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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

RIN 0503–AA42

Procedures Relating to Awards Under the Equal Access to Justice Act

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is amending its regulations implementing the Equal Access to Justice Act (EAJA) by raising the maximum hourly attorney fees rate from $125.00 to $150.00 for covered proceedings initiated on and after the effective date of this final rule.

DATES: This final rule is effective March 3, 2011.

FOR FURTHER INFORMATION CONTACT: Adam J. Hermann, Esq., Attorney Advisor, General Law Division, Office of the General Counsel, South Building Room 3311, USDA, 1400 Independence Ave., SW., Washington, DC 20250; Voice: (202) 720–9425; Email: *adam.hermann@ogc.usda.gov*.

SUPPLEMENTARY INFORMATION: On July 30, 2010, USDA published a proposed rule (75 FR 44928, July 30, 2010) to amend its regulations implementing the Equal Access to Justice Act (EAJA), 5 U.S.C. 504, to raise the maximum hourly attorney fees rate set forth in 7 CFR 1.186 from $125.00 to $150.00 for proceedings initiated on and after the effective date of the publication of this final rule. EAJA, 5 U.S.C. 504, provides to certain parties in adversary agency adjudications reimbursement for attorney fees and other expenses under limited circumstances. The proposed rule was issued in response to a Petition for Rulemaking (PFR) received by USDA on September 29, 2008, filed by Public Citizen Litigation Group, Five Points Road Joint Venture, and Charles Brown, Esq., under the provisions of 7 CFR 1.187 and 1.28. The PFR sought an increase in the maximum attorney fees payable based on the U.S. Department of Labor Consumer Price All-Items Index for All Urban Consumers. In brief, the petitioners sought an automatic escalator clause using 1996 as the base year and $125.00 per hour as the base year maximum fee, with the new amount applying to all pending and future covered proceedings before USDA.

In the proposed rule, USDA invited comments, which were due by September 28, 2010. USDA received two comments.

Comment: One commenter, citing the economy, objected to the increase in the maximum hourly rate from $125.00 to $150.00 and suggested that the maximum hourly rate should be decreased. This commenter also advocated for the enactment of a law requiring attorneys to provide twenty hours per week of "public service."

Response: USDA considered this comment but is not making any changes to the proposed rule. In the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, Title II, section 231 (1996), Congress amended EAJA at 5 U.S.C. 504(b)(1)(A) by raising the hourly maximum attorney fees rate from $75.00 to $125.00. Because inflation has eroded the value of the $125 per hour fee set by Congress in 1996, USDA does not believe it would be appropriate to decrease the $125 per hour rate. Rather, USDA has determined that an increase of $25.00—from $125.00 to $150.00—is appropriate. Finally, the enactment of laws is a function of the Congress and is, therefore, outside the purview of this regulation.

Comment: One commenter objected to any increase in the maximum hourly rate until "a more detailed process of documentation, as well as a comprehensive review of past usage of the EAJA" is undertaken. The commenter argued that attorney fee reimbursements under EAJA "have been recovered and utilized primarily by environmental groups," and that such groups are "clearly receiving a disproportionate amount of funding from EAJA." The commenter suggested that attorneys representing industry groups are disadvantaged because of such disproportionate amount of EAJA attorney fees reimbursements that are recovered by environmental groups. In support of its assertions, the commenter referred generally to research conducted by the Budd-Falen Law Offices, L.L.C., but does not state whether such research analyzed the EAJA statute for agency adjudications (5 U.S.C. 504) or the EAJA statute applicable in Federal judiciary proceedings (28 U.S.C. 2412), or both.

Response: USDA considered this comment but is not making any changes to the proposed rule. Eligibility for reimbursement of attorney fees to prevailing parties in agency adversary adjudications is determined by statute (5 U.S.C. 504). If an entity meets the statutory eligibility requirements and otherwise complies with the EAJA procedures as implemented by USDA in 7 CFR part 1, subpart J, an EAJA award will be made. The mere status of the entity as an environmental group or an industry group has no bearing on agency EAJA determinations. EAJA determinations in judicial proceedings are governed by 28 U.S.C. 2412 and are made by the courts, not the agency. Any perceived inequities in EAJA reimbursements across particular interest groups may be addressed to Congress as part of the legislative process. USDA believes that an increase in the current maximum hourly rate is appropriate for the reasons stated previously.

For the reasons stated in the proposed rule, USDA is raising the hourly fee set forth in 7 CFR 1.186 from $125.00 to $150.00, to be applicable to covered proceedings initiated on and after the effective date of this final rule.

This action has been reviewed under Executive Order No. 12866 and has been determined not to be a "significant regulatory action." This final rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; nor will it materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; nor will it have an annual effect on the economy of $100 million or more; nor will it adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way. Furthermore, it does not raise a novel legal or policy issue arising out of legal

mandates, the President's priorities or principles set forth in the Executive Order.

USDA certifies that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96–534, as amended (5 U.S.C. 601 *et seq.*).

USDA has determined that the provisions of the Paperwork Reduction Act, as amended, (44 U.S.C. 3501 *et seq.*), do not apply to any collections of information contained in this final rule because any such collections of information are made during the conduct of administrative action involving an agency against specific individuals or entities. 5 CFR 1320.4(a)(2).

List of Subjects in 7 CFR Part 1

Administrative practice and procedure.

Accordingly, Title 7 of the Code of Federal Regulations is amended as follows:

PART 1—ADMINISTRATIVE REGULATIONS

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

Authority: 5 U.S.C. 301, unless otherwise noted.

Subpart J—Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department

■ 2. Amend § 1.186 by revising paragraph (b) to read as follows:

§ 1.186 Allowable fees and expenses.

* * * * *

(b) In proceedings commenced on or after the effective date of this paragraph, no award for the fee of an attorney or agent under the rules in this subpart may exceed $150 per hour. No award to compensate an expert witness may exceed the highest rate at which the Department pays expert witnesses, which is set out at § 1.150 of this part. However, an award also may include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

* * * * *

■ 3. Amend § 1.187 by revising paragraph (a) to read as follows:

§ 1.187 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Department may adopt regulations providing that attorney fees may be awarded at a rate higher than $150 per hour in some or all of the types of proceedings covered by this part. The Department will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

* * * * *

Thomas J. Vilsack,

Secretary of Agriculture.

[FR Doc. 2011–4423 Filed 3–2–11; 8:45 am]

BILLING CODE 3410–90–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 932

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1225

RIN 2590–AA01

Minimum Capital

AGENCY: Federal Housing Finance Board and Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a final rule to implement a provision of the Federal Housing Enterprises Financial Safety and Soundness Act, as amended, that provides for a temporary increase in the minimum capital level for the entities regulated by FHFA—the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and the Federal Home Loan Banks. The final rule establishes standards for imposing a temporary increase and for rescinding such an increase, and a time frame for review of such an increase.

DATES: This rule is effective April 4, 2011.

FOR FURTHER INFORMATION CONTACT: Christopher T. Curtis, Senior Deputy General Counsel, *Christopher.Curtis@fhfa.gov*, (202) 414–8947, or Jamie Schwing, Associate General Counsel, *Jamie.Schwing@fhfa.gov,* (202) 414–3787, (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

A. Establishment of the Federal Housing Finance Agency

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, 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. FHFA was established to oversee the operations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, Enterprises), and the Federal Home Loan Banks (Banks) (collectively, regulated entities). FHFA is to ensure that the regulated entities operate in a safe and sound manner including being capitalized adequately; that their operations foster liquid, efficient, competitive and resilient national housing finance markets; that they comply with the Safety and Soundness Act and their authorizing statutes, and with rules, regulations, guidelines and orders issued under those statutes; that they carry out their missions through activities authorized and consistent with the Safety and Soundness Act and their authorizing statutes; and that the activities and operations of the entities are consistent with the public interest.[1] The regulated entities continue to operate under regulations promulgated by the Office of Federal Housing Enterprise Oversight and the Federal Housing Finance Board, and the relevant regulations of the Department of Housing and Urban Development, until such time as the existing regulations are supplanted by regulations promulgated by FHFA.[2]

B. The Bank System Generally

The twelve Banks are instrumentalities of the United States organized under the Federal Home Loan Bank Act (Bank Act).[3] *See* 12 U.S.C. 1423, 1432(a). The Banks are cooperatives: Only members of a Bank may purchase the capital stock of a Bank, and only members or certain eligible housing associates (such as state housing finance agencies) may obtain access to secured loans, known as advances, or other products provided by

[1] 12 U.S.C. 4513.

[2] Sections 1302 and 1312 of HERA.

[3] Each Bank is generally referred to by the name of the city in which it is located. The twelve Banks are located in: Boston, New York, Pittsburgh, Atlanta, Cincinnati, Indianapolis, Chicago, Des Moines, Dallas, Topeka, San Francisco, and Seattle.

a Bank. *See* 12 U.S.C. 1426(a)(4), 1430(a), 1430(b). Each Bank is managed by its own board of directors and serves the public interest by enhancing the availability of residential credit through its member institutions. *See* 12 U.S.C. 1427. Any eligible institution (generally a federally insured depository institution or state-regulated insurance company) may become a member of a Bank if it satisfies certain criteria and purchases a specified amount of the Bank's capital stock. *See* 12 U.S.C. 1424; 12 CFR part 1263.

As government-sponsored enterprises, the Banks are granted certain privileges under federal law. In light of those privileges, the Banks typically can borrow funds at spreads over the rates on U.S. Treasury securities of comparable maturity lower than most other entities. The Banks pass along a portion of their funding advantage to their members—and ultimately to consumers—by providing advances and other financial services at rates that would not otherwise be available to their members. Consolidated obligations (COs), consisting of bonds and discount notes, are the principal funding source for the Banks. The Office of Finance issues all COs on behalf of the twelve Banks. Although each Bank is primarily liable for the portion of consolidated obligations corresponding to the proceeds received by that Bank, each Bank is also jointly and severally liable with the other eleven Banks for the payment of principal and interest on all COs. 12 CFR 966.9.

C. The Enterprises Generally

The Enterprises are chartered by Congress for the purpose of establishing secondary market facilities for residential mortgages. *See* 12 U.S.C. 1716 *et seq.;* 12 U.S.C. 1451 *et seq.* Congress established the Enterprises to provide stability in the secondary mortgage market for residential mortgages, to respond appropriately to the private capital market, to provide ongoing assistance to the secondary market for residential mortgages, and to promote access to mortgage credit throughout the nation. *Id.*

On September 6, 2008, the Director of FHFA appointed FHFA as conservator of the Enterprises in accordance with the Safety and Soundness Act, as amended by HERA. The Enterprises remain under conservatorship at this time. Although the Enterprises' substantial market presence has been important to restoring market stability, neither company would be capable of serving the mortgage market today without the ongoing financial support provided by the United States Department of Treasury. While reliance on the Treasury Department's backing will continue until legislation produces a final resolution to the Enterprises' future, FHFA is monitoring the activities of the Enterprises to: (a) Limit their risk and exposure by avoiding new lines of business; (b) ensure profitability in their new books of business without deterring market participation or hindering market recovery; and (c) minimize losses on the mortgages already on their books.

D. The Proposed Rule

On February 8, 2010, FHFA published in the **Federal Register** a proposed rule that set forth standards and procedures FHFA would employ to determine whether to require or rescind a temporary increase in the minimum capital levels of a regulated entity or entities pursuant to 12 U.S.C. 4612(d). The 60-day comment period closed on April 9, 2010. *See* **Federal Register** 75 FR 6151 (February 8, 2010).

