sablefish (*Anoplopoma fimbria*), and rockfish (*Sebastolobus* and *Sebastes* species) species harvested mainly by trawlers, hook and line, longliners, and pot fishermen. In 2009, the NPFMC released its Fishery Management Plan for Fish Resources of the Arctic Management Area, covering all U.S. waters north of the Bering Strait. Management policy for this region is to prohibit all commercial harvest of fish until sufficient information is available to support the sustainable management of a commercial fishery (NPFMC 2009, p. 3). The policy helps to protect walrus from potential impacts of commercial fishery activities.

Additionally, the Sustainable Fisheries Act of 1996 amended the MSFCMA, requiring the NOAA to describe and identify Essential Fish Habitat, which includes those waters and substrates necessary to fish for spawning, breeding, feeding, or growth to maturity. "Waters" include aquatic areas and their associated physical, chemical, and biological properties. "Substrate" includes sediment underlying the waters. "Necessary" means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem. Spawning, breeding, feeding, or growth to maturity covers all habitat types utilized by a species throughout its life cycle, and includes not only the water column but also the benthos layers. The NOAA's "Final Rule for the implementation of the Fisheries of the Exclusive Economic Zone off Alaska; Groundfish Fisheries of the Bering Sea and Aleutian Islands Management Area," published July 25, 2008 (NOAA 2008, p. 43362), protects areas adjacent to walrus haulouts and feeding areas from potential impacts of trawl fisheries. For example, the St. Lawrence Island Habitat Conservation Area closes waters around the St. Lawrence Island to federally permitted vessels using nonpelagic trawl gear. Such closures provide important refuge for the walrus, but, more importantly, protect feeding habitat from disturbance.

Russian Federation

The walrus in Russia is a protected species managed primarily by the Fisheries Department within the Ministry of Agriculture. Regulations regarding the subsistence harvest of walrus were discussed previously. There is currently no commercial harvest of walrus authorized in Russia (Kochnev 2010, pers. comm.).

Important terrestrial haulout sites in Russia are also protected, and human disturbance is minimized. For example, Wrangel Island, an area which has seen large influxes of walrus, as discussed above, has been a nature reserve since 1979 and prohibits human disturbance (United Nations Environmental Program 2005, p. 1). Additionally, the haulouts at Cape Kozhevnikov near the village of Ryrkaipyi and Cape Vankarem near the village of Vankarem were recently granted protections by the Government of Chukotka to minimize disturbance, and a local conservation organization known as the "UMKY Patrol" has organized a quiet zone and implemented visitor guidelines to reduce disturbance (Patrol 2008, p. 1; Kavry 2010, pers. comm.).

State of Alaska

While the Service has the primary authority to manage Pacific walrus in the United States, the State of Alaska has regulatory programs that compliment Federal regulations and work in concert to provide conservation for walrus and their habitats. For example, as discussed above, the State's Coastal Zone Management Plan works to ensure that beach integrity is maintained. Additionally, oil and gas lease permits issued by the State of Alaska in State waters or along the coastal plain contain specific requirements for Pacific walrus that, for example, prohibit above-ground lease-related facilities and structures within 1 mile inland from the coast, in an area extending 1 mile northeast and 1 mile southwest of the Cape Seniavin walrus haulout (ADNR 2005, p. 3). In addition, walrus and their habitats are protected in various State special-use areas. For example, the Walrus Island State Game Sanctuary is a State of Alaska–managed conservation area with regulations in place that allow only limited access to the sanctuary, prohibit any disturbance of walrus, and limit access to beaches and water. These regulations protect walrus and their haulouts (5 AAC 92.066, Permit for access to Walrus Islands State Game Sanctuary).

Summary of Factor D

As explained in Factor A, the sea-ice habitat of the Pacific walrus has been modified by the warming climate, and sea-ice losses are projected to continue into the foreseeable future. There currently are no regulatory mechanisms in place to effectively reduce or limit GHG emissions. This situation was considered as part of our analysis in Factor A. Accordingly, there are no existing regulatory mechanisms to effectively address loss of sea-ice habitat.

As explained in Factor B, harvest, while currently sustainable, is identified as a threat within the foreseeable future because we anticipate that harvest levels will continue at current levels while the population declines due to sea-ice loss; as a result, the proportion of animals harvested will increase. Harvest in Russia is managed for sustainability through a quota system. Harvest in the United States is well-monitored and limited to subsistence harvest by Alaska Natives, with further restrictions on use and sale of walrus parts; however, the U.S. harvest is not directly limited by quota. Emerging local harvest management efforts offer a promising approach to developing harvest management initiatives. Effectiveness of

such measures can be evaluated with existing harvest monitoring and reporting programs. In the Bering Strait Region, where the vast majority of U.S. harvest and 43 percent of the rangewide harvest occurs, local ordinances recently adopted by two Native villages reflect the important role of self-regulation in managing the subsistence harvest, and will be important in the development of harvest management strategies in the future. However, there are currently no tribal, Federal, or State regulations in place to ensure the likelihood that, as the population of walrus declines in response to changing sea-ice conditions, the subsistence harvest of walrus will occur at a reduced and sustainable level. As a result, we conclude that current regulatory mechanisms are inadequate to address the threat of subsistence harvest becoming unsustainable in the foreseeable future, as the Pacific walrus population declines due to sea-ice habitat loss and associated impacts.

While laws and regulations exist that help to minimize the effect of other stressors on the Pacific walrus, there are no regulatory mechanisms currently in place that adequately address the primary threats of habitat loss due to sea-ice declines (Factor A) and subsistence harvest (Factor B). As a result, we conclude that the existing regulatory mechanisms do not remove or reduce the threats to the Pacific walrus from the loss of sea-ice habitat and overutilization.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence.

We evaluated other factors that may have an effect on the Pacific walrus, including pollution and contaminants; oil and gas exploration, development, and production; commercial fisheries interactions; shipping; oil spills; and icebreaking activities. The potential effects of many of the stressors under this factor are tied directly to changes in sea ice. Potential increases in commercial shipping due to the opening of shipping lanes that have been unavailable in the past are one example. In addition, oil and gas exploration and development activities are in part dependent on ice conditions, as is the potential for expanding commercial fisheries. Because the potential effects of these stressors are related to sea-ice losses, our ability to reliably predict the potential level and influence of these stressors is tied to our ability to predict environmental changes associated with sea-ice losses, as discussed previously under Factor A.

Pollution and Contaminants

Understanding the potential effects of contaminants on walruses is confounded by the wide range of contaminants present, each with different chemical properties and biological effects, and the differing geographic, temporal, and ecological exposure regimes. Nevertheless, Robards *et al.* (2009, p. 1) in their assessment of contaminant information available for Pacific walruses conclude that Pacific walruses contain generally low contaminant levels; however, an absence of data limited definitive conclusions about the effects current contaminant had on Pacific walruses.

Of particular concern in the Arctic are persistent organic pollutants (POPs), because they do not break down in the environment and are toxic. "Legacy" POPs (those no longer used in the United States) include polychlorinated biphenyls (PCBs) and organochlorine pesticides such as DDT, chlordanes, toxaphene, and mirex. POPS with continued use include hexachlorocyclohexanes (HCHs). Although numerous POPs have been detected in the Arctic environment, concentrations of POPs found in Pacific walrus are relatively low (Seagars and Garlich-Miller 2001, p. 129; Taylor *et al.* 1989, pp. 465–468) because walruses generally feed at relatively lower trophic levels than other marine mammals. In 1981, Atlantic walruses had the lowest concentrations of organochlorines in any pinniped measured (Born *et al.* 1981, p. 255), and recent data show walruses had much lower levels of brominated compounds and perfluorinated sulfonates (PFSA) than other Arctic marine mammals (Letcher *et al.,* 2010, In press). Some Atlantic walrus individuals and populations specialize in feeding on pelagic fish and ringed seals, moving them higher in the food chain than the Pacific walrus, resulting in greater POP concentrations (Dietz *et al.* 2000, p. 221). For example, PCBs and DDT concentrations in Pacific walruses were lower than concentrations found in Atlantic walruses from Greenland and Hudson Bay, Canada, collected in the 1980s (Muir *et al.* 1995, p. 335).

Heavy metals of concern in Arctic marine mammals include mercury (Hg), cadmium, and lead. Defining mercury trends is complicated by mercury's complex environmental chemistry, although in general anthropogenic mercury is increasing in the Arctic, as it is globally (AMAP 2005, p. 17), primarily due to combustion processes. Temporally, mercury concentrations in fossils and fresh walrus teeth collected at Nunavut in the Eastern Canadian Arctic were no higher in the 1980s and 1990s compared to A.D. 1200–1500, "indicating an absence of industrial Hg in the species at this location." Increases of mercury were seen in beluga teeth from the Beaufort Sea over the same time span (Outridge *et al.* 2002, p. 123). There was also no change in mercury in walruses from Greenland from 1973 to 2000 (Riget *et al.* 2007, p. 76). Born *et al.* (1981, p. 225) found low methyl mercury accumulation in Atlantic walruses compared to seals in Greenland and the eastern Canadian Arctic.

The presence of cadmium has been of concern to subsistence hunters who eat Pacific walruses, though it does not appear to be having effects on walrus health. Mollusks accumulate cadmium, so it is not surprising that walruses had relatively high levels. However, Lipscomb (1995, p. 1) found no histopathological (effects of disease on tissue) effects in Pacific walrus liver and kidney tissues, although liver concentrations were great enough to cause concern about contamination levels, walrus health, and the consumption of walrus. Over the time period 1981 to 1991, cadmium in Pacific walrus liver declined from 41.2 to 19.9 milligrams/kg dry weight (Robards 2006, p. 24).

Radionuclide (a radioactive substance) sources include atmospheric fallout from Chernobyl, nuclear weapons testing, and nuclear waste dumps in Russia (Hamilton *et al.* 2008, p. 1161). Pacific walrus muscle had non-naturally occurring cesium 137 levels lower than did bearded seals (*Erignathus barbatus*) sampled from the same area, and lower than seals from Greenland sampled one to two decades earlier (Hamilton *et al.* 2008, p. 1162). Barring new major accidents or releases, with decay of anthropogenic radionuclides from fallout and Chernobyl and improved regulation and cleanup of waste sources, radionuclide activities are expected to continue to decline in Arctic biota (AMAP 2009, p. 66).

Tributyltin (TBT; from ship antifouling paints) is ubiquitous in the marine environment (Takahashi *et al.* 1999, p. 50; Strand and Asmund 2003, p. 31), although TBT and its toxic metabolites are found at greatest concentrations in harbors and near shore shipping channels (Takahashi *et al.* 1999, p. 52; Strand and Asmund 2003, p. 34). Pacific walruses will likely see increased exposure to this contaminant class as shipping increases in their habitats as a result of longer ice-free seasons due to climate change.