Section 1111 of HERA amended section 1362 of the Safety and Soundness Act to provide additional authorities for FHFA regarding minimum capital requirements. Section 1362(a) establishes a minimum capital level for the Enterprises, while section 1362(b) incorporates the minimum capital level for the Federal Home Loan Banks established by the Federal Home Loan Bank Act (Bank Act).[4] The section explicitly authorizes the Director, by regulation, to provide for capital levels higher than the minimum levels specified for the Enterprises or the Banks to promote safe and sound operations.[5] Also, section 1362(e) provides for additional capital and reserve requirements to be issued by order or regulation with respect to a product or activity.[6] Section 1362(f) provides for a periodic review of core capital maintained by an Enterprise, the amount of capital retained by the Banks and the minimum capital levels set forth for the regulated entities required under this section.[7]

In addition, section 1362(d) provides that the Director, by order, may temporarily increase an established minimum capital level, when the Director determines "that such an increase is necessary and consistent with the prudential regulation and the safe and sound operations of a regulated entity."[8] The section also provides that the Director shall rescind the temporary minimum capital level when the Director determines circumstances no longer justify the temporary level.[9] To implement section 1362(d), the Director must issue regulations setting forth standards for the imposition of a temporary increase, standards and procedures that will be used to make the determination regarding rescission, and a time frame for periodic review of any temporary increase in the minimum capital level to make a determination regarding rescission.[10]

Section 1362(d) recognized the need for the Director to be able to respond when necessary to conditions affecting a regulated entity by imposing an appropriately higher capital requirement in an expeditious manner. The proposed rule also sets forth procedures and standards as required in the Safety and Soundness Act for a temporary increase in the minimum capital levels of the Enterprises or the Banks, including a determination to order an increase, to rescind all or part of the increase, and the time for periodic review of an increase as provided in section 1362(d).

E. Consideration of Differences Between the Banks and the Enterprises

Section 1201 of HERA (codified at 12 U.S.C. 4513(f)) requires the Director, when promulgating regulations relating to the Banks, to consider the following differences between the Banks and the Enterprises: Cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. The Director also may consider any other differences that are deemed appropriate. In preparing this final rule, FHFA considered the differences between the Banks and the Enterprises as they relate to the above factors, and determined that the rule is appropriate.

In particular, FHFA has evaluated the relevance of the factors that are part of the standard for determining that a change in the minimum capital standard is appropriate, and added a factor that is unique to the Banks: The ratio of a

[4] The Bank Act's current minimum capital requirements apply to the eleven banks that have converted to the capital structure provided in the Bank Act as amended by the Gramm-Leach-Bliley Act of 1999, *see* Bank Act section 6(a)(2), 12 U.S.C. 1426(a)(2), but do not apply to the Federal Home Loan Bank of Chicago. The Federal Home Loan Bank of Chicago is subject to capital requirements as set forth in a 2007 Cease and Desist Order, as amended. *See* 74 FR 5597 (January 30, 2009). As a result, the definition of "minimum capital level" as set forth in the proposed regulation is structured to take into account the current supervisory status of the Federal Home Loan Bank of Chicago.

[5] 12 U.S.C. 4612(c).

[6] *Id.* at (e).

[7] *Id.* at (f).

[8] *Id.* at (d)(1).

[9] *Id.* at (d)(2).

[10] *Id.* at (d)(3).

Bank's market value of equity to the par value of its capital stock. FHFA also considered the Banks' circumstances when crafting the procedural elements of the rule, including the relevance of the Banks' capital structure plans, and concluded that the statutory requirement that the Banks operate under capital structure plans does not require that a different rule be crafted specifically for them, although a Bank's capital structure plan will undoubtedly be relevant to the steps a Bank would take to meet a new, increased minimum capital level. As a tool supportive of safety and soundness, the capital authority conferred by the statute and implemented in this regulation will, overall, be supportive of the Banks' unique structure and mission.

II. Final Rule

A. Comments

In the proposed rule, FHFA provided for notice of a temporary increase in a regulated entity's minimum capital requirement; standards for imposing a temporary increase in minimum capital; standards for rescission of a temporary increase; timeframe for review of temporary increase for the purpose of rescission; requirements for written plans to augment capital; and promulgation of future guidance. FHFA received a total of five comment letters on the proposed rule. Comments were received from the Federal Home Loan Bank of Boston (Boston Bank); the Federal Home Loan Bank of Dallas (Dallas Bank); the Federal Home Loan Bank of San Francisco (San Francisco Bank); a joint letter from the Federal Home Loan Banks of Atlanta, Chicago, Des Moines, Indianapolis, Pittsburgh, Seattle and Topeka (Joint Bank Letter); and a letter from a private citizen (consisting of a one sentence statement regarding "limitations on seller financing" that was not germane to the rulemaking).

FHFA has considered all of the comments in developing the final rule. FHFA accepted some of the commenters' recommendations and has made changes in the final rule, although the basic approach adopted in the proposed rule remains the same. The changes made in the final rule improve upon the basic approach proposed by FHFA by clarifying certain provisions and by improving the structure of the rule. Specific comments, FHFA's responses, and changes adopted in the final rule are described in greater detail below in the sections describing the relevant rule provisions.

B. Final Rule Provisions

1. General Comment

Three Bank letters offered similar comments regarding the application of section 1201 of the Housing and Economic Recovery Act of 2008 (HERA) requiring the Director to consider the differences between the Banks and the Enterprises before promulgating regulations, or taking formal or informal actions of general applicability relating to the Banks. The commenters noted that the proposed rule does not indicate whether the Director conducted the review required under section 1201, and lacks a statement to that effect, which typically has been included in most agency actions promulgated by FHFA.[11] FHFA agrees with the commenters that this rule is subject to HERA section 1201. As noted above, FHFA has reviewed the rule in the context of the differences enumerated in section 1201 and has determined that it is appropriate.

The three Bank letters also suggest that FHFA should consider separating the requirements for temporary increases for the Banks and the Enterprises into separate rules. FHFA did not agree with the commenters' suggestion, as the rule has been crafted taking into account the differences between the regulated entities. As the rule is structured, there is sufficient regulatory flexibility to evaluate and respond to the unique circumstances that may impact one or more regulated entities causing the Director to impose, or rescind, a temporary increase. Separating the proposed rule into two rulemakings would not enhance FHFA's ability to respond to unique or institution-specific circumstances.

2. Section 1225.2—Definitions

FHFA has adopted the definitions as proposed. FHFA did not receive any comments that addressed the proposed definitions.

3. Section 1225.3—Procedures

All of the Banks commented on proposed § 1225.3, which sets forth the requirements for notice of a temporary increase in the minimum capital requirement. As a general matter, the Banks objected to the length of the time period for the notice of a temporary increase in the minimum capital requirement and the potential impact the provision could have on existing timelines built into each Bank's capital plan. The San Francisco Bank commented that "these time periods for response and compliance with respect to something so fundamentally critical to a Bank as its capital level are unrealistically short in light of the possible strategic financial management changes and other actions [a Bank] may need to take in order to meet the increased requirement * * * for purposes of the Final Rule, a notice period of at least 60 days, with at least 30 days to respond, is more appropriate."[12] The San Francisco Bank also stated that the final rule should indicate that the effective date of any required increase should take into account a Bank's compliance with the terms of its capital plan, including applicable notice requirements, and that the order should be subject to a more formal procedure, including an opportunity for a hearing under 12 CFR Part 907.[13]

FHFA considered the comment and did not make the requested changes. The statutory provision is designed to elicit an immediate response, if necessary, by the subject institution to an unusual condition. A Bank would be able to address capital-plan issues in its response to a temporary capital increase notice; however, the terms of a capital plan do not limit the Director's power under this statutory provision. A hearing requirement would not be consistent with the need for rapid action, and is not provided in other capital contexts, such as the prompt corrective action (PCA) framework.[14]

Two of the Banks suggested that the final rule cross-reference 12 CFR 1229.11 for requiring Banks to temporarily increase minimum capital. The Joint Bank Letter states: "In promulgating 12 CFR Part 1229, the FHFA recognized that the [Banks] are limited in their ability to quickly raise additional capital because of the [Bank's] cooperative capital stock structure and capital plans. In light of these limitations, the FHFA requires

[11] Joint Bank Letter, section I., at 1–2; Boston Bank Letter, section I., at 1; and Dallas Bank Letter, section I., at 2.

[12] San Francisco Bank, section I., at 1.

[13] San Francisco Bank, section I., at 1–2. *See also* Dallas Bank, section II., at 3, stating that "the final rule should clarify whether the effective date for a temporary minimum capital requirement refers to the date on which [a Bank] is required to issue additional capital stock to its members or the date on which the [Bank] must implement the steps under its capital plan that are required to impose a change in the minimum stock requirement of that [Bank's] members * * *. The Dallas Bank suggests that the notice period in the final rule take into account that the [Banks] are bound to operate in compliance with the terms of their capital plans with respect to increases in their members' minimum stock purchase requirement and that a temporary increase in the minimum stock purchase requirement may require an amendment to [a Bank's] capital plan."

[14] Sections 1361–1369(D) of the Safety and Soundness Act (12 U.S.C. 4611–4623).

undercapitalized and significantly undercapitalized [Banks] to submit a capital restoration plan * * *. We believe that it would be helpful to apply the same capital restoration plan requirements to [a Bank] in the event the FHFA temporarily increases the minimum capital requirement, particularly given the close interaction of these two provisions of the regulations." [15]

FHFA considered the comments and determined that it would retain the provision as proposed. FHFA determined that the differences between the PCA regulation and the proposed rule reflect differences in the respective statutory provisions. The PCA statute sets out defined time periods for capital restoration plans; section 1362(d) does not, giving the Director discretion regarding timing of increasing the minimum capital requirement. The rule seeks to retain that flexibility. However, in response to the commenters' more general objection that the practicalities of capital-raising by Federal Home Loan Banks require a longer time period than the notice and reply periods prescribed in the rule, FHFA notes that the concept of those periods is not necessarily that the regulated entity be able to come into compliance with the new requirement within 30 days after notification by the Director, but rather that the regulated entity have an opportunity to respond to the agency on the appropriateness of the temporary increased capital level within that period. Depending upon a particular Federal Home Loan Bank's circumstances, there may be a period between the setting of the new capital level and the regulated entity's compliance with it during which the regulated entity would be undercapitalized and subject to the statute's restrictions on activities by undercapitalized entities, notably capital distributions. Similarly, if that same entity is also determined to be undercapitalized under the PCA capital classification process—which also proceeds on a 30-day notice (Safety and Soundness Act section 1368(c))—it would be subject to those restrictions until its capital restoration plan is approved and implemented. It is appropriate that those restrictions apply to an entity whose capital level is not adequate to the risks to which it is subject.

4. Section 1225.4(a)(1)—Current or Anticipated Declines in the Value of Assets Held

The Dallas Bank commented that FHFA should clarify the "nature and magnitude of the decline in the value of assets that would warrant an order to temporarily increase minimum capital levels." [16] According to the Dallas Bank, current or anticipated declines in asset values may not accurately reflect the underlying economic value of the asset. The Dallas Bank commented that a temporary increase in minimum capital in "instances of temporary illiquidity or market volatility with respect to a regulated entity's assets could prove to be harmful to the [Bank] and to its membership given member sensitivity and concerns regarding additional capital calls." [17]

FHFA considered the comment and did not make the requested change. FHFA concluded that amending the provision in the suggested manner would not be feasible, as the provision is meant to be applied on a case-by-case basis. FHFA also notes that, with respect to instances involving "illiquid or volatile" markets, concerns regarding potential harm caused by a proposed capital increase could be addressed by a regulated entity in its response to the notice of a temporary increase in the minimum capital requirement.

The Boston Bank also commented that "the concept of basing a temporary increase in the minimum capital requirements of [a Bank] on 'anticipated' declines is hard for us to understand as it is generally recognized that it is not possible to predict market movements and future prices." [18] The Boston Bank suggested that FHFA should limit the standard to current "decline[s] in the [market] value of assets that would warrant an order to temporarily increase minimum capital levels." [19]

FHFA considered the comment and concluded that since capital often acts as a lagging indicator, delaying action until a decline is recognized may be inconsistent with the need for prompt action. The proposed regulation would provide FHFA with an additional regulatory tool to address potential problems that may arise as the result of relying solely on a lagging indicator such as capital. Certain assets on an entity's balance sheet are valued based on historical cost and may not reflect all available information as to the assets' actual values. Therefore, FHFA has not made the requested change.

Although FHFA did not adopt the proposed comments, it ultimately determined that it was appropriate to remove the phrase "the amounts of a regulated entity's mortgage-backed securities" to avoid singling out any particular category of assets in the provision.

5. Section 1225.4(a)(2)—Credit (including Counterparty), Market, Operational and Other Risks Facing a Regulated Entity

FHFA did not receive comments on this provision. However, the phrase "a depreciation in the value of its capital or assets, a decline in liquidity, or" was removed from the provision. FHFA determined that the language was redundant, as declines in capital and assets and concerns about liquidity are addressed in § 1225.4(a)(1) and § 1225.4(a)(3), respectively.

6. Section 1225.4(a)(4)—Compliance With Regulations, Written Orders or Agreement

The Boston Bank commented that the standard should apply only to "material non-compliance with regulations, written orders or agreements that negatively impact [a Bank's] financial health or that are indicative of its potential risk of failure." The comment further states that "Without clarification, it would appear that any violation of any regulation, order or agreement could permit the FHFA to order [a Bank] to increase temporary minimum capital levels." [20]

FHFA considered the comment and agreed that the standard should apply only to material non-compliance with a regulation, order, or agreement. FHFA did not intend the provision to require a capital increase in response to an immaterial infraction. FHFA did not agree with the Boston Bank comment that the factor relate only to material non-compliance with some regulations, orders or agreements, those asserted to negatively impact financial health, because all material violations could potentially have a negative impact on financial health, if only because of the remediation that might be required.

[15] Joint Bank Letter, section II., at 3. *See also* Boston Bank, section II., at 2.

[16] Dallas Bank, section III.A., at 3.

[17] *Id. See also* San Francisco Bank, section II.A., at 2; and Joint Bank Letter, section III.A., at 4. According to the Joint Comment Letter, the current provision "could be pro-cyclical and lead to long-lasting declines in membership and business volume, further weakening the affected [Bank]. The FHFA should consider clarifying the nature and magnitude of the decline in the value of assets that would warrant an order to temporarily increase minimum capital levels."

[18] Boston Bank, section III.A., at 3.

[19] *Id.*

[20] Boston Bank, section III.B., at 3. *See also* Dallas Bank, section III.B., at 3–4; Joint Bank Letter, section III.B., at 4; and San Francisco Bank, section II.B., at 2.

7. Section 1225.4(a)(5)—Unsafe or Unsound Operations or Practices, or Circumstances That Reflect Unsafe and Unsound Conduct by a Regulated Entity

FHFA removed this provision from the final rule, as the remaining standards address specific conditions and practices. As well, to the extent that an unsafe or unsound condition is identified by the Director, FHFA determined that § 1225.4(a)(9), Other Conditions as Detailed by the Director, would be a more appropriate vehicle for responding to such a contingency.

8. Section 1225.4(a)(6)—Housing Finance Market Conditions

The San Francisco Bank suggested that the factor be deleted from the final rule because it believes it to be vague and that "the relevance of this factor to a Regulated Entity's capital level is unclear, except to the extent that housing finance market conditions result in a decline in the value of housing-related assets held by the [Banks]." The comment also states that this matter is already covered by Section 1225.4(a)(1).[21]

FHFA considered the comment and decided to retain the provision as proposed. Housing market conditions other than asset values, such as market volatility and prepayment risk, may pose risks to a regulated entity that could warrant holding additional capital.

9. Section 1225.4(a)(7)—Level of Reserves or Retained Earnings

The Dallas Bank commented that FHFA should focus on "the aggregate capital levels of the [Bank]" as a more accurate gauge of a Bank's financial health instead of focusing on specific types of capital.[22] The San Francisco Bank suggested that the standard "be expanded to ensure that, in addition to considering reserves and retained earnings in determining a Regulated Entity's financial health, the Finance Agency is recognizing the Regulated Entity's demonstrated commitment and actions toward building retained earnings, and also is taking into consideration the aggregate capital levels of the Regulated Entity, which provides a more accurate indication of a Regulated Entity's health or risk of failure."[23]

FHFA did not agree with the comment and will retain the provision as proposed. Specific elements of capital can have independent significance. For example, retained earnings are relevant to a Bank's ability to maintain the par value of its capital stock, which is important to the financial stability of a Federal Home Loan Bank and of the System. Further, while this provision is a factor, among possible others, that may be used by the Director to make a determination regarding capital, it does not set a specific requirement. Finally, with respect to recognition of a Bank's commitment to build retained earnings, such activity would most appropriately be evaluated on a case-by-case basis and could be addressed in the Bank's response to a notice of capital increase.

10. Section 1225.4(a)(8)—Initiatives, Operations, Products, or Practices That Entail Heightened Risk

FHFA did not receive comment regarding this provision. The provision will be adopted as proposed.

11. Section 1225.4(a)(9)—The Ratio of the Market Value of Equity to the Par Value of Capital Stock

The Dallas Bank questioned the inclusion of the MVE/PVCS ratio in the proposed rule, stating: "In the final capital classification rule issued just eight months ago, the FHFA indicated it would 'continue to weigh whether it would be appropriate to propose a separate target for retained earnings and/or MVE/PVCS, either as a stand-alone regulation or as part of any risk-based capital proposal. * * * We are unaware of any subsequent FHFA rulemaking, guidance, analysis or pronouncements concerning the utility and applicability of MVE/PVCS."[24] The Dallas Bank also noted that "neither the [Banks], their member institutions nor other stakeholders would be able to determine ahead of time with any certainty—perhaps not until after a temporary order has been issued—how the FHFA applies this factor on an ongoing basis."[25] The Bank also requests that in the final rule, FHFA "detail its thinking, including the results of any studies or analysis it has conducted, on how this factor should be defined and applied" or "use the release of the final rule to provide clear definitions and explanations of how this factor may be applied."[26]

The Dallas Bank also expressed concern with the MVE/PVCS ratio for two reasons: (i) "The proposed rule does not define '[the] market value of equity'" and (ii) "the rule places no parameters or standards for the FHFA to use in applying this ratio."[27] The Joint Comment Letter requested additional information in the final rule regarding FHFA's "thinking, including the results of any studies or analysis it has conducted, on how this factor should be defined and applied."[28] The Joint Bank Letter also indicated that FHFA should "define MVE (including during periods of severe market illiquidity)" and indicate "why it is appropriate to use the MVE/PVCS ratio to determine whether a [Bank's] minimum capital should be increased."[29]

The Joint Bank Letter asked FHFA to address two specific questions:

(1) "Is MVE for purposes of the temporary minimum capital regulation defined as set forth in 12 CFR 932.5 * * * as the market value of total capital (defined as Class A stock, general allowance for losses, Class B stock and retained earnings) or otherwise?" and

(2) "Will MVE be defined in accordance with the liquidation value, or the going-concern value, of the [Bank]?"[30]

The Joint Bank Letter concludes with an expression of general concern regarding the use of MVE/PVCS as a factor related to a temporary increase in minimum capital without considering the existing risk-based capital regime, and the letter urges FHFA to consider this standard in a separate rulemaking.[31]

The Boston Bank commented that FHFA should "clarify the definition of the market value of equity (MVE) by reference to 12 CFR 932.5." The Bank also commented that it remained "generally concerned with using MVE/PVCS as a factor for imposing a temporary minimum capital increase without consideration of the existing risk-based capital regulatory framework that already takes this relationship into consideration to some extent in establishing [a Bank's] risk-based capital requirements."[32]

The San Francisco Bank commented that using an MVE/PVCS ratio could result in a "double charging" effect on a Bank. According to the San Francisco Bank "the existing risk-based regulation

[21] San Francisco Bank, section II.C., at 2–3. *See also* Joint Bank Letter, section III.C., at 4; and Dallas Bank, section III.C., at 4.

[22] Dallas Bank, section III.D., at 4. *See also* San Francisco Bank, section II.D., at 3.

[23] San Francisco Bank, section II.D., at 3.

[24] Dallas Bank, section III.E., at 4. *See also* Joint Bank Letter III.D., at 4.

[25] Dallas Bank, section III.E., at 4.

[26] *Id. See also* Joint Bank Letter, section III.D., at 4 stating "[w]ithout analytically supported guidance, it is difficult to judge fully the appropriateness of using MVE/PVCS as a factor in determining [a Bank's] minimum capital requirement."

[27] Dallas Bank, section III.E., at 5.

[28] Joint Bank Letter, section III.D., at 5.

[29] *Id.*

[30] *Id.*

[31] *Id.* at 6.

[32] Boston Bank, section III.C., at 3.

already imposes an additional risk-based capital charge on any [Bank] that has a market value of total capital less than 85% of the book value of its total capital, so that using an MVE/PVCS ratio to impose an additional increase in [a Bank's] minimum capital requirement would have the effect of 'double charging' that [Bank] on the basis of the same criteria." [33] The San Francisco Bank also stated that the proposed rule does not define "market value of equity." The letter notes that "If the Agency determines MVE with reference to liquidation value, then we do not believe that such a measure provides a sound basis for increasing [a Bank's] minimum capital level. * * * Instead, we encourage the Finance Agency to develop an MVE model that reflects certain going concern assumptions and makes MVE determinations in the context of other factors, including market conditions." [34] The San Francisco Bank concluded with a recommendation to establish "parameters or standards" surrounding the use of the MVE/PVCS ratio. According to the San Francisco Bank, "[t]here's no indication * * * at what level(s) the Director would consider it appropriate to increase [a Bank's] minimum capital requirement based on this ratio." [35]

FHFA considered and did not adopt the Dallas Bank's comment to provide additional detail regarding the application of the MVE/PVCS ratio. FHFA concluded that the factor would be applied on a case-by-case basis, considering the specific circumstances of a particular Bank. In instances where a Bank has a low MVE/PVCS ratio, this rule would serve as one reason, among many, for a Bank to address the issue.

FHFA also considered the questions posed by the Dallas Bank. FHFA concluded that use of the MVE/PVCS ratio is an important element in assessing the financial health of an institution. The use of the MVE/PVCS ratio also provides a useful indicator of capital strength in addition to capital ratios that are based on generally accepted accounting principles. However, it is only one factor among a number enumerated in the rule that the Director may consider in assessing whether a Bank should hold more capital. That assessment is sufficiently case-specific such that it is not feasible to provide general rules or parameters around the use of any particular factor.

With respect to the comment offered in the Joint Bank Letter, FHFA does intend that, for purposes of this factor, the Director would look to market value of equity as calculated by a Bank using a method approved by the agency under 12 CFR 932.5. The issue of going-concern versus liquidation value, however, is an accounting issue that is not applicable to the calculation of that ratio. However, MVE/PVCS ratio is only one factor among a number enumerated in the rule that the Director may consider in assessing whether a Bank should hold more capital. That assessment is sufficiently case-specific that it is not feasible to provide general rules or parameters around the use of any particular factor. The Joint Bank Letter also asked for a separate rulemaking for the provision. FHFA did not agree with the comment. FHFA believes that a separate rulemaking to address the existing risk-based capital regime, including the role of MVE in it, may be appropriate, but such a rulemaking, unlike this rule, would not address the need to address temporary or unusual circumstances.