Climate-related change will affect long-range and oceanic transport of contaminants, and may provide additional sources of contaminants. Increasing water temperatures may increase methylation of mercury, which increases the availability of mercury for bioaccumulation (Sunderland *et al.* 2009, p. 1) and may release contaminants from melting pack ice (Metcalf and Robards 2008, p. S153). It is projected that Cesium 137 from nuclear weapons testing fallout and Chernobyl may be liberated from storage in trees as the incidence of forest fires increases due to climate change (AMAP 2009, p. 66).

Although few data exist with which to evaluate the status of the Pacific walrus population in relation to contaminants, information available indicates that Pacific walruses have generally low concentrations of contaminants of concern. Further, based on the general observations of a lack of effect on individual animals, there is currently no evidence of population-level effects in walruses from contaminants of any type. Climate change, with projected increases in mobilization of contaminants to and within the Arctic, combined with potential changes in Pacific walrus prey base, may lead to increased exposure. However, potential effects are likely to be limited by the trophic status and distribution of walruses: As benthic feeders that specialize on prey lower in the food web, walruses would have a low rate of bioaccumulation and therefore limited exposure to contaminants. Based on our estimation of low current contaminant loads and the likelihood of minimal future exposure as walruses feed on lower trophic levels, we conclude that contaminants are not a threat now and are not likely to be a threat to the Pacific walrus population in the foreseeable future.

Oil and Gas Exploration, Development, and Production

Oil and gas related activities have been conducted in the Beaufort and Chukchi Seas since the late 1960s, with most activity occurring in the Beaufort Sea (USFWS 2008, p. 33212). Three existing projects are located off the coast of Alaska in the Beaufort Sea (Endicott, Northstar, and Oooguruk). Current and foreseeable future activity in the Chukchi Sea is related to Lease Sale 193, the first Chukchi Sea lease sale since 1991 (MMS 2008, p. 1). While no development of leases issued pursuant to the lease sale has occurred to date, future activity is anticipated. Our ability to predict effects of these activities on walrus is based, in part, on reasonably foreseeable development scenarios prepared for this lease sale, which project exploration, development, and production activities to last through roughly 2049 (USFWS, Final Biological Opinion for Beaufort and Chukchi Sea Program Area Lease Sales and Associated Seismic Surveys and Exploratory Drilling, Anchorage, Alaska, September 3, 2009, pp. 10–11).

In the Chukotka Russia region, the oil and gas industry is targeting regions of the Bering and Chukchi Seas for exploration. Recently, there has been renewed interest in exploring for oil and gas in the Russian Chukchi Sea, as new evidence suggests that the region may harbor large reserves. In 2006, seismic exploration was conducted in the Russian Chukchi to explore for economically viable oil and gas reserves (Frantzen 2007, p. 1).

Currently, Pacific walruses do not normally range into the Beaufort Sea, although individuals and small groups have been observed there. From 1994 to 2004, industry monitoring programs recorded a total of 9 walrus sightings, involving a total of 10 animals. No disturbance events or lethal takes have been reported to date (USFWS 2008, p. 33212). Because of the small numbers of walruses encountered by past and present oil and gas activity in the Beaufort Sea, impacts to the Pacific walrus population appear to have been minimal (USFWS 2008, p. 33212). Even with less ice, it is unlikely that walrus numbers will increase significantly in the Beaufort Sea, as habitat is limited by a relatively narrow continental shelf, which results in deep and less-productive waters. Therefore, we do not anticipate significant interactions with, or impacts from, oil and gas activities in the Beaufort Sea on the Pacific walrus population.

Pacific walruses are seasonally abundant in the Chukchi Sea. Exploratory oil and gas operations in the Chukchi Sea have routinely encountered Pacific walruses; however, potential impacts to walruses are regulated through the MMPA. Specifically, incidental take regulations (ITRs) have been promulgated for the non-lethal, incidental take of walruses from oil and gas exploration activities in the Chukchi Sea, including geophysical, seismic, exploratory drilling and associated support activities for the 5-year period ending in June 2013. In a detailed analysis of the effects of such activities, including noise, physical obstructions, human encounters, and oil spills, the Service concluded that exploration activities would be sufficiently limited in time and scope that they would result in the take of only small numbers of walruses with no more than a negligible impact on the stock (73 FR 33212 (2008)). Prior to commencing exploration activities, operators are currently required by the Bureau of Ocean Energy, Management, Regulation and Enforcement (BOEMRE, formerly MMS) to obtain letters of authorization (LOA) pursuant to the ITRs or an incidental harassment authorization (IHA) (Wall 2011, pers. comm.). If operators commence operations without such authorization, their operations may be shut down, (Wall 2011, pers. comm.), and any take of walrus would be in violation of the MMPA.

While we anticipate oil and gas exploration activities to occur in the Chukchi Sea in the foreseeable future, we expect industry to request that the ITRs be renewed, so that any non-lethal, incidental take associated with exploration is authorized under the MMPA. The ITRs could not be renewed, and LOAs could not be issued, unless a determination were made that the activities would result in the take of only small numbers of walrus and have a negligible impact on the stock.

Monitoring studies performed to date have documented minimal effects of various exploration activities on walruses (USFWS 2008, p. 33212). In 1989 and 1990, aerial surveys and vessel-based observations of walruses were carried out to examine the animals' response to drilling operations at three Chukchi Sea prospects. Aerial surveys documented several thousand walruses (a small percentage of the estimated population) in the vicinity of the drilling prospects. The monitoring reports concluded that: (1) Walrus distributions were closely linked with pack ice; (2) pack ice was near active drill prospects for relatively short time periods; and (3) ice passing near active prospects contained relatively few animals. Walruses either avoided areas of operations or were passively carried away by the ice floes, and because only a small proportion of the population was near the operations, and for short periods of time, the effects of the drilling operations on walruses were limited in time, area, and proportion of the population (USFWS 2008, p. 33212). However, if walrus are forced to avoid areas of operations and associated disturbance by abandoning ice haulouts and swimming to other areas, they will likely experience increased energetic costs related to active swimming as opposed to passive transport on ice floes.

Disturbances caused by vessel and air traffic may cause walrus groups to abandon land or ice haulouts. One study

suggests that walruses may be tolerant of ship activities; Brueggeman *et al.* (1991, p. 139) reported that 75 percent of walruses encountered by vessels in the Chukchi Sea exhibited no reaction to ship activities within 1 km (0.6 mi) or less. This conclusion is corroborated by another study, which reported observations that walruses in water generally show little concern about potential disturbance from approaching vessels and will dive or swim away if a vessel is nearing a collision with them (Fay *et al.* 1984, p. 118).

Open-water seismic exploration, which produces underwater sounds typically with air gun arrays, may potentially affect marine mammals. Walruses produce a variety of sounds (grunts, rasps, clicks), which range in frequency from 0.1 to 10.0 Hertz (Hz, sine wave of a sound) (Richardson *et al.* 1995, p. 108). The effects of seismic surveys on walrus hearing and communications have not been studied. Seismic surveys in the Beaufort and Chukchi Seas will not impact vocalizations associated with breeding activity (one of the most important times of communication), because walruses do not currently breed in the open water areas that are subject to survey. Injury from seismic surveys would likely occur only if animals entered the zone immediately surrounding the sound source (Southall *et al.* 2007, p. 441). Walrus behavioral responses to dispersal and diving vessels associated with seismic surveys were monitored in the Chukchi Sea OCS in 2006. Based upon the transitory nature of the survey vessels, and the behavioral reactions of the animals to the passage of the vessels, we conclude that the interactions resulted in temporary changes in animal behavior with no lasting impacts to the species (Ireland *et al.* 2009, pp. xiii–xvi).

Future seismic surveys are anticipated to have minimal impacts to walrus. Surveys will occur in areas of open water, where walrus densities are relatively low. Monitoring requirements (vessel-based observers) and mitigation measures (operations are halted when close to walrus) in U.S. waters are expected to minimize any potential interactions with large aggregations of walruses. Because seismic operations likely would not be concentrated in any one area for extended periods, any impacts to walruses would likely be relatively short in duration and have a negligible overall impact on the Pacific walrus population.

Currently, there are no active offshore oil and gas developments in the U.S. Bering or Chukchi Seas. Therefore, the risk of an oil spill is low at the present time. The potential for an oil spill increases as offshore oil and gas development and shipping activities increase. No large oil spills have occurred in areas inhabited by walruses; however, a large oil spill could result in acute mortalities and chronic exposure that could substantially reduce the Pacific walrus population for many years (Garlich-Miller *et al.* 2011, Section 3.6.2.3.3 "Oil Spills"). A spill that oiled coastal haulouts occupied by females and calves could be particularly significant and could have the potential to impact benthic communities upon which walruses depend. As discussed below, oil spill cleanup in the broken-ice and open-water conditions that characterize walrus habitat would be more difficult than in other areas, primarily because effective strategies have yet to be developed. The Coast Guard has no offshore response capability in northern or western Alaska (O'Rourke 2010, p. 23).

According to BOEMRE, if oil and gas development of leases issued pursuant to Chukchi Lease Sale 193 occurs, the chance of one or more large oil spills (greater than or equal to 1,000 barrels) occurring over the production life of the development is between 35 and 40 percent (MMS 2007, p. IV–156). However, the estimated probability that oil reserves sufficient for development will be discovered range from 1 to 10 percent (MMS 2007, p. IV–156), reducing the chance of a large oil spill to 0.33 to 4 percent.

Our analysis of oil and gas development potential and subsequent risks was based on the analysis BOEMRE (MMS 2007, p. 1–631) conducted for the Chukchi Sea lease sales. Following the Deepwater Horizon incident in the Gulf of Mexico, offshore oil and gas activities have come under increased scrutiny. Policy and management changes are under way within the Department of the Interior that will likely affect the timing and scope of future offshore oil and gas activities. In addition, BOEMRE has been restructured to increase the effectiveness of oversight activities, eliminate conflicts of interest, and increase environmental protections (USDOI 2010, p. 1). As a result, we anticipate that the potential for a significant oil spill will remain small; however, we recognize that should a spill occur, there are no effective strategies for oil spill cleanup in the broken-ice conditions that characterize walrus habitat. In addition, the potential impacts to Pacific walrus from a spill could be significant, particularly if subsequent cleanup efforts are ineffective. Potential impacts would be greatest if walrus are aggregated in coastal haulouts where oil comes to shore. Overall, the chance of a large oil spill occurring in the Pacific walrus' range in the foreseeable future, however, is considered low.