FHFA also considered the comment offered by the Boston Bank regarding its general concern regarding use of the MVE/PVCS ratio as a factor for imposing an increase. FHFA notes that any decision to impose a temporary increase in the minimum capital requirement would consider the existing minimum capital requirements. The MVE would be used as one factor in evaluating the financial condition of a Bank in the event that a Bank's existing capital position is determined to be insufficient.

Finally, FHFA considered the San Francisco Bank's comment regarding establishment of standards and parameters for the provision. FHFA does not agree that standards or parameters should be set around the use of the MVE/PVCS ratio. It is not necessary or appropriate to determine in advance the significance of a shortfall of this ratio in consideration of the other factors identified in this rule. FHFA did not adopt the Bank's recommendation.

12. Section 1225.4(a)(10)—Other Conditions as Detailed by the Director

The Joint Bank Letter suggested that FHFA provide guidance on "what other conditions might be relevant in determining whether to impose temporary increases in minimum capital levels * * * and provide the [Banks] a chance to comment on any new proposed standards." [36] FHFA considered the comment and retained the provision as proposed. The purpose of the provision is to address factors that are unforeseeable under current circumstances but that turn out to be relevant at a later date. FHFA has determined that a provision that allows the agency to respond to unforeseen circumstances without substantial delay is prudent, reasonable, and necessary.

13. Section 1225.4(a)(11)—Written Plan To Augment Capital

The Joint Bank Letter noted that the requirement to submit a written plan to augment capital is a procedural requirement and not a standard or factor. The Joint Bank Letter suggested that the requirement be moved to a different section of the rule.[37] FHFA agreed with the comment and the final rule incorporates the provision in § 1225.3, regarding procedures.

14. Section 1225.4—Standards and Factors

The San Francisco Bank commented that standards regarding rescission of an increase are not addressed. The letter recommends reducing uncertainty in the area by "addressing in the Proposed Rule such critical issues as the size of a fluctuation that would weigh significantly in favor of the issuance or rescission of a temporary order." [38] FHFA considered the comment and revised the section to add clarity to the standards regarding rescission of an increase. In addition, although FHFA did not receive specific comment regarding proposed § 1225.4(c), FHFA determined that the provision clearly addresses a procedural as opposed to substantive matter. FHFA has redesignated the provision as § 1225.3(e).

15. Section 1225.4(d)—Promulgation of Future Guidance

Three Banks expressed concern regarding proposed § 1255.4(d) detailing the Director's authority to issue guidance regarding the regulation.[39] Two Banks suggested that FHFA remove § 1225.4(d) from the regulation based on concerns regarding application of the Administrative Procedure Act.[40] In the alternative, the three Bank commenters suggested that "to the extent that guidance expands or adds substantive detail to the existing regulation, it

[33] San Francisco Bank, section II.E., at 3.

[34] *Id.*

[35] *Id.*

[36] Joint Bank Letter, section III.E., at 6. *See also* Dallas Bank, section III.F., at 5; and San Francisco Bank, section II.F., at 4.

[37] Joint Bank Letter, section III.F., at 6. *See also* Boston Bank, section III.D., at 4; and Dallas Bank, section III.G., at 5.

[38] San Francisco Bank, section II.E., at 3.

[39] Joint Bank Letter, section IV., at 6; San Francisco Bank, section III., at 4; and Dallas Bank, section IV., at 6.

[40] Dallas Bank, section IV., at 6–7; and Joint Bank Letter, section IV., at 7.

would be better for the guidance to be issued as a formal rulemaking and subject to the requirements of the Administrative Procedure Act, with advance notice and an opportunity to comment by the [Banks] and their members."[41] FHFA considered the comment, but included the proposed provision in the final rule. FHFA will review each issue as it arises and take appropriate action, including notice and comment rulemaking, and promulgation of guidance with or without comment, depending on the nature of the issue. FHFA has also redesignated this provision as new § 1225.5 of the final rule.

16. Sections 932.2 and § 932.3

FHFA is also amending the Banks' capital regulations to remove § 932.2(b) and § 932.3(b) which allowed the regulator to raise the Banks' capital requirements for reasons of safety and soundness. These specific regulations were adopted pursuant to the Finance Board's general safety and soundness authority under old section 2A(a)(3)(A) of the Bank Act, a section which was removed by HERA. Final Rule: Capital Requirements for the Federal Home Loan Banks, 66 FR 8262, 8282–83 (January 30, 2001). Given that FHFA is adopting new part 1225 of its regulations and the fact that the Safety and Soundness Act as amended by HERA provides specific authority under which the Director may raise the Banks' minimum capital requirements, FHFA no longer views § 932.2(b) and § 932.3(b) as controlling and is removing these provisions.

III. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to the Office of Management and Budget for Review.

IV. Regulatory Flexibility Act

The final rule applies only to the Banks and the Enterprises, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5. U.S.C. 650(b), FHFA certifies that this final rule will not have significant economic impact on a substantial number of small entities.

[41] *See e.g.,* San Francisco Bank, section III., at 4.

List of Subjects

12 CFR Part 932

Credit, Federal Home Loan Banks, Reporting and recordkeeping requirements.

12 CFR Part 1225

Federal Home Loan Banks, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Capital, Filings, Minimum capital, Procedures, Standards.

Accordingly, for the reasons stated in the Supplementary Information, under the authority of 12 U.S.C. 4513, 4526 and 4612, the Federal Housing Finance Agency amends Chapters IX and XII of Title 12 of the Code of Federal Regulations as follows:

Chapter IX—Federal Housing Finance Board

PART 932—FEDERAL HOME LOAN BANK CAPITAL REQUIREMENTS

■ 1. Revise the authority citation for part 932 to read as follows:

Authority: 12 U.S.C. 1426, 1440, 1443, 1446, 4513, 4526.

■ 2. Revise § 932.2 to read as follows:

§ 932.2 Total capital requirement.

Each Bank shall maintain at all times:

(a) Total capital in an amount at least equal to 4.0 percent of the Bank's total assets; and

(b) A leverage ratio of total capital to total assets of at least 5.0 percent of the Bank's total assets. For purposes of determining the leverage ratio, total capital shall be computed by multiplying the Bank's permanent capital by 1.5 and adding to this product all other components of total capital.

■ 3. Revise § 932.3 to read as follows:

§ 932.3 Risk-based capital requirement.

Each Bank shall maintain at all times permanent capital in an amount at least equal to the sum of its credit risk capital requirement, its market risk capital requirement, and its operations risk capital requirement, calculated in accordance with §§ 932.4, 932.5 and 932.6, respectively.

Chapter XII—Federal Housing Finance Agency

Subchapter B—Entity Regulations

■ 4. Add part 1225 to subchapter B to read as follows:

PART 1225—MINIMUM CAPITAL—TEMPORARY INCREASE

Sec.

1225.1 Purpose.
1225.2 Definitions.
1225.3 Procedures.
1225.4 Standards and factors.
1225.5 Guidances.

Authority: 12 U.S.C. 4513, 4526 and 4612.

§ 1225.1 Purpose.

FHFA is responsible for ensuring the safe and sound operation of regulated entities. In furtherance of that responsibility, this part sets forth standards and procedures FHFA will employ to determine whether to require or rescind a temporary increase in the minimum capital levels for a regulated entity or entities pursuant to 12 U.S.C. 4612(d).

§ 1225.2 Definitions.

For purposes of this part, the term:

Enterprise means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and the term *Enterprises* means, collectively, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

Minimum capital level means the lowest amount of capital meeting any regulation or orders issued pursuant to 12 U.S.C. 1426(a)(2) and 12 U.S.C. 4612, or any similar requirement established for a Federal Home Loan Bank by regulation, order or other action.

Regulated entity means—

(1) The Federal National Mortgage Association and any affiliate thereof;

(2) The Federal Home Loan Mortgage Corporation and any affiliate thereof; and

(3) Any Federal Home Loan Bank.

Rescission means a removal in whole or in part of an increase in the temporary minimum capital level.

§ 1225.3 Procedures.

(a) *Information*—(1) *Information to the regulated entity or entities.* If the Director determines, based on standards enunciated in this part, that a temporary increase in the minimum capital level is necessary, the Director will provide notice to the affected regulated entity or entities 30 days in advance of the date that the temporary minimum capital requirement becomes effective, unless the Director determines that an exigency exists that does not permit such notice or the Director determines a longer time period would be appropriate.

(2) *Information to the Government.* The Director shall inform the Secretary of the Treasury, the Secretary of Housing and Urban Development, and the Chairman of the Securities and Exchange Commission of a temporary increase in the minimum capital level contemporaneously with informing the affected regulated entity or entities.

(b) *Comments.* The affected regulated entity or entities may provide comments

regarding or objections to the temporary increase to FHFA within 15 days or such other period as the Director determines appropriate under the circumstances. The Director may determine to modify, delay, or rescind the announced temporary increase in response to such comments or objection, but no further notice is required for the temporary increase to become effective upon the date originally determined by the Director.

(c) *Communication.* The Director shall transmit notice of a temporary increase or rescission of a temporary increase in the minimum capital level in writing, using electronic or such other means as appropriate. Such communication shall set forth, at a minimum, the bases for the Director's determination, the amount of increase or decrease in the minimum capital level, the anticipated duration of such increase, and a description of the procedures for requesting a rescission of the temporary increase in the minimum capital level.

(d) *Written plan.* In making a finding under this part, the Director may require a written plan to augment capital to be submitted on a timely basis to address the methods by which such temporary increase may be attained and the time period for reaching the new temporary minimum capital level.

(e) *Time frame for review of temporary increase for purpose of rescission.*—(1) Absent an earlier determination to rescind in whole or in part a temporary increase in the minimum capital level for a regulated entity or entities, the Director shall no less than every 12 months, consider the need to maintain, modify, or rescind such increase.

(2) A regulated entity or regulated entities may at any time request in writing such review by the Director.

§ 1225.4 Standards and factors.

(a) *Standard for imposing a temporary increase.* In making a determination to increase temporarily a minimum capital requirement for a regulated entity or entities, the Director will consider the necessity and consistency of such an increase with the prudential regulation and the safe and sound operations of a regulated entity. The Director may impose a temporary minimum-capital increase if consideration of one or more of the following factors leads the Director to the judgment that the current minimum capital requirement for a regulated entity is insufficient to address the entity's risks:

(1) Current or anticipated declines in the value of assets held by a regulated entity; the amounts of mortgage-backed securities issued or guaranteed by the regulated entity; and, its ability to access liquidity and funding;

(2) Credit (including counterparty), market, operational and other risks facing a regulated entity, especially where an increase in risks is foreseeable and consequential;

(3) Current or projected declines in the capital held by a regulated entity;

(4) A regulated entity's material non-compliance with regulations, written orders, or agreements;

(5) Housing finance market conditions;

(6) Level of reserves or retained earnings;

(7) Initiatives, operations, products, or practices that entail heightened risk;

(8) With respect to a Bank, the ratio of the market value of its equity to par value of its capital stock where the market value of equity is the value calculated and reported by the Bank as "market value of total capital" under 12 CFR 932.5(a)(1)(ii)(A); or

(9) Other conditions as detailed by the Director in the notice provided under § 1225.3.

(b) *Standard for rescission of a temporary increase.* In making a determination to rescind a temporary increase in the minimum capital level for a regulated entity or entities, whether in full or in part, the Director will consider the consistency of such a rescission with the prudential regulation and safe and sound operations of a regulated entity. The Director will rescind, in full or in part, a temporary minimum capital increase if consideration of one or more of the following factors leads the Director to the judgment that rescission of a temporary minimum-capital increase for a regulated entity is appropriate considering the entity's risks:

(1) Changes to the circumstances or facts that led to the imposition of a temporary increase in the minimum capital levels;

(2) The meeting of targets set for a regulated entity in advance of any capital or capital-related plan agreed to by the Director;

(3) Changed circumstances or facts based on new developments occurring since the imposition of the temporary increase in the minimum capital level, particularly where the original problems or concerns have been successfully addressed or alleviated in whole or in part; or

(4) Such other standard as the Director may consider as detailed by the Director in the notice provided under § 1225.3.

§ 1225.5 Guidances.

The Director may determine, from time to time, issue guidance to elaborate, to refine or to provide new information regarding standards or procedures contained herein.

Dated: February 22, 2011.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2011–4413 Filed 3–2–11; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30769; Amdt. No. 492]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: *Effective Date:* 0901 UTC, March 10, 2011.

FOR FURTHER INFORMATION CONTACT: Harry Hodges, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is

adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on February 4, 2011.

John McGraw,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, March 10, 2011.

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

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 492 effective date March 10, 2011]

From	To	MEA
§ 95.1001 Direct Routes—U.S. Color Routes **§ 95.516 Green Federal Airway G16 Is Amended To Delete In Part**		
PUT RIVER, AK NDB	BARTER ISLAND, AK NDB	2000

From	To	MEA	MAA
§ 95.3000 Low Altitude RNAV Routes **§ 95.3278 RNAV Route T278 Is Amended To Read in Part**			
*HAPIT, AK FIX *15000—MRA	CSPER, AK FIX	4000	17500
CSPER, AK FIX	SISTERS ISLAND, AK VORTAC	5300	17500
§ 95.6001 Victor Routes—U.S. **§ 95.6016 VOR Federal Airway V16 Is Amended To Read in Part**			
RICHMOND, VA VORTAC *5000—MCA TAPPA, VA FIX, NE BND	*TAPPA, VA FIX	2000	
TAPPA, VA FIX *1500—MOCA *2000—GNSS MEA	PATUXENT, MD VORTAC	*5000	
§ 95.6020 VOR Federal Airway V20 Is Amended To Read in Part			
RICHMOND, VA VORTAC *5000—MCA TAPPA, VA FIX, NE BND	*TAPPA, VA FIX	2000	
TAPPA, VA FIX *10000—MCA COLIN, VA FIX, N BND **1500—MOCA **2000—GNSS MEA	*COLIN, VA FIX	**5000	
§ 95.6026 VOR Federal Airway V26 Is Amended To Read in Part			
EAU CLAIRE, WI VORTAC *2900—MOCA	EDGRR, WI FIX	*4500	
EDGRR, WI FIX *3600—MOCA *3600—GNSS MEA #WAUSAU R–271 UNUSABLE BYD 10 NM, USE EAU CLAIRE R–087.	#WAUSAU, WI VORTAC	*6000	

From	To	MEA
§ 95.6033 VOR Federal Airway V33 Is Amended To Read in Part		
HARCUM, VA VORTAC *10000—MCA COLIN, VA FIX, N BND **1600—MOCA **2000—GNSS MEA	*COLIN, VA FIX	**4000
§ 95.6055 VOR Federal Airway V55 Is Amended To Read in Part		
#SIREN, WI VOR/DME *2800—MOCA *3000—GNSS MEA #SIREN R–293 UNUSABLE, USE BRAINERD R–111	BRAINERD, MN VORTAC	*6000
§ 95.6056 VOR Federal Airway V56 Is Amended To Read in Part		
FAYETTEVILLE, NC VOR/DME *5000—MRA	*ROZBO, NC FIX	2000
*ROZBO, NC FIX *5000—MRA	WALLO, NC FIX	2000
WALLO, NC FIX *2400—MOCA	KROVE, NC FIX	*3000
KROVE, NC FIX *1800—MOCA	NEW BERN, NC VOR/DME	*2400
§ 95.6062 VOR Federal Airway V62 Is Amended To Read in Part		
TEXICO, TX VORTAC	SPADE, TX FIX	5900
SPADE, TX FIX	LUBBOCK, TX VORTAC	5000
§ 95.6102 VOR Federal Airway V102 Is Amended To Read in Part		
LUBBOCK, TX VORTAC	GUTHRIE, TX VORTAC	5000
§ 95.6108 VOR Federal Airway V108 Is Amended To Read in Part		
RED TABLE, CO VOR/DME *12300—MCA STAMY, CO FIX, W BND	*STAMY, CO FIX	16400
STAMY, CO FIX *10700—MCA BLACK FOREST, CO VORTAC, W BND	*BLACK FOREST, CO VORTAC	12000
§ 95.6157 VOR Federal Airway V157 Is Amended To Read in Part		
RICHMOND, VA VORTAC *5000—MCA TAPPA, VA FIX, NE BND	*TAPPA, VA FIX	2000
TAPPA, VA FIX *1500—MOCA *2000—GNSS MEA	PATUXENT, MD VORTAC	*5000
§ 95.6188 VOR Federal Airway V188 Is Amended To Read in Part		
*WONOP, OH FIX *5000—MRA **5000—MRA ***2200—MOCA	**CLERI, OH FIX	***3000
§ 95.6213 VOR Federal Airway V213 Is Amended To Read in Part		
HOPEWELL, VA VORTAC *5000—MCA TAPPA, VA FIX, NE BND	*TAPPA, VA FIX	2000
TAPPA, VA FIX *1500—MOCA *2000—GNSS MEA	PATUXENT, MD VORTAC	*5000
§ 95.6284 VOR Federal Airway V284 Is Amended To Read in Part		
SEA ISLE, NJ VORTAC *1800—MOCA	CEDAR LAKE, NJ VORTAC	*2500
§ 95.6323 VOR Federal Airway V323 Is Amended To Read in Part		
EUFAULA, AL VORTAC *2100—MOCA	BYROE, GA FIX	*3000
BYROE, GA FIX	MACON, GA VORTAC	2300

From	To	MEA
§ 95.6328 VOR Federal Airway V328 Is Amended To Read in Part		
#JACKSON, WY VOR/DME #MTA V328 NW TO V465 SW 15100	BIG PINEY, WY VOR/DME	13500
§ 95.6330 VOR Federal Airway V330 Is Amended To Read in Part		
IDAHO FALLS, ID VOR/DME *9500—MCA OSITY, ID FIX, E BND	*OSITY, ID FIX	8000
OSITY, ID FIX *13400—MCA JACKSON, WY VOR/DME, W BND #MTA V330 E TO V520 W 16000	#*JACKSON, WY VOR/DME	14000
§ 95.6465 VOR Federal Airway V465 Is Amended To Read in Part		
SHEAR, UT FIX	*MALAD CITY, ID VOR/DME. SW BND NE BND	 11000 10000
*10700—MCA MALAD CITY, ID VOR/DME, NE BND		
#MALAD CITY, ID VOR/DME #MTA V465 SW TO V21–257 NW 11000	LUNDI, ID FIX	11500
LUNDI, ID FIX *13300—MOCA *13300—GNSS MEA *MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE. #MTA V465 NE TO V330 W OR V520 W 16000	#JACKSON, WY VOR/DME	*15000
§ 95.6469 VOR Federal Airway V469 Is Amended To Read in Part		
#JOHNSTOWN, PA VORTAC *4500—MOCA #JOHNSTOWN R–125 UNUSABLE, USE ST THOMAS R–307	#ST THOMAS, PA VORTAC	*5000
§ 95.6520 VOR Federal Airway V520 Is Amended To Read in Part		
SALMON, ID VOR/DME *9000—MCA DUBOIS, ID VORTAC, E BND	*DUBOIS, ID VORTAC	13500
DUBOIS, ID VORTAC *15200—MCA JACKSON, WY VOR/DME, W BND #MTA V520 E TO V330 W 14200	#*JACKSON, WY VOR/DME	15300
§ 95.6536 VOR Federal Airway V536 Is Amended To Read in Part		
PULLMAN, WA VOR/DME	MULLAN PASS, ID VOR/DME	9100
MULLAN PASS, ID VOR/DME *9700—MOCA *10000—GNSS MEA	KALISPELL, MT VOR/DME	*11500
§ 95.6317 ALASKA VOR Federal Airway V317 Is Amended To Read in Part		
SISTERS ISLAND, AK VORTAC CSPER, AK FIX.	NE BND SW BND	*7000 *15000
*5300—MOCA		
CSPER, AK FIX *15000—MRA **4000—MOCA	*HAPIT, AK FIX	**15000

From	To	MEA	MAA
§ 95.7001 Jet Routes **§ 95.7040 Jet Route J40 Is Amended To Read in Part**			
#MONTGOMERY, AL VORTAC #MACON R–258 UNUSABLE USE MONTGOMERY R–075	#MACON, GA VORTAC	18000	45000
§ 95.7120 Jet Route J120 Is Amended To Read in Part			
FORT YUKON, AK VORTAC	BARTER ISLAND, AK NDB	18000	45000

From	To	Changeover points	
		Distance	From
§ 95.8003 VOR Federal Airway Changeover Points Airway Segment V10 Is Amended To Delete Changeover Point			
YOUNGSTOWN, OH VORTAC	REVLOC, PA VOR/DME	37	YOUNGSTOWN
V116 Is Amended To Delete Changeover Point			
KALAMAZOO, MI VOR/DME	JACKSON, MI VOR/DME	36	KALAMAZOO
V26 Is Amended To Add Changeover Point			
EAU CLAIRE, WI VORTAC	WAUSAU, WI VORTAC	71	EAU CLAIRE
§ 95.8005 Jet Routes Changeover Points Airway Segment J40 Is Amended To Add Changeover Point			
MONTGOMERY, AL VORTAC	MACON, GA VORTAC	139	MONTGOMERY

[FR Doc. 2011–4580 Filed 3–2–11; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0082]

Drawbridge Operation Regulation; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Tower Drawbridge across the Sacramento River, mile 59.0, at Sacramento, CA. The deviation is necessary to allow the community to participate in the 7th Annual Shamrock Half Marathon. This deviation allows the bridge to remain in the closed-to-navigation position during the event.

DATES: This deviation is effective from 7:45 a.m. to 1:05 p.m. on March 13, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0082 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0082 in the "Keyword" box and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, e-mail *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Tower Drawbridge, mile 59.0, Sacramento River, at Sacramento, CA. The Tower Drawbridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times the draw shall open on signal if at least four hours notice is given, as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 7:45 a.m. to 1:05 p.m. on March 13, 2011 to allow the community to participate in the 7th Annual Shamrock Half Marathon. This temporary deviation has been coordinated with waterway users. There are no scheduled river boat cruises or anticipated levee maintenance during this deviation period. No objections to the proposed temporary deviation were raised.

Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time. In the event of an emergency the drawspan can be opened with 15 minutes advance notice.

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

Dated: February 17, 2011.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2011–4733 Filed 3–2–11; 8:45 am]
BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0090]

Drawbridge Operation Regulation; Shark River (South Channel), Belmar, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the S71 Bridge across Shark River (South Channel), mile 0.8, at Belmar, NJ. The deviation is necessary to help lessen traffic congestion during the Saint Patrick's Day Parade. This deviation allows the drawbridge to be maintained in the closed position to vessels on March 6, 2011 from 9 a.m. to 3 p.m. and from 6 p.m. to 11:59 p.m.