In summary, oil and gas activities have occurred sporadically throughout the range of the Pacific walrus. Specific studies on the effects of exploratory drilling activities and associated shipping and seismic surveys have documented minimal effects on walrus—namely, transitory behavioral changes that were temporary in nature. Exploration activities are currently regulated under the MMPA, and the take of walrus during exploration activities is only authorized if operators have first obtained an LOA or an IHA. These authorizations are only issued for the non-lethal, incidental take of walrus, where the activities are considered likely to result in the take of small numbers of walrus with a negligible impact on the stock. We expect that future exploration to be similarly regulated under the MMPA. Therefore, we conclude that impacts of oil and gas exploration likely to occur over the foreseeable future will have minimal effects on walruses. Further, although a significant oil spill in the Chukchi Sea from exploration, development or production activities could have a detrimental impact on Pacific walrus, depending on timing and location, the potential for such a spill is low. As a result, we conclude that oil and gas exploration, development, and production are not threats to the Pacific walrus now, nor are they likely to become threats in the foreseeable future.

Commercial Fisheries

Commercial fisheries occur primarily in ice-free waters and during the open-water season, which limits the overlap between fishery operations and walruses. Where they do overlap, fisheries may impact Pacific walruses through interactions that result in the incidental take of walrus or through competition for prey resources or destruction of benthic prey habitat. A complete list of fisheries is published annually by NOAA Fisheries. The most recent edition (NOAA 2009a, p. 58859), showed about nine fisheries that have the potential to occur within the range of the Pacific walrus.

Currently, incidental take in the form of mortality from commercial fishing is low. Pacific walruses occasionally interact with trawl and longline gear of groundfish fisheries. In Alaska each year, fishery observers monitor a percentage of commercial fisheries and report injury and mortality of marine

mammals affected incidental to these operations. Incidental mortality to Pacific walruses during 2002–2006 was recorded for only one fishery, the Bering Sea/Aleutian Island flatfish trawl fishery, which is a Category II Commercial Fishery with 34 vessels or persons. During the years 2002–2006, observer coverage for this fishery averaged 64.7 percent. The mean number of observed mortalities was 1.8 walrus per year, with a range of 0 to 3 walrus per year. The total estimated annual fishery-related incidental mortality in Alaska was 2.66 walrus per year (USFWS 2010, pp. 3–4).

In addition to incidental take from fishing activities, however, fishery vessel traffic has the potential to take Pacific walruses through collisions and disturbance of resting, foraging, or travelling behaviors. We consider the likelihood of collisions between fishing vessels and walruses to be very low, however, as we unaware of any documented ship strikes, and it has been observed that walruses typically dive or swim off to the side if a shipping vessel comes close to colliding with them (Fay *et al.* 1984, p. 118). Fisheries occurring near terrestrial haulouts may affect animals approaching, leaving, or resting at the haulouts.

The Bristol Bay region in the Bering Sea is home to some of the largest U.S. land haulouts and several fisheries. For some haulouts, regulations are in place to minimize disturbance. Round Island is buffered from all fishing activities by a 0-to-3-nautical-mile "no transit" closure. Capes Peirce and Newenham and Round Island are buffered from fishing activities in Federal waters from 3 to 12 nautical miles; however, this buffer only applies to vessels with Federal fisheries permits. The haulout at Hagemeister Island has no protection zone in either Federal or State waters. Large catcher/processer vessels associated with the yellowfin sole fishery, as well as smaller fishing vessels 32 ft or less in length routinely pass between the haulout and the mainland to a site for offloading product to foreign vessels. Anecdotal reports indicate potential disturbance of walruses using the Hagemeister haulout (Wilson and Evans 2009b, p. 28). To address concerns of disturbance associated with the yellowfin sole fleet, the Service has engaged the North Pacific Fisheries Management Council to examine alternatives to provide increased protection for the haulout at Hagemeister Island (Wilson and Evan 2009a, pp. 1–23); however, no specific measures have been implemented. The haulout at Cape Seniavin currently has no Federal or State protection zones. No Federal fisheries occur near Cape Seniavin, but State of Alaska–managed salmon fisheries do occur in the immediate vicinity and pose a potential for disturbance. In general, however, within Bristol Bay, the proportion of walruses potentially affected is small relative to the population. The population is also comprised predominantly of males, which are less susceptible to trampling injuries as a result of disturbance; however, repeated disturbance events have the potential to result in haulout abandonment.

State-managed nearshore herring and salmon gillnet fisheries also have the potential to take walruses. The ADFG does not have an observer or self-reporting program to record marine mammal interactions, but it is believed that gear interactions with walruses have not occurred in the recent past (Murphy 2010, pers. comm.; Sands 2010, pers. comm.). Spotter planes used in the spring herring fishery in Bristol Bay have the potential to cause disturbance at terrestrial haulouts. To mitigate this potential, the Service developed and distributed guidelines for appropriate use of aircraft within the vicinity of Bristol Bay walrus haulouts (USFWS 2009, p. 1), and these were in effect during the fishing season.

In summary, given the current low rates of walrus encounters and deaths associated with commercial fishing, we expect that any increase in the level of fishery-related mortality to walrus will occur at a very low level relative to the total walrus population. Similarly, although walrus may be subject to disturbance from commercial fishing, the proportion of walrus affected is low, and efforts are under way to minimize the impacts. Accordingly, we do not consider fishery-related take of walrus to be a threat to the Pacific walrus population now or in the foreseeable future.

Commercial fisheries may also impact walruses through competition for prey resources or destruction of benthic prey habitat. With regard to competition, there is little overlap between commercial fish species and Pacific walrus prey species. The principal prey items consumed by weaned walruses are bivalves, gastropods, and polychaete worms (Fay 1982, p. 145; Sheffield and Grebmeier 2009, p. 767). Fay (1982, pp. 153–154) notes that the scarcity in walruses of endoparasites of known fish origin indicates that walruses rarely ingest fish. Fay (1982, pp. 152,154) also notes that various authors have reported occasionally finding several different crab species in walrus stomachs, but apparently at low frequency. Thus, direct competition for prey from commercial fisheries does not appear to be a threat to the Pacific walrus population now or in the foreseeable future.

Commercial fisheries—specifically pelagic (mid-water trawl) and nonpelagic (bottom trawl) fisheries—have the potential to indirectly affect walruses through destruction or modification of benthic prey or their habitat. Pelagic or mid-water trawls make frequent contact with the bottom, as evidenced by the presence of benthic species (*e.g.,* crabs, halibut) that are brought up as bycatch. NFMS estimates that approximately 44 percent of the area shadowed by the gear receives bottom contact from the footrope (NMFS 2005, pp. B–11). The majority of the pelagic trawl effort in the eastern Bering Sea is directed at walleye pollock in waters of 50–300 m (164–960 ft) (Olsen 2009, p. 1). The area north of Unimak Island along the continental shelf edge receives high fishing effort (Olsen 2009, p. 1). This puts the majority of pelagic fishing effort on the periphery of walrus-preferred habitat, as walruses are usually found over the continental shelf in waters of 100 m (328 ft) or less (Fay and Burns 1988, pp. 239–240; Jay *et al.* 2001, p. 621).

Nonpelagic fisheries also have the potential to indirectly affect walruses by destroying or modifying benthic prey or their habitat, or both. The predominant effects of nonpelagic trawl include "smoothing of sediments, moving and turning of rocks and boulders, resuspension and mixing of sediments, removal of sea grasses, damage to corals, and damage or removal of epigenetic organisms" (Mecum 2009, p. 57). Numerous studies on the effects of trawl gear on infauna have been conducted, and all note a reduction in mass (Brylinsky *et al.* 1994, p. 650; Bergman and van Santbrink 2000, p. 1321; McConnaughey *et al.* 2000, p. 1054; Kenchington *et al.* 2001, p. 1043). Two such studies comparing microfaunal populations between unfished and heavily fished areas in the eastern Bering Sea reported that, overall, the heavily trawled and untrawled areas were significantly different. In relation to walrus prey, the abundance of neptunid snails was significantly lower in the heavily trawled area, and mean body size was smaller, as was the trend for a number of bivalve species (*Macoma, Serripes, Tellina*), indicating a general decline in these species. The abundance of Mactromeris was greater in the heavily trawled area, but mean body size was smaller (McConnaughey *et al.* 2000, pp. 1381–1382; McConnaughey *et al.* 2005, pp. 430–431).

The areas open to nonpelagic trawling, however, are limited. The Final Environmental Impact Statement (EIS) for Essential Fish Habitat Identification and Conservation in Alaska concluded that nonpelagic trawling in the southern Bering Sea has long-term effects on benthic habitat features, but little impact on fish stock productivity. The EIS concludes that the reduction of infaunal and epifanual prey for managed fish species would be 0 to 3 percent (NMFS 2005, p. 10; Mecum 2009, p. 47). While not a direct measure of impacts to walrus prey, the analysis provides some insight on the level of impact to benthic species and indicates that impacts are likely to be minimal.

Nonpelagic trawls are designed to remain on the bottom of the ocean floor, but they may bring up walrus prey items as bycatch, albeit in very small quantities. Wilson and Evans (2009, p. 15) report bycatch of walrus prey items in the nonpelagic trawl fishery in the Northern Bristol Bay Trawl Area (NBBTA). Data were collected through the NMFS Fisheries Observer program and are aggregated for the years 2001 to 2009. Bivalves (mussels, oysters, scallops, and clams) accounted for 334 kg (735 lb) of the 457 kg (1005 lb) (73 percent) of total bycatch reported; snails, which are consumed by walruses, were listed as a bycatch species, but no amounts were reported. This level of bycatch is very low relative to the total amount of prey consumed by walrus. The NMFS is currently developing regulations to require the use of modified nonpelagic trawl gear in the Bering Sea subarea for the flatfish fishery and for nonpelagic trawl gear fishing in the northern Bering Sea subarea (Brown 2010, pers. comm.), which will likely reduce impacts on walrus prey. When implemented, the regulations will reopen an area within the NBSRA to modified gear nonpelagic trawl fishing (Brown 2010, pers. comm.; Mecum 2009, pp. 1–194).

Ecosystem shifts in the Bering Sea are expected to extend the distribution of fish populations northward and, along with this shift, nonpelagic bottom trawl fisheries are also expected to move northward (NOAA 2009b, p. 1). Because we currently lack information on benthic habitats and community ecology of the northern Bering Sea, we are unable to forecast the specific impacts that may occur from nonpelagic bottom trawling within this area (NOAA 2009b, p. 1) and how it may affect the Pacific walrus.

Commercial fisheries in all U.S. waters north of the Bering Strait are covered by the Fishery Management Plan for Fish Resources of the Arctic Management Area, which was released by the NPFMC in 2009. Management policy for this region is to prohibit all commercial harvest of fish until sufficient information is available to support the sustainable management of a commercial fishery (NPFMC 2009, p. 3). At some point, the Arctic Management Area may be opened to commercial fishing, but to date the NPFMC has taken a conservative stance. It is unclear whether the Arctic Management Area will open to commercial fishing at all, and if so, when it would be opened. If commercial fishing does open up in this area, however, we would work with the NPFMC to ensure that any necessary measures to minimize negative effects to Pacific walrus are implemented.