DATES: This deviation is effective from 9 a.m. to 11:59 p.m. on March 6, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0090 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0090 in the "Keyword" box and then clicking "Search." They are

also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Terrance A Knowles, Environmental Protection Specialist, Fifth Coast Guard District; telephone 757–398–6587, e-mail *Terrance.A.Knowles@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The S71 Bridge, a bascule lift drawbridge, across Shark River (South Channel), at mile 0.8, in Belmar, NJ, has a vertical clearance in the closed position to vessels of approximately 13 feet above mean high water.

On behalf of the Town of Belmar, New Jersey Department of Transportation (NJDOT) has requested a temporary deviation from the current operating regulations of the bridge set out in 33 CFR 117.751 to accommodate the Saint Patrick's Day parade scheduled for Sunday, March 6, 2011.

Under this deviation, the drawbridge would be allowed to remain in the closed to navigation position on two separate closure periods starting from 9 a.m. to 3 p.m. and from 6 p.m. to 11:59 p.m. on Sunday, March 6, 2011, to help lessen traffic congestion related to the Saint Patrick's Day parade.

Bridge opening data, supplied by NJDOT and reviewed by the Coast Guard, revealed that the bridge opened for vessels approximately 80 times in the month of March 2010. The primary user of the waterway that operates in the vicinity of the bridge is commercial fishermen. Vessels that are able can pass underneath the bridge in the closed position at any time. There are no alternate routes for vessels transiting this section of Shark River (South Branch) and the drawbridge will be able to open in the event of an emergency.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: February 11, 2011.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 2011–4735 Filed 3–2–11; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 530 and 531

[Docket No. 11–03]

RIN 3072–AC42

Service Contracts and Non-Vessel-Operating Service Arrangements; Transmission of Approved Log-In ID and Passwords

February 28, 2011.

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends Part 530 and 531 of its regulations to enable it to use methods other than the U.S. Mail to advise applicants for log-in IDs and passwords.

DATES: The Final Rule is effective March 3, 2011.

FOR FURTHER INFORMATION CONTACT:

Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, Tel.: (202) 523–5725, E-mail: *secretary@fmc.gov.*

Rebecca A. Fenneman, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, Tel.: (202) 523–5740, E-mail: *generalcounsel@fmc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission (FMC or Commission) is amending its regulations at 46 CFR 530.5(c)(2) and 531.5(d)(2) to replace the name of a predecessor Office and to remove the requirement that the Office use only the U.S. Mail to transmit approved log-on IDs and password to registrants in the Commission's automated SERVCON filing system.

Pursuant to 5 U.S.C. 553, the amended rules are published as final and effective upon publication.

This Final Rule is not a "major rule" under 5 U.S.C. 804(2).

List of Subjects in 46 CFR Parts 530 and 531

Freight, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons stated in the supplementary information, the Federal Maritime Commission amends 46 CFR parts 530 and 531 as follows.

PART 530—SERVICE CONTRACTS

■ 1. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40301–40306, 40501–40503, 41307.

■ 2. Revise § 530.5(c)(2) to read as follows:

§ 530.5 Duty to file.

* * * * *

(c) * * *

(2) *Approved registrations.* OIT shall provide approved Registrants a log-on ID and password for filing and amending service contracts and notify Registrants of such approval.

PART 531—NVOCC SERVICE ARRANGMENTS

■ 3. The authority citation for part 531 continues to read as follows:

Authority: 46 U.S.C. 40103.

■ 4. Revise § 531.5(d)(2) to read as follows:

§ 531.5 Duty to file.

* * * * *

(d) * * *

(2) *Approved registrations.* OIT shall provide approved Registrants a log-on ID and password for filing and amending NSAs and notify Registrants of such approval.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–4769 Filed 3–2–11; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket No. 03–185; FCC 04–220]

Digital Low Power Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, The Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection requirements

contained in FCC Form 337. The form changes were approved on February 7, 2011.

DATES: The amendments to FCC Form 337 are effective on March 3, 2011.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Cathy Williams, *cathy.williams@fcc.gov* or on (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document announces that, on February 7, 2011, OMB approved, for a period of three years, the information collection requirements contained in FCC Form 337. The Commission publishes this document to announce the effective date of FCC Form 337. *See In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Class A Television Stations,* MB Docket No. 03–185, FCC 04–220, 69 FR 69325, November 29, 2004.

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on February 7, 2011, for the information collection requirements contained in FCC Form 337. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, 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 that does not display a valid OMB Control Number.

The OMB Control Number is 3060–0386 and the total annual reporting burdens for respondents for this information collection are as follows:

OMB Control Number: 3060–0386.

OMB Approval Date: February 7, 2011.

Expiration Date: February 28, 2014.

Title: Special Temporary Authorization (STA) Requests; Notifications; and Informal Filings; Sections 1.5, 73.1615, 73.1635, 73.1740 and 73.3598; CDBS Informal Forms; Section 74.788; FCC Form 337.

Form Number: FCC Form 337.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents/Responses: 4,070 respondents and 4,070 responses.

Estimated Time per Response: 0.5–4 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 4,105 hours.

Total Annual Costs: $2,059,410.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336 and 337 of the Communications Act of 1934, as amended, and Section 204 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On September 30, 2004, the Commission adopted the Report and Order, *In the Matter of Amendments of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television Translator, Television Booster Stations, and to Amend Rules for Digital Class A Television Stations,* MB Docket No. 03–185, FCC 04–220 (released September 30, 2004). In this Report and Order, the Commission establishes rules and policies for digital low power television ("LPTV") and television translator ("TV translator") stations and modifies certain rules applicable to digital Class A TV stations ("Class A"). The Commission addresses important issues such as: (1) The digital low power television transition; (2) channel assignments; (3) authorization of digital service; (4) permissible service; (5) mutually exclusive applications; (6) protected service area; and (7) equipment and other technical and operational requirements. Furthermore, the Report and Order adopts a new information collection requirements, which provides that new digital low power television, television translator, and Class A permittees may submit FCC Form 337, Application for Extension of Time to Construct a Digital Television Broadcast Station, should an acceptable reason for failing to construct, as set forth in 47 CFR 74.788(c)(1)–(2), apply.

Also, the other information collection requirements contained under OMB control number 3060–0386, Special Temporary Authorization (STA) Requests; Notifications; and Informal Filings; Sections 1.5, 73.1615, 73.1635, 73.1740, and 73.3598 of the Commission Rules; CDBS Informal Forms, have already been approved by OMB and remain unchanged.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–3959 Filed 3–2–11; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–55; DA 11–315]

Improving Public Safety Communications in the 800 MHz Band; New 800 MHz Band Plan for Puerto Rico and the U.S. Virgin Islands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document summarizes the Fourth Report and Order, which establishes a new 800 MHz band plan for the U.S. Virgin Islands (USVI). This action is necessary to meet the Commission's goals to improve public safety communications in the 800 MHz band. The effect of this order ensures an orderly and efficient transition to the new 800 MHz band plan in the USVI.

DATES: Effective March 3, 2011.

FOR FURTHER INFORMATION CONTACT: John Evanoff, Policy Division, Public Safety and Homeland Security Bureau, (202) 418–0848.

SUPPLEMENTARY INFORMATION: This is a summary of the Fourth Report and Order, DA 11–315, released on February 18, 2011. The complete text of the Fourth Report and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Fourth Report and Order

In a July 2004 Report and Order, the Commission reconfigured the 800 MHz band to eliminate interference to public safety and other land mobile communication systems operating in the band, 69 FR 67823, November 22, 2004. In a Third Report and Order and Third

Further Notice of Proposed Rulemaking, adopted in April 2010, the Public Safety and Homeland Security Bureau, on delegated authority sought comment on its tentative conclusion to adopt the same 800 MHz band plan in the USVI as it had adopted in Puerto Rico, 75 FR 35363, June 22, 2010. The Bureau received two comments in response.

Based on the record, the Bureau adopted its tentative conclusion because it best fulfills the Commission's goal to separate—to the greatest extent possible—public safety and other non-cellular licensees from licensees that employ cellular technology in the 800 MHz band. The non-ESMR band plan adopted contains the following elements:

- All NPSPAC channels will be relocated from the 821–824/866–869 MHz segment to channel assignments 15 MHz lower in frequency, *i.e.,* to the 806–809/851–854 MHz band segment. Currently, there are no NPSPAC licensees in the USVI.
- As with the Puerto Rico band plan, USVI incumbents in the 806–809/851–854 MHz band segment will be relocated to comparable spectrum in the Interleaved, Expansion, or ESMR Band, depending on their eligibility.
- All licensees currently operating in the Interleaved Band will remain on their current frequencies, except those relocating to the ESMR band.
- All non-ESMR incumbents that are not public safety licensees and that currently operate in the Expansion Band, as modified, will remain on their current frequencies.
- Licensees in the modified Guard Band may, at their option, relocate to the Interleaved or Expansion Band.
- All licensees that currently operate between 817–821/862–866 MHz and are not eligible to remain in the ESMR band will be relocated to the 809–816.5/854–861.5 MHz band segment, which includes the Interleaved and Expansion Bands of the USVI Band Plan.

The ESMR Band in the USVI is identical to the U.S. non-border 817–824/862–869 MHz ESMR band segment. Because not all ESMR and ESMR-eligible licensees in USVI may be accommodated within that ESMR Band segment, the Bureau apportioned the USVI ESMR Band and directed the TA to use the following procedure:

- The TA will attempt to assign replacement channels to the EA-based non-Sprint ESMR and ESMR-eligible licensees on a 1:1 basis relative to their existing USVI holdings. If ESMR channels remain after this assignment, the TA shall assign them to Sprint.
- If, however, sufficient ESMR channels are not available to assign them on a 1:1 basis to all non-Sprint ESMR and ESMR-eligible licensees electing to relocate to the ESMR band, then the number of Sprint ESMR channels will be reduced to the extent necessary to assign channels to the non-Sprint licensees on a 1:1 basis.
- If sufficient ESMR channels are not available following the apportionment, supra, then the holdings of all ESMR and ESMR-eligible licensees electing to relocate to the ESMR band will be reduced pro rata such that all such licensees are accommodated in the band.

The Bureau adopted a single 90-day mandatory negotiation period for the remaining incumbent licensees that must be returned from the 816.5–821/861.5–866 MHz portion of the band. Thereafter, if Sprint and an incumbent licensee have not negotiated a Frequency Reconfiguration Agreement with Sprint, they must enter mandatory TA-sponsored mediation. The Bureau also established a 12-month transition period to complete rebanding in USVI. The transition period will start on March 21, 2011 and end on March 20, 2012.

The Bureau also extended the filing freeze on new applications in the USVI region until thirty working days after the date for completion of mandatory negotiations. However, the freeze does not apply to applications for modification of license that do not change an 800 MHz frequency or expand an 800 MHz station's existing coverage area (*e.g.,* administrative updates), assignments/transfers, or renewal-only applications. In addition, licensees in the USVI region may expand their facilities or add channels during the freeze, but only pursuant to Special Temporary Authorization (STA). Requests for STA must be accompanied by a demonstration that, without the new or expanded facilities, there would be a specific, material and serious adverse effect on the safety of life or property.

The Bureau also envisioned band reconfiguration in USVI will occur in the following stages, consistent with the Puerto Rico implementation plan:

Stage 1

- Clear non-Sprint incumbent licensees from Channels 1–120. Defer assigning replacement spectrum for Preferred Acquisitions, Inc. (PAI) EA licenses.

Stage 2

- Relocate EA and site-based ESMR licensees (except PAI) from the Interleaved channels to the ESMR band.
- Relocate high-site incumbents from the ESMR band to the cleared Interleaved channels.
- Relocate EA/ESMR licensees from the Guard Band to the cleared ESMR channels.