Accordingly, although commercial fisheries—specifically pelagic and nonpelagic trawl fisheries—have the potential to indirectly affect walruses through destruction or modification of benthic prey or their habitat, those fisheries do not appear to be a threat to Pacific walrus now or in the foreseeable future, because of limited overlap between the areas currently open to trawling and areas of walrus prey habitat as well as ongoing efforts to minimize detrimental impacts to walrus prey and benthic habitat.

In summary, we find that commercial fisheries have limited overlap with walrus distribution, and reported direct takes are nominal. Indirect effects on walruses are also limited, with some site-specific potential effects to walrus near terrestrial haulouts in Bristol Bay. Indirect effects to prey and benthic habitats due to various types of trawls occur, but are limited with respect to overlap with the range of walrus and walrus feeding habitat. We did not identify any direct competition for prey resources between walruses and fisheries. In addition, as fisheries currently do not occur in the Chukchi Sea, they are not considered a serious threat to walrus at this time. We recognize the potential future interest by the fishing industry to initiate fisheries further north as fish distribution changes in association with predicted changes in ocean conditions. However, based on the limited fishing-related impacts to walrus that have occurred in other areas to date, and the active engagement of the NPFMC through the Arctic Fisheries Management Plan, we conclude that commercial fishing is not now a threat to Pacific walrus and is not likely to become a threat in the foreseeable future.

Shipping

Commercial shipping and marine transportation vessels include oil and gas tankers, container ships, cargo ships, cruise ships, research vessels, icebreakers, and commercial fishing vessels. These vessels may travel to or from destinations within the Arctic (destination traffic), or may use the Arctic as a passageway between the Atlantic and Pacific Oceans (nondestination traffic). While the level of shipping activity is currently limited, the potential exists for increased activity in the future if changes in sea-ice patterns open new shipping lanes and result in a longer navigable season. Whether, and to what extent, marine transportation levels may change in the Arctic depends on a number of factors, including the extent of sea-ice melt, global trade dynamics, infrastructure development, the safety of Arctic shipping lanes, the marine insurance industry, and ship technology. Given these uncertainties, forecasts of future shipping levels in the Arctic are highly speculative (Arctic Council 2009, p. 1).

Two major shipping lanes in the Arctic intersect the range of Pacific walrus: The Northwest Passage, which runs parallel to the Alaskan Coast through the Bering Strait up through the Canadian Arctic Archipelago; and the Northern Sea Route, which refers to a segment of the Northeast Passage paralleling the Russian Coast through the Bering Strait and into the Bering Sea (Garlich-Miller *et al.* 2011, Section 3.6.4.1 "Scope and Scale of Shipping").

Shipping levels in the Northwest Passage and Northern Sea Route are highly dependent on the extent of sea-ice cover. Walrus occur along both of these routes where they pass through the Bering Sea, Bering Strait, and Chukchi Sea. Given the dependence of shipping activities on the absence of sea ice, shipping levels are seasonally variable. Almost all activity occurs in June through September, and to a lesser extent, October and November, and April and May. Most walrus are in the Chukchi Sea during the height of the shipping season, although at times they are associated with sea ice or terrestrial haulouts. There is currently no commercial shipping or marine transportation in December through March (Arctic Council 2009, p. 85).

Based on predicted sea-ice loss (Douglas 2010, p. 12), the navigation period in the Northern Sea Route is forecast to increase from 20–30 days to 90–100 days per year by 2100. Other factors that may lead to increased vessel traffic in the Arctic, in addition to reduced sea ice, include increased oil

and gas development, Arctic community population growth and associated development, and increased tourism (Brigham and Ellis 2004, pp. 8–9; Arctic Council 2009, p. 5).

No quantitative analyses of changes in shipping levels currently exist. Both the Arctic Marine Shipping Assessment (AMSA) and the Arctic Marine Transport Workshop note that the greatest potential for increased shipping and marine transportation is the potential use of the Arctic as an alternative trade route connecting the Atlantic and Pacific Oceans. The Northwest Passage is not considered a viable Arctic throughway, given that the oldest and thickest sea ice in the Arctic is pushed into the western edge of the Canadian Arctic Archipelago, making the passage dangerous to navigate (Arctic Council 2009, p. 93). However, the passage was open in 2007 and 2010, due to ice-free conditions.

The broad range of future shipping scenarios described in the AMSA and the Arctic Marine Transport Workshop underscore the uncertainties regarding future shipping levels. The AMSA notes that while the reduction in sea ice will provide the opportunity for increased shipping levels, ultimately it is economic factors, such as the feasibility of utilizing the Northern Sea Route as an alternative connection between the Atlantic and Pacific Oceans, that will determine future shipping levels (Arctic Council 2009, pp. 120–121).

Increased shipping in the Bering and Chukchi Seas has the potential to impact Pacific walrus during the spring, summer, and fall seasons. An increase in shipping will result in increased potential for disturbance in the water and at terrestrial haulouts. According to Garlich-Miller *et al.* (2011, Section 3.2.1.2.3 "Summer/Fall"), recent trends suggest that most of the Pacific walrus population will be foraging in open water from coastal haulouts along the Chukotka coast during the shipping season. Because the Northern Sea Route passes through this area, it is reasonable to expect walruses may be encountered along this route (Garlich-Miller *et al.* 2011, Figure 9). According to one study, however, walruses may be tolerant of ship activities, as 75 percent of walruses encountered by vessels in the Chukchi Sea exhibited no reaction to ship activities within 1 km (0.6 mi) or less (Brueggeman *et al.* 1991, p. 139). This is confirmed by another study, which noted that walruses in water have been observed to generally show little concern about potential disturbance from approaching vessels, unless the ship came in very close proximity to them, in which case they dove or swam off to the side (Fay *et al.* 1984, p. 118). Therefore, we expect disturbance to walruses from shipping to be minimal. In situations where negligible impacts to a small number of walrus are anticipated from repeated displacement from a preferred feeding area, for example, or noise disturbance at haulouts, incidental take regulations could potentially be developed for U.S. vessels to permit take caused by shipping activities, which are subject to the MMPA. These activities likely would require mandatory monitoring and mitigation measures designed to minimize effects to walrus through vessel-based observers to avoid collisions and disturbance.

As a result, shipping is not currently a threat to the Pacific walrus population, because shipping occurs at low levels, and shipping in support of other activities (*e.g.,* oil and gas exploration) is sufficiently regulated and mitigated by MMPA incidental take regulations. Shipping may increase in the future, but shipping lanes are typically limited to narrow corridors, and disturbance from such activities is expected to be low. Moreover, given the uncertainties identified related to potential future shipping activities, we conclude that increased shipping activities are unlikely to cause population-level effects to the Pacific walrus in the foreseeable future. In addition, take provisions of the MMPA can be effective in regulating shipping that may disturb haulouts and interrupt foraging activity in U.S. waters.

Oil Spills

To date, there have been relatively few oil spills caused by marine vessel travel in the Bering and Chukchi seas. Within the seasonal range of walrus, there were approximately six vessel oil spill incidents between 1995 and 2004: two caused by fires, two by machinery damage or failure, one by grounding, and one by damage to the vessel. These incidents were small in scale and did not cause widespread impacts to walrus or their habitat. In general, the pattern of past vessel incidents corresponds to areas of high vessel traffic. Given anticipated increases in marine vessel travel within the range of Pacific walrus due to sea-ice decline, it is likely that the number of vessel incidents will increase in the foreseeable future.

Oil spill response for walruses, and for wildlife in general, can be broken into three phases (Alaska Regional Response Team 2002, p. G1). Phase One is focused on eliminating the source of the spill, containing the spilled oil, and protecting environmentally sensitive areas. Phase Two involves efforts to herd or haze potentially affected wildlife away from the spill area. Phase Three, the most involved and most infrequently undertaken phase of oil spill response for wildlife, includes the capture and rehabilitation of oiled individuals.

Even under the most stringent control systems, some tanker spills, pipeline leaks, and other accidents are likely to occur from equipment leaks or human error (O'Rourke 2010, p. 16). The history of oil spills and response in the Aleutian Islands raises concerns for potential spills in the Arctic region: "The past 20 years of data on response to spills in the Aleutians has also shown that almost no oil has been recovered during events where attempts have been made by the responsible parties or government agencies, and that in many cases, weather and other conditions have prevented any response at all" (O'Rourke 2010, p. 23). Moreover, the Commander of the Coast Guard's 17th District, which covers Alaska, noted in an online journal that "* * * we are not prepared for a major oil spill [over 100,000 gallons] in the Arctic environment. The Coast Guard currently has no offshore response capability in northern or western Alaska and we only dimly understand the science of recovering oil in broken ice" (O'Rourke 2010, p. 23). The behavior of oil spills in cold and icy waters is not well understood (O'Rourke 2010, p. 23). Cleaning up oil spills in ice-covered waters will be more difficult than in other areas, primarily because effective strategies have yet to be developed.

The Arctic conditions present several hurdles to oil cleanup efforts. In colder water temperatures, there are fewer organisms to break down the oil through microbial degradation and oil evaporates at a slower rate. Although slower evaporation may allow for more oil to be recovered, evaporation removes the lighter, more toxic hydrocarbons that are present in crude oil (O'Rourke 2010, p. 24). The longer the oil remains in an ecosystem, the more opportunity there is for exposure. Oil spills may get trapped in ice, evaporating only when the ice thaws, and in some cases, oil could remain in the ice for years. Icy conditions enhance emulsification—the process of forming different states of water in oil, often described as "mousse." Emulsification creates oil cleanup challenges by increasing the volume of the oil/water mixture and the mixture's viscosity (resistance to flow). The latter change creates particular problems for conventional removal and pumping cleanup methods (O'Rourke 2010, p. 24). Moreover, two of the major nonmechanical recovery methods—in-

situ burning and dispersant application—may be limited by the Arctic conditions and lack of logistical support such as aircraft, vessels, and other infrastructure (O'Rourke 2010, p. 24).

As stated earlier, vessel-related spills were, and will likely continue to be, small in scale with localized impact to walrus and their habitat. A large-scale spill could have a major impact on the Pacific walrus population, depending on the spill and location relative to coastal aggregations. However, at present the chance of a large oil spill occurring in the Pacific walrus' range in the foreseeable future is considered low. Because most oil spills will have only localized impact to walrus, and the chance of a large-scale spill occurring in the walrus' range in the foreseeable future is low, oil spills do not appear to be a threat to Pacific walrus now or in the foreseeable future.

Icebreaking Activities

Icebreaking activities can create noise that causes marine mammals to avoid areas where these activities are occurring. Further, icebreaking activities may increase the risk of oil spills by increasing vessel traffic in ice-filled waters. Given that marine mammals, including walrus, have been found to concentrate in and around temporary breaks in the ice created by icebreakers, there may be greater environmental impact associated with an oil spill involving an icebreaker or a vessel operating in a channel cleared by an icebreaker.

Currently, Russian and Canadian icebreakers are used along the Northern Sea Route and within the Canadian Arctic Archipelago to clear passageways utilized by commercial shipping vessels (Arctic Council 2009, p. 74), primarily in the summer months. The United States does not currently engage in icebreaking activities for navigational purposes in the Arctic (NRC 2005, p. 16). There are no current U.S. or State of Alaska regulations on icebreaking activities, mainly because icebreaking along the Alaskan Coast is minimal and usually carried out by the Coast Guard. However, in the last few years, oil and gas exploration activities in the Beaufort and Chukchi Seas have used privately contracted icebreakers in support of their operations.

Icebreaking activities may increase in the future, given increases in commercial shipping and marine transportation. In particular, the establishment of the Northern Sea Route as a viable alternative trade route connecting the Atlantic and Pacific Oceans is contingent on, among other factors, the availability of a reliable government or private icebreaking fleet to clear the entire Route and provide predictable open shipping lanes (Arctic Marine Transport Workshop 2004, p. 1; Arctic Council 2009, p. 20). Although there are no current regulations on icebreaking activities in the Arctic, voluntary guidelines addressing icebreaking activities could be included as part of unified, multilateral regulation on Arctic shipping. According to the U.S. Department of Transportation, the International Maritime Organization (IMO) is considering developing icebreaking guidelines.

Icebreaking is currently not a threat to the Pacific walrus population, because of the limited amount of icebreaking activity, current regulations associated with shipping in support of other activities (*e.g.,* oil and gas development), and the relatively narrow corridors in which the activities occur. Shipping activity and associated icebreaking are predicted to increase in the future, but the magnitude and rate of increase are unknown and dependent on both economic and environmental factors. Given the uncertainties identified related to potential future shipping activities, the available information does not enable us to conclude that these activities will cause population-level effects to the Pacific walrus in the foreseeable future.

Both the Service and USGS BN models included oil and gas development, commercial fisheries, and shipping as stressors (Garlich-Miller *et al.* 2011, Section 3.8.5 "Other Natural or Human Factors"; Jay *et al.* 2010b, p. 37). The USGS model also included air traffic and shipping activities simultaneously (Jay *et al.* 2010b, p. 37). In both models, these stressors had little influence on model outcomes (Garlich-Miller *et al.* 2011 Section 3.8.5 "Other Natural or Human Factors"; Jay *et al.* 2010b, pp. 85–86, respectively).

Summary of Factor E

Based on our estimation of low current contaminant loads and the likelihood of minimal future exposure as walruses feed on lower trophic levels, we conclude that contaminants are not a threat now and are not likely to be a threat to the Pacific walrus population in the foreseeable future. Oil and gas exploration, development, and production are currently not a threat to the Pacific walrus and are not expected to be in the foreseeable future, due to the anticipated increased scrutiny oil and gas development will undergo in the future, the continued application of incidental take regulations, and the low risk of an oil spill. Commercial fishing is also currently not a threat to walrus, as it occurs only on the periphery of the walrus' range and results in minimal impacts on the population. We recognize the potential future interest by the fishing industry to initiate fisheries further north as fish distribution changes in association with predicted changes in ocean conditions. However, based on the limited fishing-related impacts to walrus that have occurred in other areas to date, and the active engagement of the NPFMC through the Arctic Fisheries Management Plan, we conclude that commercial fishing is not now, and is not likely to become, a threat to Pacific walrus in the foreseeable future. Shipping is not currently a threat to the Pacific walrus population, because it occurs at low levels, and shipping in support of other activities (*e.g.,* oil and gas exploration) is sufficiently regulated and mitigated by MMPA incidental take regulations. Shipping may increase in the future, but shipping lanes are typically limited to narrow corridors, and disturbance from such activities is expected to be low. Moreover, given the uncertainties identified related to potential future shipping activities, we conclude that increased shipping activities are unlikely to cause population-level effects to the Pacific walrus in the foreseeable future. In addition, take provisions of the MMPA can be effective in regulating shipping in U.S. waters that may disturb haulouts and interrupt foraging activity. Because most oil spills will have only localized impact to walrus, and the chance of a large-scale spill occurring in the walrus' range in the foreseeable future is considered low, oil spills do not appear to be a threat to Pacific walrus now or in the foreseeable future. Finally, shipping activity and associated icebreaking is predicted to increase in the future, but the magnitude and rate of increase are unknown and dependent on both economic and environmental factors. Based on the best information available at this time, we are unable to conclude that these shipping activities will be a threat to the Pacific walrus in the foreseeable future, in light of the uncertainties in projecting the magnitude and rate of increase of these activities in the future.

Therefore, based on our review of the best commercial and scientific data available, we conclude that none of the potential stressors identified and discussed under Factor E ("Other Natural or Manmade Factors Affecting Its Continued Existence of the Pacific Walrus") is a threat to the Pacific walrus

now, or is likely to become a threat in the foreseeable future.

Finding

As required by the Act, we considered each of the five factors under section 4(a)(1)(A) in assessing whether the Pacific walrus is endangered or threatened throughout all or a significant portion of its range. We carefully examined the best scientific and commercial information available regarding the past, present, and future threats faced by the Pacific walrus. We considered the information provided in the petition submitted to the Service by the Center for Biological Diversity; information available in our files; other available published and unpublished information; information submitted to the Service in response to our Federal Register notice of September 10, 2009; and information submitted to the Service in response to our public news release requesting information on September 10, 2010. We also consulted with recognized Pacific walrus experts and other Federal, State, and Tribal agencies.

In our analysis of Factor A, we identified and evaluated the risks of present or threatened destruction, modification, or curtailment of habitat or range of the Pacific walrus from (1) loss of sea ice due to climate change and (2) effects on prey species due to ocean warming and ocean acidification. We examined the likely responses and effects of changing sea-ice conditions in the Bering and Chukchi Seas on Pacific walruses. Pacific walrus is an ice-dependent species. Individuals use ice for many aspects of their life history throughout the year, and because of the projected loss of sea ice over the 21st century, we have identified the loss of sea ice and associated effects to be a threat to the Pacific walrus population. Although we anticipate that sufficient ice will remain, so that breeding behavior and calving will still occur in association with sea ice, the locations of these activities will likely change in response to changing ice patterns. The greatest change in sea ice, walrus distribution, and behavioral responses is expected to occur in the summer (June–August) and fall (October and November), when sea-ice loss is projected to be the greatest.

Based on the best scientific information available, in the foreseeable future, we anticipate that there will be a 1–5-month period in which sea ice will typically retreat northward off of the Chukchi continental shelf. The Chukchi Sea is projected to be ice-free in September every year by mid-century. However, loss of sea ice is occurring faster than forecast and, on average, sea ice has retreated off the continental shelf for approximately 1 month per year during the last decade. At mid-century, model subsets project a 2-month ice-free season in the Chukchi Sea, and a 4-month ice-free season at the end of the century, centered on the month of September (Douglas 2010, p. 8), with some models indicating there will be 5 ice-free months. Based on the current rate of sea-ice loss, and the current rate of GHG increases, these changes may occur earlier in the century than currently projected.

Through our analysis, we have concluded that loss of sea ice, with its concomitant changes to walrus distribution and life-history patterns, will lead to a population decline, and is a threat to Pacific walrus in the foreseeable future. We base this conclusion on the fact that, over time, walruses will be forced to rely on terrestrial haulouts to an increasingly greater extent. Although coastal haulouts have been traditionally used more frequently by males than by females with calves, in the future both sexes and all ages will be restricted to coastal habitats for a much greater period of time. This will expose all individuals, but especially calves, juveniles, and females, to increased levels of stress from depletion of prey, increased energetic costs to obtain prey, trampling injuries and mortalities, and predation. Although some of these stressors are currently acting on the population, we anticipate that their magnitude will increase over time as sea-ice loss over the continental shelf occurs regularly and more extensively. Given this persistent and increasing threat of sea-ice loss, we conclude that this anticipated Pacific walrus population decline will continue into the foreseeable future.

Under Factor A, we also analyzed the effects of ocean warming and ocean acidification on Pacific walrus. Although we are concerned about the changes to the walrus prey base that may occur from ocean acidification and warming, and theoretically we understand how those stressors might operate, ocean dynamics are very complex and the specific outcomes for these stressors are too unreliable at this time for us to conclude that they are a threat to Pacific walrus now or in the foreseeable future. We therefore conclude that these stressors do not rise to the level of a threat, now or in the foreseeable future.

In our analysis of Factor B, we identified and evaluated the risks to Pacific walrus from overutilization for commercial, recreational, scientific, or educational purposes. Under Factor B, we considered four potential risks to the Pacific walrus from overutilization relating to (1) Recreation, scientific, or educational purposes; (2) United States import/export; (3) commercial harvest; and (4) subsistence harvest. We found that recreational, scientific, and educational utilization of walruses is currently at low levels and is not projected to be a threat in the foreseeable future. United States import/export is not considered to be a threat to Pacific walrus now or in the foreseeable future, because most specimens imported into or exported from the United States are fossilized bone and ivory shards, and any other walrus ivory can only be imported into or exported from the United States after it has been legally harvested and substantially altered to qualify as a Native handicraft. Commercial and sport hunting of Pacific walrus in the United States is prohibited under the MMPA. Russian legislation also prohibits sport hunting of Pacific walruses. Commercial hunting in Russia has not occurred since 1991, and resumption would require the issuance of a governmental decree. In addition, any future commercial harvest in Russia must be based on a sustainable quota; therefore, it is unlikely that any potential future Russian commercial harvest will become a threat to the Pacific walrus population.

With regard to the subsistence harvest of walrus, subsistence harvest in Chukotka, Russia, is controlled through a quota system. An annual subsistence quota is issued through a decree by the Russian Federal Fisheries Agency. Quota recommendations are based on what is thought to be a sustainable removal level (approximately 4 percent of the population), based on the total population and productivity estimates. However, there are no U.S. quotas on subsistence harvest. Although at present it is difficult to quantify sustainable removal levels because of the lack of information on Pacific walrus population status and trends, we determined that 4 percent is a conservative sustainable harvest level. The current level of subsistence harvest rangewide is about 4 percent of the 2006 population estimate. Therefore, we do not consider the current level of subsistence harvest to be a threat to Pacific walrus at the present time.

Pacific walrus are an important subsistence resource in the Bering Strait region, and we expect Pacific walrus to continue to remain available for harvest there, even as sea-ice conditions change. Because there are no U.S. subsistence harvest quotas, we do not expect harvest

levels in the Bering Strait region to change appreciably in the foreseeable future, unless regulations are put in place to restrict harvest by limiting the number of walrus that may be taken. There are two paths that could result in harvest quotas: (1) Self-regulation activities by Alaska Natives; and (2) implementation of procedures in the MMPA. Neither of these is currently in place, except for one quota on Round Island, as discussed below. Instead, we predict that subsistence harvest is likely to continue at similar levels to those currently, even as the walrus population declines in response to loss of summer sea ice. Over time, as the proportion of animals harvested increases relative to the overall population, this continued level of subsistence harvest likely will become unsustainable. Therefore, we determine that subsistence harvest is a threat to the walrus population in the foreseeable future.