Stage 3 (If Necessary)

- Relocate PAI's EA and site-based channels to the ESMR band.
- If the ESMR band cannot accommodate all ESMR band licensees, then:
  - Relieve the shortfall by redesignating Sprint channels for use by other licensees, and, if necessary,
  - Reduce the number of all licensees' channels pro rata in order to accommodate all licensees within the ESMR band.

Procedural Matters

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA) requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). We certify that the rule changes and actions in this Fourth Report and Order will have no significant economic impact on a substantial number of small entities.

In this Fourth Report and Order, the Public Safety and Homeland Security Bureau, on delegated authority, establishes a revised 800 MHz band plan for the USVI in order to accomplish the Commission's goals for band reconfiguration. The band plan is identical to the band plan that the Commission previously adopted in this proceeding with one exception—the USVI band plan, identical to the Puerto Rico band plan, includes a slightly larger Expansion Band and a slightly smaller Guard Band. The USVI Expansion and Guard Bands we establish will not have a significant impact on a substantial number of small businesses, and our aim is to provide interference protection to non-ESMR licensees. Furthermore, although ESMR

licensees and ESMR-eligible licensees may be subject to a pro rata apportionment of spectrum, the number of such entities is not substantial, their operating capacity would not be significantly reduced, and the economic effect on their operations would not be significant. Therefore, we certify that the requirements of this Fourth Report and Order will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act Analysis

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Therefore it does not contain any new or modified "information burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

Congressional Review Act

The Commission will send a copy of this Fourth Report and Order in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.

Ordering Clauses

Accordingly, it is ordered, pursuant to Sections 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 332, and Sections 0.191 and 0.392 of the Commission's rules, 47 CFR 0.191, 0.392, that this Fourth Report and Order *is adopted.*

It is further ordered that the amendments of the Commission's rules set forth below, are effective, upon the date of publication in the **Federal Register**.

It is further ordered that the Final Regulatory Flexibility Certification required by Section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, and as set forth above *is adopted.*

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

List of Subjects in 47 CFR Part 90

Radio.

Federal Communications Commission.

Michael J. Wilhelm,

Deputy Chief, Policy Division, Public Safety and Homeland Security Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

Authority: 4(i), 11, 303(g), 303(r), and 302(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. Section 90.617 is amended by revising the introductory text to paragraphs (k)(1)through (k)(4) to read as follows:

§ 90.617 Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked, conventional or cellular system use in non-border areas.

* * * * *

(k) * * *

(1) Mobile units (except in Puerto Rico and the U.S. Virgin Islands):

* * * * *

(2) Portable units (except in Puerto Rico and the U.S. Virgin Islands):

* * * * *

(3) Mobile units operating in Puerto Rico and the U.S. Virgin Islands:

* * * * *

(4) Portable units operating in Puerto Rico and the U.S. Virgin Islands:

* * * * *

■ 3. Section 90.677 is amended by revising the first sentence in paragraph (b) and revising paragraph (c) introductory text to read as follows:

§ 90.677 Reconfiguration of the 806–824/851–869 MHz band in order to separate cellular systems from non-cellular systems.

* * * * *

(b) *Voluntary negotiations.* Thirty days before the start date for each NPSPAC region other than Region 47 and Region 48, the Chief, Public Safety and Homeland Security Bureau will issue a public notice initiating a three-month voluntary negotiation period.

* * *

(c) *Mandatory negotiations.* If no agreement is reached by the end of the voluntary period, a three-month mandatory negotiation period will begin during which both Sprint Nextel and the incumbents must negotiate in "good faith." In Region 47, a 90-day mandatory negotiation period will begin 60 days after the effective date of the Third Report and Order and Third Further Notice of Proposed Rulemaking in WT Docket 02–55. In Region 48, a 90-day mandatory negotiation period will begin on March 21, 2011. Sprint Nextel and relocating incumbents may agree to conduct face-to-face negotiations or either party may elect to communicate with the other party through the Transition Administrator. All parties are charged with the obligation of utmost "good faith" in the negotiation process. Among the factors relevant to a "good-faith" determination are:

* * * * *

[FR Doc. 2011–4787 Filed 3–2–11; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 76, No. 42
Thursday, March 3, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 842

RIN 3206–AM20

Presumption of Insurable Interest for Same-Sex Domestic Partners

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its regulations to include same-sex domestic partners to the class of persons for which an insurable interest is presumed to exist. The proposed rule, therefore, is designed to relieve federal employees with same-sex domestic partners from the evidentiary requirements in existing regulations for persons outside this class. Additionally, OPM is taking this step to recognize that individuals with same-sex domestic partners have the same presumption of an insurable interest in the continued life of employees or Members as the class of persons listed in the existing rule.

DATES: We must receive your comments by April 4, 2011.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number 3206–AM20 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: combox@opm.gov.* Include RIN number 3206–AM20 in the subject line of the message.
- *Mail:* John Panagakos, Retirement Policy, Retirement Services, Office of Personnel Management, 1900 E. Street, NW., Washington, DC 20415–3200.

FOR FURTHER INFORMATION CONTACT: Kristine Prentice or Roxann Johnson, (202) 606–0299.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is amending 5 CFR 831.613(e) and 5 CFR 842.605(e) to add persons in same-sex domestic partnerships to the relationships listed as having a presumption of an insurable interest under §§ 831.613(e)(1) and 842.605(e)(1). Retiring employees and Members of Congress (Members), who submit evidence to demonstrate that they are in good health and who are not retiring on disability are generally able to elect a reduced annuity to provide an insurable interest survivor annuity. However, the employee or Member must establish that the person elected has an insurable interest in the continued life of the employee or Member. An insurable interest in the continued life of a retiring employee or Member is presumed to exist for certain relationships listed under §§ 831.613(e)(1) and 842.605(e)(1). Currently, the relationships listed under §§ 831.613(e)(1) and 842.605(e)(1) include the following: Spouses, former spouses, blood or adopted relatives closer than first cousins, common law spouses, or persons to whom employees or Members are engaged to be married. If employees or Members elect an insurable interest annuity for a person who does not fall under one of these categories, the employee or Member must submit affidavits along with his or her election to establish the existence of a relationship between the named beneficiary of the election and the employee or Member, the extent to which the named beneficiary is dependent on the employee or Member, and the reasons why the named beneficiary might reasonably expect to derive financial benefit from the continued life of the employee or Member. Without such proof, the employee or Member will fail to meet the statutory requirement to establish the insurable interest relationship and the election will be denied.

Pursuant to the President's June 2, 2010, Memorandum for the Heads of Executive Departments and Agencies on Extension of Benefits to Same-Sex Domestic Partners of Federal Employees, OPM proposes to add to the relationships listed in §§ 831.613(e) and 842.605(e) of the United States Code of Federal Regulations those individuals who have entered into a domestic partnership with an individual of the same sex who is a retiring employee or Member. For the purposes of these regulations, an insurable interest will be presumed to exist for employees or Members having a same-sex domestic partner. The term "domestic partnership" has the same meaning as that ascribed to it in the Memorandum issued by OPM Director Berry on June 2, 2010, to Heads of Executive Departments and Agencies concerning Implementation of the President's Memorandum Regarding Extension of Benefits to Same-Sex Domestic Partners of Federal Employees. See *http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=2982.*

To demonstrate eligibility to elect an insurable interest annuity, at retirement, OPM will ask employees and Members to provide proof to establish the existence of, or former existence of, his or her domestic partnership, in addition to evidence of his or her good health.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement payments to retired employees or Members who elect an insurable interest annuity for a person with whom they have entered into a domestic partnership or civil union.

List of Subjects in 5 CFR Parts 831 and 842

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

John Berry,

Director.

For the reasons discussed in the preamble, the Office of Personnel Management is proposing to amend 5 CFR parts 831 and 842 as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2), and Sec. 1313(b)(5) of Public Law 107–296, 116 Stat. 2135; Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under Secs. 11202(f), 11232(e), and 11246(b) of Public Law 105–33, 111 Stat. 251; Sec. 831.201(g) also issued under Secs. 7(b) and (e) of Public Law 105–274, 112 Stat. 2419; Sec. 831.201(i) also issued under Secs. 3 and 7(c) of Public Law 105–274, 112 Stat. 2419; Sec. 831.204 also issued under Sec. 102(e) of Public Law 104–8, 109 Stat. 102, as amended by Sec. 153 of Public Law 104–134, 110 Stat. 1321; Sec. 831.205 also issued under Sec. 2207 of Public Law 106–265, 114 Stat. 784; Sec. 831.206 also issued under Sec. 1622(b) of Public Law 104–106, 110 Stat. 515; Sec. 831.301 also issued under Sec. 2203 of Public Law 106–265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and Sec. 2203 of Public Law 106–235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337; Sec. 831.502 also issued under Sec. 1(3), E.O. 11228, 3 CFR 1965–1965 Comp. p. 317; Sec. 831.663 also issued under Secs. 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under Sec. 11004(c)(2) of Public Law 103–66, 107 Stat. 412; Sec. 831.682 also issued under Sec. 201(d) of Public Law 99–251, 100 Stat. 23; Sec. 831.912 also issued under Sec. 636 of Appendix C to Public Law 106–554, 114 Stat. 2763A–164; Subpart V also issued under 5 U.S.C. 8343a and Sec. 6001 of Public Law 100–203, 101 Stat. 1330–275; Sec. 831.2203 also issued under Sec. 7001(a)(4) of Public Law 101–508, 104 Stat. 1388–328.

2. Revise 831.613(e) to read as follows:

§ 831.613 Election of insurable interest annuities.

* * * * *

(e) An insurable interest annuity may be elected to provide a survivor benefit only for a person who has an insurable interest in the retiring employee or Member.

(1) An insurable interest is presumed to exist with—

(i) The current spouse;

(ii) The current same-sex domestic partner;

(iii) A blood or adopted relative closer than first cousins;

(iv) A former spouse;

(v) A former same-sex domestic partner;

(vi) A person to whom the employee or Member is engaged to be married, or a person with whom the employee or Member has agreed to enter into a same-sex domestic partnership;

(vii) A person with whom the employee or Member is living in a relationship that would constitute a common-law marriage in jurisdictions recognizing common-law marriages;

(2) For purposes of this section, the term "same-sex domestic partner" means a person in a domestic partnership with an employee or annuitant of the same sex and the term "domestic partnership" is defined as a committed relationship between two adults, of the same sex, in which the partners—

(i) Are each other's sole domestic partner and intend to remain so indefinitely;

(ii) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(iii) Are at least 18 years of age and mentally competent to consent to contract;

(iv) Share responsibility for a significant measure of each other's financial obligations;

(v) Are not married or joined in a civil union to anyone else;

(vi) Are not the domestic partner of anyone else;

(vii) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed; and

(viii) Are willing to certify, if required by OPM, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001.

(3) When an insurable interest is not presumed, the employee or Member must submit affidavits from one or more persons with personal knowledge of the named beneficiary's insurable interest in the employee or Member. The affidavits must set forth the relationship, if any, between the named beneficiary and the employee or Member, the extent to which the named beneficiary is dependent on the employee or Member, and the reasons why the named beneficiary might reasonably expect to derive financial benefit from the continued life of the employee or Member.

(4) The employee or Member may be required to submit documentary evidence to establish the named beneficiary's date of birth.