In our analysis of Factor C, we identified and evaluated the risks to Pacific walrus from disease and predation, and we determined that neither component currently, or in the foreseeable future, represents threats to the Pacific walrus population. Although a changing climate may increase exposure of walrus to new pathogens, there are no clear transmission vectors that would change levels of exposure, and no evidence exists that disease will become a threat in foreseeable future.

As the use of coastal haulouts by both walruses and polar bears during summer increases, we expect interactions between the two species to also increase, and terrestrial walrus haulouts may become important feeding areas for polar bears. The presence of polar bears along the coast during the ice-free season will likely influence patterns of haulout use as walrus shift to other coastal haulout locations. These movements may result in increased energetic costs to walrus, but it is not possible to predict the magnitude of these costs. Although predation by polar bears on Pacific walrus has been observed, the lack of documented population-level effects leads us to conclude that polar bear predation is not currently a threat to the Pacific walrus. As sea ice declines and Pacific walrus spend more time on coastal haulouts, however, it is likely that polar bear predation will increase. However, we cannot reliably predict the level of predation in the future, and therefore we are not able to conclude with sufficient reliability that it will rise to the level of a threat to the Pacific walrus population in the foreseeable future. There is no evidence that killer whale predation has ever limited the Pacific walrus population, and there is no evidence of increased presence of killer whales in the Bering or Chukchi Seas; therefore, killer whale predation is not a threat to the Pacific walrus now, and it is unlikely to become a threat in the foreseeable future.

In our analysis under Factor D, we identified and evaluated the risks from the inadequacy of existing regulatory mechanisms by focusing our analysis on the specific laws and regulations aimed at addressing the two primary threats to the walrus—the loss of sea-ice habitat and subsistence harvest. As discussed previously under Factor A, GHG emissions have contributed to a warming climate and the loss of sea-ice habitat for the Pacific walrus. There are currently no regulatory mechanisms in place to reduce or limit GHG emissions. This situation was considered as part of our analysis in Factor A. Accordingly, there are no existing regulatory mechanisms to effectively address sea-ice loss.

With regard to the other main threat to the walrus, subsistence harvest, there is currently no limit on the number of walrus that may be taken for subsistence purposes rangewide. While the subsistence harvest in Russia is controlled through a quota system, no national or Statewide quota exists in the United States. One local quota restricts the number of walrus that may be taken on Round Island (Alaska), but the harvest level in this area represents only a very minor portion of the harvest rangewide. Local ordinances recently adopted by two Native communities in the Bering Strait region, where 84 percent of the harvest in the United States and 43 percent of the rangewide harvest occurs, contain provisions aimed at restricting the number of hunting trips that may be taken for subsistence purposes. While these ordinances provide an important framework for future co-management initiatives and the potential development of future localized harvest limits, we acknowledge that no limits currently exist on the total number of walrus that may be taken in the Bering Strait region or rangewide. Nor are there other restrictions in place to ensure the likelihood that, as the population of walrus declines in response to changing sea-ice conditions, the subsistence harvest of walrus will occur at a reduced level. As a result, we determine that the existing regulatory mechanisms are inadequate to address the threat of subsistence harvest to the Pacific walrus in the foreseeable future.

In our analysis under Factor E, we evaluated other factors that may have an effect on the Pacific walrus, including pollution and contaminants; oil and gas exploration, development, and production; commercial fisheries interactions; shipping; oil spills; and icebreaking activities. Based on our estimation of low current contaminant loads and the likelihood of minimal future exposure as walruses feed on lower trophic levels, we conclude that contaminants are not a threat now and are not likely to be a threat to the Pacific walrus population in the foreseeable future. Oil and gas development is currently not a threat to the Pacific walrus and is not expected to be in the foreseeable future due to the anticipated increased scrutiny oil and gas development will undergo in the future, the continued application of incidental take regulations, and the low risk of an oil spill. Commercial fishing is also currently not a threat to walrus as it occurs only on the periphery of the species' range and results in minimal impacts on the population. We recognize the potential future interest by the fishing industry to initiate fisheries further north as fish distribution changes in association with predicted changes in ocean conditions. However, based on the limited fishing-related impacts to walrus that have occurred in other areas to date, and the active engagement of the NPFMC through the Arctic Fisheries Management Plan, we conclude that commercial fishing is not now a threat to Pacific walrus, and is not likely to become a threat in the foreseeable future. Shipping is not currently a threat to the Pacific walrus population, because it occurs at low levels, and shipping in support of other activities (*e.g.,* oil and gas exploration) is sufficiently regulated and mitigated by MMPA incidental take regulations. Shipping may increase in the future, but given the uncertainties identified related to potential future shipping activities, the available information does not allow us to conclude that these activities will cause population-level effects to the Pacific walrus in the foreseeable future. In addition, take provisions of the MMPA can be effective in regulating shipping in U.S. waters that may disturb haulouts and interrupt foraging activity. Because most oil spills will have only localized impact to walrus, and the chance of a large-scale spill occurring in the walrus' range in the foreseeable future is considered low, oil spills do not appear to be a threat to Pacific walrus now or in the foreseeable future. Finally, shipping activity and associated icebreaking are predicted to increase in the future, but the magnitude and rate of increase are unknown and dependent on both

economic and environmental factors. Given the uncertainties identified related to potential future shipping activities, the available information does not enable us to conclude that icebreaking will cause population-level effects to the Pacific walrus in the foreseeable future. Therefore, we determine that none of the potential stressors identified and discussed under Factor E is a threat to the Pacific walrus now, or is likely to become a threat in the foreseeable future.

In summary, we identify loss of sea ice in the summer and fall and associated impacts (Factor A) and subsistence harvest (Factor B) as the primary threats to the Pacific walrus in the foreseeable future. These conclusions are supported by the Bayesian Network models prepared by USGS and the Service. Our Factor D analysis determined that existing regulatory mechanisms are currently inadequate to address these threats. These threats are of sufficient imminence, intensity, and magnitude to cause substantial losses of abundance and an anticipated population decline of Pacific walrus that will continue into the foreseeable future.

Therefore, on the basis of the best scientific and commercial information available, we find that the petitioned action to list the Pacific walrus is warranted. We will make a determination on the status of the species as threatened or endangered when we prepare a proposed listing determination. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and expeditious progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render the species at risk of extinction at this time such that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act is warranted. We determined that issuing an emergency regulation temporarily listing the species is not warranted for this species at this time, because the threats acting on the species are not immediately impacting the entire species across its range to the point where the species will be immediately lost. However, if at any time we determine that issuing an emergency regulation temporarily listing the Pacific walrus is warranted, we will initiate this action at that time.

Listing Priority Number

The Service adopted guidelines on September 21, 1983 (48 FR 43098), to establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered and Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. These guidelines, titled "Endangered and Threatened Species Listing and Recovery Priority Guidelines," address the immediacy and magnitude of threats, and the level of taxonomic distinctiveness. The system places greatest importance on the immediacy and magnitude of threats, but also factors in the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera (genus with one species), full species, and subspecies (or equivalently, distinct population segments of vertebrates).

As a result of our analysis of the best available scientific and commercial information, we assigned the Pacific walrus a Listing Priority Number (LPN) of 9, based on the moderate magnitude and imminence of threats. These threats include the present or threatened destruction, modification or curtailment of Pacific walrus habitat due to loss of sea-ice habitat; and overutilization due to subsistence harvest. In addition, existing regulatory mechanisms fail to address these threats. These threats affect the entire population, are ongoing, and will continue to occur into the foreseeable future. Our rationale for assigning the Pacific walrus an LPN of 9 is outlined below.

Under the Service's Guidelines, the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidelines indicate that species with the highest magnitude of threat are those species facing the most severe threats to their continued existence. These species receive the highest listing priority. As discussed in the finding, the Pacific walrus is being impacted by two primary threats; the loss of sea-ice habitat, and subsistence harvest. The main threat to the Pacific walrus is the loss of sea-ice habitat due to climate change. Sea-ice losses have been observed to date and are projected to continue through the end of the 21st century. The loss of sea-ice habitat, while affecting individual walrus or localized populations, does not appear to be currently resulting in significant population-level effects. However, the modeled projections of the loss of sea-ice habitat and the associated impacts on the Pacific walrus are expected to greatly increase within the foreseeable future, thereby resulting in significant population-level effects. Because the threat of the loss of sea-ice habitat is not having significant effects currently, but is projected to, we have determined the magnitude of this threat is moderate, and not high.

Subsistence harvest is also identified as a threat to the Pacific walrus. Harvest is currently occurring at sustainable levels. With the loss of sea-ice habitat and the projected associated population decline, and because subsistence harvest is expected to continue at current levels, we concluded that subsistence harvest would have a population-level effect on the species in the future. Because harvest is occurring at sustainable levels now, but may become unsustainable in the foreseeable future due to the projected population decline, we have determined the magnitude of the threat of subsistence harvest is considered to be moderate, and not high.

Under our Guidelines, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure that species that face actual, identifiable threats are given priority over those species for which threats are only potential or species that are intrinsically vulnerable but are not known to be presently facing such threats. We have determined that loss of sea-ice habitat is affecting the Pacific walrus population currently and is expected to continue and likely intensify in the foreseeable future. Similarly, we have determined that subsistence harvest is presently occurring and expected to continue at current levels into the foreseeable future, even as the Pacific walrus population declines due to sea-ice loss. Because both the loss of sea-ice habitat and subsistence harvest are presently occurring, we consider the threats to be imminent.

The third criterion in our guidelines is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy, with the highest priority given to monotypic genera, followed by species and then subspecies. The Pacific walrus is a valid subspecies and therefore receives a lower priority than species or a monotypic genus. As discussed, the threats affecting the Pacific walrus are of moderate magnitude and imminent. Accordingly we have assigned the Pacific walrus an LPN of 9, pursuant to our guidelines.

We will continue to monitor the threats to the Pacific walrus, as well as the species' status, on an annual basis, and should the magnitude or the

imminence of the threats change, we will revisit our assessment of the LPN.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and the cost and relative priority of competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a listing proposal regulation or whether promulgation of such a proposal is precluded by higher-priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual "resubmitted" petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The median cost for preparing and publishing a 90-day finding is $39,276; for a 12-month finding, $100,690; for a proposed rule with critical habitat, $345,000; and for a final listing rule with critical habitat, the median cost is $305,000.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Since FY 2002, the Service's budget has included a critical habitat subcap to ensure that some funds are available for other work in the Listing Program ("The critical habitat designation subcap will ensure that some funding is available to address other listing activities" (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001)). From FY 2002 to FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In some FYs since 2006, we have been able to use some of the critical habitat subcap funds for proposed listing determinations for high-priority candidate species. In other FYs, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. At this time, for FY 2011, we do not know if we will be able to use some of the critical habitat subcap funds to fund proposed listing determinations.

We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. Through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have, in effect, determined the amount of money available for other listing activities nationwide (i.e., actions other than critical habitat designation). Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress identified the availability of resources as the only basis for deferring the initiation of a rulemaking that is warranted. The Conference Report accompanying Pub. L. 97–304 (Endangered Species Act Amendments of 1982), which established the current statutory deadlines and the warranted-but-precluded finding, states that the amendments were "not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise." Although that statement appeared to refer specifically to the "to the maximum extent practicable" limitation on the 90-day deadline for making a "substantial information" finding, that finding is made at the point when the Service is deciding whether or not to commence a status review that will determine the degree of threats facing the species, and therefore the analysis underlying the statement is more relevant to the use of the warranted-but-precluded finding, which is made when the Service has already determined the degree of threats facing the species and is deciding whether or not to commence a rulemaking.

In FY 2011, on December 22, 2010, Congress passed a continuing resolution which provides funding at the FY 2010 enacted level through March 4, 2011. Until Congress appropriates funds for FY 2011 at a different level, we will fund listing work based on the FY 2010 amount. Thus, at this time in FY 2011, the Service anticipates an appropriation of $22,103,000 based on FY 2010 appropriations. Of that, the Service anticipates needing to dedicate $11,632,000 for determinations of critical habitat for already listed species. Also $500,000 is appropriated for foreign species listings under the Act. The Service thus has $9,971,000 available to fund work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. In FY 2010 the Service received many new petitions and a single petition to list 404 species. The receipt of petitions for a large number of species is consuming the

Service's listing funding that is not dedicated to meeting Court-ordered commitments. Absent some ability to balance effort among listing duties under existing funding levels, it is unlikely that the Service will be able to make expeditious progress on candidate species in FY 2011.

In 2009, the responsibility for listing foreign species under the Act was transferred from the Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. Therefore, starting in FY 2010, we used a portion of our funding to work on the actions described above for listing actions related to foreign species. In FY 2011, we anticipate using $1,500,000 for work on listing actions for foreign species which reduces funding available for domestic listing actions, however, currently only $500,000 has been allocated. Although there are currently no foreign species issues included in our high-priority listing actions at this time, many actions have statutory or court-approved settlement deadlines, thus increasing their priority. The budget allocations for each specific listing action are identified in the Service's FY 2011 Allocation Table (part of our record).

For the above reasons, funding a proposed listing determination for the Pacific walrus is precluded by court-ordered and court-approved settlement agreements, listing actions with absolute statutory deadlines, and work on proposed listing determinations for those candidate species with a higher listing priority (i.e., candidate species with LPNs of 1–8).

Based on our September 21, 1983, guidance for assigning an LPN for each candidate species (48 FR 43098), we have a significant number of species with an LPN of 2. Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high or moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species, or part of a species (subspecies, distinct population segment, or significant portion of the range)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority).

Because of the large number of high-priority species, we have further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, originally comprised a group of approximately 40 candidate species ("Top 40"). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for those 40 candidates, we apply the ranking criteria to the next group of candidates with an LPN of 2 and 3 to determine the next set of highest-priority candidate species. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, since as listed species, they are already afforded the protection of the Act and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered if we can combine this with work that is subject to a court-determined deadline.

With our workload so much bigger than the amount of funds we have to accomplish it, it is important that we be as efficient as possible in our listing process. Therefore, as we work on proposed rules for the highest priority species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, we take into consideration the availability of staff resources when we determine which high-priority species will receive funding to minimize the amount of time and resources required to complete each listing action.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. As with our "precluded" finding, the evaluation of whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program in light of the resource available for delisting, which is funded by a separate line item in the budget of the Endangered Species Program. So far during FY 2011, we have completed one delisting rule.) Given the limited resources available for listing, we find that we are making expeditious progress in FY 2011 in the Listing program. This progress included preparing and publishing the following determinations:

FY 2011 COMPLETED LISTING ACTIONS

Publication date	Title	Actions	FR pages
10/6/2010	Endangered Status for the Altamaha Spinymussel and Designation of Critical Habitat.	Proposed Listing Endangered	75 FR 61664–61690
10/7/2010	12-month Finding on a Petition to list the Sacramento Splittail as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	75 FR 62070–62095
10/28/2010	Endangered Status and Designation of Critical Habitat for Spikedace and Loach Minnow.	Proposed Listing Endangered (uplisting).	75 FR 66481–66552
11/2/2010	90-Day Finding on a Petition to List the Bay Springs Salamander as Endangered.	Notice of 90-day Petition Finding, Not substantial.	75 FR 67341–67343
11/2/2010	Determination of Endangered Status for the Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail and Designation of Critical Habitat.	Final Listing Endangered	75 FR 67511–67550
11/2/2010	Listing the Rayed Bean and Snuffbox as Endangered	Proposed Listing Endangered	75 FR 67551–67583
11/4/2010	12–Month Finding on a Petition to List Cirsium wrightii (Wright's Marsh Thistle) as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 67925–67944

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
12/14/2010	Endangered Status for Dunes Sagebrush Lizard	Proposed Listing Endangered	75 FR 77801–77817
12/14/2010	12-month Finding on a Petition to List the North American Wolverine as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78029–78061
12/14/2010	12-Month Finding on a Petition to List the Sonoran Population of the Desert Tortoise as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78093–78146
12/15/2010	12-Month Finding on a Petition to List *Astragalus microcymbus* and *Astragalus schmolliae* as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78513–78556
12/28/2010	Listing Seven Brazilian Bird Species as Endangered Throughout Their Range.	Final Listing Endangered	75 FR 81793–81815
1/4/2011	90-Day Finding on a Petition to List the Red Knot subspecies *Calidris canutus roselaari* as Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 304–311
1/19/2011	Endangered Status for the Sheepnose and Spectaclecase Mussels.	Proposed Listing Endangered	76 FR 3392–3420

Our expeditious progress also includes work on listing actions that we funded in FY 2010 and FY 2011, but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and, as discussed above, selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding compared to preparing separate proposed rules for each of them in the future.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement	
Flat-tailed horned lizard	Final listing determination.
Mountain plover[4]	Final listing determination.
Solanum conocarpum	12-month petition finding.
Thorne's Hairstreak butterfly[3]	12-month petition finding.
Hermes copper butterfly[3]	12-month petition finding.
4 parrot species (military macaw, yellow-billed parrot, red-crowned parrot, scarlet macaw)[5]	12-month petition finding.
4 parrot species (blue-headed macaw, great green macaw, grey-cheeked parakeet, hyacinth macaw)[5]	12-month petition finding.
4 parrot species (crimson shining parrot, white cockatoo, Philippine cockatoo, yellow-crested cockatoo)[5]	12-month petition finding.
Utah prairie dog (uplisting)	90-day petition finding.
Actions With Statutory Deadlines	
Casey's june beetle	Final listing determination.
Southern rockhopper penguin—Campbell Plateau population	Final listing determination.
6 Birds from Eurasia	Final listing determination.
5 Bird species from Colombia and Ecuador	Final listing determination.
Queen Charlotte goshawk	Final listing determination.
5 species southeast fish (Cumberland darter, rush darter, yellowcheek darter, chucky madtom, and laurel dace)[4].	Final listing determination.
Ozark hellbender[4]	Final listing determination.
Altamaha spinymussel[3]	Final listing determination.
3 Colorado plants (*Ipomopsis polyantha* (Pagosa Skyrocket), *Penstemon debilis* (Parachute Beardtongue), and *Phacelia submutica* (DeBeque Phacelia))[4].	Final listing determination.
Salmon crested cockatoo	Final listing determination.
6 Birds from Peru & Bolivia	Final listing determination.
Loggerhead sea turtle (assist National Marine Fisheries Service)[5]	Final listing determination.
2 mussels (rayed bean (LPN = 2), snuffbox No LPN)[5]	Final listing determination.
Mt Charleston blue[5]	Proposed listing determination.
CA golden trout[4]	12-month petition finding.
Black-footed albatross	12-month petition finding.
Mount Charleston blue butterfly	12-month petition finding.
Mojave fringe-toed lizard[1]	12-month petition finding.
Kokanee—Lake Sammamish population[1]	12-month petition finding.
Cactus ferruginous pygmy-owl[1]	12-month petition finding.
Northern leopard frog	12-month petition finding.
Tehachapi slender salamander	12-month petition finding.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

Species	Action
Coqui Llanero	12-month petition finding/Proposed listing.
Dusky tree vole	12-month petition finding.
3 MT invertebrates (mist forestfly *(Lednia tumana*), *Oreohelix* sp. 3, *Oreohelix* sp. 31) from 206 species petition.	12-month petition finding.
5 UT plants (*Astragalus hamiltonii, Eriogonum soredium, Lepidium ostleri, Penstemon flowersii, Trifolium friscanum*) from 206 species petition.	12-month petition finding.
5 WY plants (*Abronia ammophila, Agrostis rossiae, Astragalus proimanthus, Boechere* (*Arabis*) *pusilla*, *Penstemon gibbensii*) from 206 species petition.	12-month petition finding.
Leatherside chub (from 206 species petition)	12-month petition finding.
Frigid ambersnail (from 206 species petition)[3]	12-month petition finding.
Platte River caddisfly (from 206 species petition)[5]	12-month petition finding.
Gopher tortoise—eastern population	12-month petition finding.
Grand Canyon scorpion (from 475 species petition)	12-month petition finding.
Anacroneuria wipukupa (a stonefly from 475 species petition)[4]	12-month petition finding.
Rattlesnake-master borer moth (from 475 species petition)[3]	12-month petition finding.
3 Texas moths (*Ursia furtiva, Sphingicampa blanchardi, Agapema galbina*) (from 475 species petition)	12-month petition finding.
2 Texas shiners (*Cyprinella* sp., *Cyprinella lepida*) (from 475 species petition)	12-month petition finding.
3 South Arizona plants (*Erigeron piscaticus, Astragalus hypoxylus, Amoreuxia gonzalezii*) (from 475 species petition).	12-month petition finding.
5 Central Texas mussel species (3 from 475 species petition)	12-month petition finding.
14 parrots (foreign species)	12-month petition finding.
Berry Cave salamander[1]	12-month petition finding.
Striped Newt[1]	12-month petition finding.
Fisher—Northern Rocky Mountain Range[1]	12-month petition finding.
Mohave Ground Squirrel[1]	12-month petition finding.
Puerto Rico Harlequin Butterfly[3]	12-month petition finding.
Western gull-billed tern	12-month petition finding.
Ozark chinquapin (*Castanea pumila* var. *ozarkensis*)[4]	12-month petition finding.
HI yellow-faced bees	12-month petition finding.
Giant Palouse earthworm	12-month petition finding.
Whitebark pine	12-month petition finding.
OK grass pink (*Calopogon oklahomensis*)[1]	12-month petition finding.
Ashy storm-petrel[5]	12-month petition finding.
Honduran emerald	12-month petition finding.
Southeastern pop snowy plover & wintering pop. of piping plover[1]	90-day petition finding.
Eagle Lake trout[1]	90-day petition finding.
Smooth-billed ani[1]	90-day petition finding.
32 Pacific Northwest mollusks species (snails and slugs)[1]	90-day petition finding.
42 snail species (Nevada & Utah)	90-day petition finding.
Peary caribou	90-day petition finding.
Plains bison	90-day petition finding.
Spring Mountains checkerspot butterfly	90-day petition finding.
Spring pygmy sunfish	90-day petition finding.
Bay skipper	90-day petition finding.
Unsilvered fritillary	90-day petition finding.
Texas kangaroo rat	90-day petition finding.
Spot-tailed earless lizard	90-day petition finding.
Eastern small-footed bat	90-day petition finding.
Northern long-eared bat	90-day petition finding.
Prairie chub	90-day petition finding.
10 species of Great Basin butterfly	90-day petition finding.
6 sand dune (scarab) beetles	90-day petition finding.
Golden-winged warbler[4]	90-day petition finding.
Sand-verbena moth	90-day petition finding.
404 Southeast species	90-day petition finding.
Franklin's bumble bee[4]	90-day petition finding.
2 Idaho snowflies (straight snowfly & Idaho snowfly)[4]	90-day petition finding.
American eel[4]	90-day petition finding.
Gila monster (Utah population)[4]	90-day petition finding.
Arapahoe snowfly[4]	90-day petition finding.
Leona's little blue[4]	90-day petition finding.
Aztec gilia[5]	90-day petition finding.
White-tailed ptarmigan[5]	90-day petition finding.
San Bernardino flying squirrel[5]	90-day petition finding.
Bicknell's thrush[5]	90-day petition finding.
Chimpanzee	90-day petition finding.
Sonoran talussnail[5]	90-day petition finding.
2 AZ Sky Island plants (*Graptopetalum bartrami* & *Pectis imberbis*)[5]	90-day petition finding.
I'iwi[5]	90-day petition finding.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

Species	Action
High-Priority Listing Actions	
19 Oahu candidate species[2] (16 plants, 3 damselflies) (15 with LPN = 2, 3 with LPN = 3, 1 with LPN = 9)	Proposed listing.
19 Maui-Nui candidate species[2] (16 plants, 3 tree snails) (14 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8).	Proposed listing.
2 Arizona springsnails[2] (*Pyrgulopsis bernadina* (LPN = 2), *Pyrgulopsis trivialis* (LPN = 2))	Proposed listing.
Chupadera springsnail[2] (*Pyrgulopsis chupaderae* (LPN = 2)	Proposed listing.
8 Gulf Coast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11))[4].	Proposed listing.
Umtanum buckwheat (LPN = 2) and white bluffs bladderpod (LPN = 9)[4]	Proposed listing.
Grotto sculpin (LPN = 2)[4]	Proposed listing.
2 Arkansas mussels (Neosho mucket (LPN = 2) & Rabbitsfoot (LPN = 9))[4]	Proposed listing.
Diamond darter (LPN = 2)[4]	Proposed listing.
Gunnison sage-grouse (LPN = 2)[4]	Proposed listing.
Miami blue (LPN = 3)[3]	Proposed listing.
4 Texas salamanders (Austin blind salamander (LPN = 2), Salado salamander (LPN = 2), Georgetown salamander (LPN = 8), Jollyville Plateau (LPN = 8))[3].	Proposed listing.
5 SW aquatics (Gonzales Spring Snail (LPN = 2), Diamond Y springsnail (LPN = 2), Phantom springsnail (LPN = 2), Phantom Cave snail (LPN = 2), Diminutive amphipod (LPN = 2))[3].	Proposed listing.
2 Texas plants (Texas golden gladecress (*Leavenworthia texana*) (LPN = 2), Neches River rose-mallow (*Hibiscus dasycalyx*) (LPN = 2))[3].	Proposed listing.
FL bonneted bat (LPN = 2)[3]	Proposed listing.
21 Big Island (HI) species[5] (includes 8 candidate species—5 plants & 3 animals; 4 with LPN = 2, 1 with LPN = 3, 1 with LPN = 4, 2 with LPN = 8).	Proposed listing.
12 Puget Sound prairie species (9 subspecies of pocket gopher (*Thomomys mazama* ssp.) (LPN = 3), streaked horned lark (LPN = 3), Taylor's checkerspot (LPN = 3), Mardon skipper (LPN = 8))[3].	Proposed listing.
2 TN River mussels (fluted kidneyshell (LPN = 2), slabside pearlymussel (LPN = 2))[5]	Proposed listing.
Jemez Mountain salamander (LPN = 2)[5]	Proposed listing.

[1] Funds for listing actions for these species were provided in previous FYs.
[2] Although funds for these high-priority listing actions were provided in FY 2008 or 2009, due to the complexity of these actions and competing priorities, these actions are still being developed.
[3] Partially funded with FY 2010 funds and FY 2011 funds.
[4] Funded with FY 2010 funds.
[5] Funded with FY 2011 funds.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

The Pacific walrus will be added to the list of candidate species upon publication of this 12-month finding. We will continue to monitor the status of this population as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency-listing procedures.

We intend that any proposed listing determination for the Pacific walrus will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, the subsistence community, industry, or any other interested party concerning this finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Alaska Marine Mammals Office (*see* **ADDRESSES** section).

Author(s)

The primary authors of this notice are the staff members of the Marine Mammals Management Office and the Fisheries and Ecological Services Division of the Alaska Regional Office.

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 21, 2011.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2011–2400 Filed 2–9–11; 8:45 am]

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Vol. 76, No. 28

Thursday, February 10, 2011

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

5467–5678 1
5679–6048 2
6049–6310 3
6311–6522 4
6522–6686 7
6686–7094 8
7095–7478 9
7479–7680 10

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revison date of each title.

1 CFR

9 6311
11 6311
12 6311

3 CFR

Proclamations:
8625 6305
8626 6307
8627 6521

Executive Orders:
13501 (revoked by 13564) 6309
13564 6309

Administrative Orders:
Memorandums:
Memorandum of February 7, 2011 7477

7 CFR

301 5679
915 7095
996 7096
1429 6313
2902 6319

Proposed Rules:
925 7119
2902 6366

9 CFR

78 6322

Proposed Rules:
103 6702
112 6702
114 6702
309 6572

10 CFR

Proposed Rules:
73 ..... 6085, 6086, 6087, 6200

12 CFR

21 6687
41 6687
907 7479
1213 7479

Proposed Rules:
1228 6702

13 CFR

120 7098
121 ..... 5680, 7098
124 5680
125 5680
126 5680
134 5680

Proposed Rules:
Ch. III 5501, 6088

14 CFR

39 ..... 5467, 6323, 6523, 6525, 6529, 6533, 6535, 6536, 6539, 6541, 6543, 6549, 7101
45 7482
71 ..... 5469, 5470, 5471, 5472, 6049
97 ..... 6050, 6053
110 7482
119 7482
121 7482
129 7482
135 7482

Proposed Rules:
25 6088
27 6094
29 6094
39 ..... 5503, 5505, 5507, 6575, 6578, 6581, 6584, 7511, 7513
71 7515
139 5510

15 CFR

748 7102

Proposed Rules:
922 6368

17 CFR

229 6010
240 6010
249 6010

Proposed Rules:
3 6095
23 ..... 6708, 6715
32 6095
33 6095
35 6095
229 ..... 6110, 6111
239 6110
249 ..... 6110, 6111

18 CFR

Proposed Rules:
410 6727

19 CFR

123 6688
142 6688
178 6688
351 7491

Proposed Rules:
351 5518

21 CFR

510 6326
516 6326
573 7106
878 6551

23 CFR

470 6690

24 CFR

Proposed Rules:
200.....5518
903.....6654
905.....6654
941.....6654
968.....6654
969.....6654

25 CFR

15.....7500

26 CFR

1.....6553

Proposed Rules:
301.....6369

27 CFR

1.....5473
4.....5473
5.....5473
7.....5473
9.....5473
13.....5473
16.....5473
17.....5473
18.....5473
20.....5473
22.....5473
24.....5473
25.....5473
26.....5473
28.....5473
30.....5473
40.....5473
41.....5473
44.....5473
45.....5473
53.....5473
70.....5473
71.....5473

28 CFR

552.....6054

Proposed Rules:
115.....6248

30 CFR

Proposed Rules:
104.....5719
938.....6587
948.....6589

31 CFR

548.....5482

Proposed Rules:
1.....7121
29.....6112

32 CFR

655.....6692

Proposed Rules:
156.....5729

33 CFR

100.....7107
117.....5685, 5686, 6694, 7107
147.....7107
165.....7107
334.....6327

Proposed Rules:
100.....7123
117.....7131
165.....5732, 6728, 7131, 7515

36 CFR

1254.....6554

Proposed Rules:
242.....6730

37 CFR

Proposed Rules:
1.....6369

38 CFR

1.....6694
36.....6555

Proposed Rules:
3.....5733

39 CFR

20.....7114

40 CFR

51.....6328
52.....6331, 6559, 7116
81.....6056
93.....6328
180.....5687, 5691, 5696, 5704, 5711, 6335, 6342, 6347
271.....6561, 6564

Proposed Rules:
26.....5735
52.....6376, 6590, 7142
55.....7518
271.....6594

42 CFR

405.....5862
424.....5862
447.....5862
455.....5862
457.....5862
498.....5862
1007.....5862

Proposed Rules:
416.....5755
418.....5755
482.....5755
483.....5755
484.....5755
485.....5755
486.....5755
491.....5755

43 CFR

4.....7500
30.....7500

44 CFR

61.....7508

Proposed Rules:
67.....5769, 6380

45 CFR

Proposed Rules:
170.....5774
1609.....6381

46 CFR

401.....6351

47 CFR

Proposed Rules:
0.....6928
1.....5652, 6928
2.....5521, 6928
5.....6928
15.....5521
22.....6928
73.....5521, 6928
74.....6928
80.....6928
87.....6928
90.....6928
101.....6928

48 CFR

245.....6004, 6006
252.....6004, 6006
1816.....6696

Proposed Rules:
24.....7522
1834.....7526

49 CFR

171.....5483
173.....5483
191.....5494
192.....5494

Proposed Rules:
385.....5537
390.....5537
395.....5537

50 CFR

17.....6066, 6848, 7246
216.....6699
300.....6567
622.....5717, 6364, 7118
679.....5718, 6083

Proposed Rules:
17.....6734, 7528, 7634
100.....6730
223.....6754, 6755
224.....6383
648.....5555
680.....5556

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H.R. 366/P.L. 112-1
To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes. (Jan. 31, 2011)

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