* * * * *

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

3. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under Secs. 3 and 7(c) of Public Law 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under Sec. 102(e) of Public Law 104–8, 109 Stat. 102, as amended by Sec. 153 of Public Law 104–134, 110 Stat. 1321–102; Sec. 842.107 also issued under Secs. 11202(f), 11232(e), and 11246(b) of Public Law 105–33, 111 Stat. 251, and Sec. 7(b) of Public Law 105–274, 112 Stat. 2419; Sec. 842.108 also issued under Sec. 7(e) of Public Law 105–274, 112 Stat. 2419; Sec. 842.109 also issued under Sec. 1622(b) of Public Law 104–106, 110 Stat. 515; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and Sec.1313(b)(5) of Public Law 107–296, 116 Stat. 2135; Secs. 842.304 and 842.305 also issued under Sec. 321(f) of Public Law 107–228, 116 Stat. 1383, Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under Sec. 7001(a)(4) of Public Law 101–508, 104 Stat. 1388; Sec. 842.707 also issued under Sec. 6001 of Public Law 100–203, 101 Stat. 1300; Sec. 842.708 also issued under Sec. 4005 of Public Law 101–239, 103 Stat. 2106 and Sec. 7001 of Public Law 101–508, 104 Stat. 1388; Subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under Sec. 636 of Appendix C to Public Law 106–554 at 114 Stat. 2763A–164; Sec. 842.811 also issued under Sec. 226(c)(2) of Public Law 108–176, 117 Stat. 2529.

4. Revise 842.605(e) to read as follows:

§ 842.605 Election of insurable interest rate.

* * * * *

(e) An insurable interest rate may be elected to provide a survivor benefit only for a person who has an insurable interest in the retiring employee or Member.

(1) An insurable interest is presumed to exist with—

(i) The current spouse;

(ii) The same-sex domestic partner;

(iii) A blood or adopted relative closer than first cousins;

(iv) A former spouse;

(v) A former same-sex domestic partner;

(vi) A person to whom the employee or Member is engaged to be married, or a person with whom the employee or Member has agreed to enter into a same-sex domestic partnership;

(vii) A person with whom the employee or Member is living in a relationship that would constitute a common-law marriage in jurisdictions recognizing common-law marriages;

(2) For purposes of this section, the term "same-sex domestic partner" means a person in a domestic partnership with

an employee or annuitant of the same sex, and the term "domestic partnership" is defined as a committed relationship between two adults, of the same sex, in which the partners—

(i) Are each other's sole domestic partner and intend to remain so indefinitely;

(ii) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(iii) Are at least 18 years of age and mentally competent to consent to contract;

(iv) Share responsibility for a significant measure of each other's financial obligations;

(v) Are not married or joined in a civil union to anyone else;

(vi) Are not the domestic partner of anyone else;

(vii) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed; and

(viii) Are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001, and that the method for securing such certification, if required, shall be determined by the agency.

(3) When an insurable interest is not presumed, the employee or Member must submit affidavits from one or more persons with personal knowledge of the named beneficiary's having an insurable interest in the employee or Member. The affidavits must set forth the relationship, if any, between the named beneficiary and the employee or Member, the extent to which the named beneficiary is dependent on the employee or Member, and the reasons why the named beneficiary might reasonably expect to derive financial benefit from the continued life of the employee or Member.

(4) The employee or Member may be required to submit documentary evidence to establish the named beneficiary's date of birth.

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[FR Doc. 2011–4791 Filed 3–2–11; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 214 and 299

[CIS No. 2443–08; DHS Docket No. USCIS–2008–0014]

RIN 1615–AB71

Registration Requirement for Petitioners Seeking to File H–1B Petitions on Behalf of Aliens Subject to the Numerical Limitations

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is proposing to amend its regulations governing petitions filed on behalf of H–1B alien workers subject to annual numerical limitations or exempt from numerical limitations by virtue of having earned a U.S. master's or higher degree (also referred to as the "65,000 cap" and "20,000 cap" respectively, or the "cap" collectively). This rule proposes to require employers seeking to petition for H–1B workers subject to the cap to first file electronic registrations with U.S. Citizenship and Immigration Services (USCIS) during a designated registration period. Under this proposed rule, if USCIS anticipates that the H–1B cap will not be reached by the first day that H–1B petitions may be filed for a particular fiscal year, USCIS would notify all registered employers that they are eligible to file H–1B petitions on behalf of the beneficiaries named in the selected registrations. USCIS would continue to accept and select registrations until the H–1B cap is reached. On the other hand, if USCIS anticipates that the H–1B cap will be reached by the first day that H–1B petitions may be filed for a particular fiscal year, USCIS would close the registration before such date and randomly select a sufficient number of timely filed registrations to meet the applicable cap. USCIS proposes to allow only those petitioners whose registrations are randomly selected to file H–1B petitions for the cap-subject prospective worker named in the registration. USCIS would create a waitlist containing some or all of the remaining registrations, based on USCIS statistical estimates of how many more registrations may be needed to fill the caps should the initial pool of selected registrations fall short. USCIS would notify the employers of those registrations placed on the waitlist *when* and if they are eligible to file an H–1B petition. Employers whose registrations were neither randomly selected to file petitions nor placed on the waitlist *would receive notification* that they were not selected to file petitions in that fiscal year.

USCIS anticipates that this new process will reduce administrative burdens and associated costs on employers who currently must spend significant time and resources compiling the petition and supporting documentation for each potential beneficiary without certainty that the statutory cap has not been reached. The proposed mandatory registration process also will alleviate administrative burdens on USCIS service centers that process H–1B petitions.

DATES: Written comments must be submitted on or before May 2, 2011.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2008–0014 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* You may submit comments directly to USCIS by e-mail at *rfs.regs@dhs.gov.* Include DHS Docket No. USCIS–2008–0014 in the subject line of the message.
- *Mail:* Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. To ensure proper handling, please reference DHS Docket No. USCIS–2008–0014 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Contact Telephone Number is (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Shelly Sweeney, Adjudications Officer, Business Employment Services Team, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529–2060, telephone (202) 272–8410.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

I. Public Participation
II. Background
  A. Current H–1B Petition Process
  B. H–1B Nonimmigrants Subject to H–1B Caps
  C. Current Random Selection Process
  D. Fiscal Year 2009 Filings
III. Proposed Registration Program

A. Registration
1. Announcement of Registration Requirement
2. Information Required
3. USCIS Acceptance of Registrations
B. Random Selection of Registrations
C. H–1B Petition Filing Period After Random Selection
IV. Miscellaneous Amendments
V. Regulatory Requirements
A. Regulatory Flexibility Act
B. Unfunded Mandates Reform Act of 1995
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D. Executive Order 12866 (Regulatory Planning and Review)
E. Executive Order 13132 (Federalism)
F. Executive Order 12988 (Civil Justice Reform)
G. Paperwork Reduction Act

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. The Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) also invite comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to DHS and USCIS will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS–2008–0014. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.* Submitted comments may also be inspected at the Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020.

II. Background

Congress has established limits on the number of alien workers who may be granted H–1B nonimmigrant visas or status each fiscal year (commonly known as the "cap"). *See* Immigration and Nationality Act (INA) section 214(g), 8 U.S.C. 1184(g). With a few exceptions, the total number of aliens who may be accorded H–1B nonimmigrant status during any fiscal year currently may not exceed 65,000. *See* INA sec. 214(g), 8 U.S.C. 1184(g). The ability of employers to fill available U.S. jobs with aliens otherwise eligible for the H–1B nonimmigrant classification generally depends on when the employers filed petitions for such workers and the number of such petitions that USCIS has approved to allow workers to begin employment during the course of the fiscal year (*i.e.,* October 1 through September 30). USCIS, however, may only accord H–1B status in the order in which it receives the H–1B petitions. *See* INA sec. 214(g)(3), 8 U.S.C. 1184(g)(3).

USCIS monitors the requests for H–1B workers and administers the distribution of available H–1B cap numbers in light of these limits. The first day on which petitioners may file H–1B petitions can be as early as six months ahead of the projected employment start date. *See* 8 CFR 214.2(h)(9)(i)(B). During years of high demand for H–1B workers, the H–1B cap has been reached within days of the opening of the H–1B filing period for a new fiscal year. In practical terms, this means that the cap has been reached on or shortly after April 1 (which is six months before the start of a new fiscal year). For example, in FY 2009, USCIS received nearly 163,000 H–1B petitions between April 1 and April 7, 2008. *See e.g.* USCIS Update, "USCIS Releases Preliminary Number of H–1B Cap Filings," *http://www.uscis.gov/files/article/USCIS%20Update_H1B_Preliminary%20Count1_10Apr08.pdf.*

To ensure the fair and orderly distribution of H–1B cap numbers, USCIS employs a random selection process after announcing a final date on which it will receive H–1B petitions. USCIS refers to this day as the "final receipt date." *See* 8 CFR 214.2(h)(8)(ii)(B). In past fiscal years, the final receipt date has been as early as the first day after USCIS began accepting H–1B petitions for the new fiscal year. In Fiscal Year 2010, due to the struggling economy and high unemployment rates, the final receipt date was not reached until December 21, 2009. Petitions submitted properly on the "final receipt date" undergo a random selection process to determine which petitions can be processed to completion and, if otherwise eligible, which beneficiaries are able to receive a new H–1B visa number.

USCIS has found that when it receives a significant number of H–1B petitions (*e.g.,* 100,000 or more) within the first few days of the H–1B filing period, it is difficult to handle the volume of petitions received in advance of the H–1B random selection process. Further, after expending USCIS resources to ensure proper processing of these petitions, USCIS must reject and return to the petitioning employer those petitions and associated fees that are not randomly selected as eligible for an H–1B cap number. U.S. employers are also adversely affected by the current petition process. Preparing and mailing H–1B petitions, with the required filing fee, can be burdensome and costly for employers, if the petition must ultimately be returned because the cap was reached and the petition was not selected in the random selection process.

Requiring U.S. employers to file complete H–1B petitions prior to the random selection process is not the most efficient way to administer the allocation of available H–1B cap numbers. USCIS is proposing an alternate, more streamlined mechanism for allocating H–1B cap numbers and administering the H–1B cap.

A. Current H–1B Petition Process

Before employing an H–1B temporary worker, a U.S. employer must first obtain a certification from the U.S. Department of Labor (DOL) confirming that it has filed a Labor Condition Application (LCA) in the occupational specialty in which the alien will be employed. *See* 8 CFR 214.2(h)(4)(i)(B)(*1*) and 8 CFR 214.2(h)(1)(ii)(B)(*3*). Upon certification of the LCA, the employer may then file an H–1B petition with USCIS on Form I–129, Petition for a Nonimmigrant Worker. Once USCIS accepts a properly filed H–1B petition, it adjudicates the petition. USCIS will notify the petitioner in writing if it requires additional information before rendering a written decision to approve or deny the petition. *See* 8 CFR 103.2(a)(8) and 214.2(h)(9) and (10). An approved H–1B petition is valid for a period of up to three years and may not exceed the validity period of the LCA. *See* 8 CFR 214.2(h)(9)(iii)(A)(*1*).

Prior to the expiration of the initial H–1B status, the petitioning employer may apply for an extension of stay, or a different employer may petition on behalf of the temporary worker. *See* 8 CFR 214.2(h)(2)(i)(D), (h)(15)(ii)(B). An extension of stay generally may only be granted for a period of up to three years, such that the total period of the H–1B temporary worker's admission does not exceed six years. *See* INA 214(g)(4), 8 U.S.C. 1184(g)(4); 8 CFR 214.2(h)(15)(ii)(B)(*1*). As with initial H–1B petitions, the petitioning employer must first obtain a certified LCA from DOL before applying for the extension of stay. At the end of the six-year

period,[1] in most cases, the alien must change to another nonimmigrant status, seek permanent resident status, or depart the United States. The alien may be eligible for a new six-year maximum period of stay in H–1B nonimmigrant status if he or she remains outside the United States for at least one year. *See* 8 CFR 214.2(h)(13)(iii)(A).

B. H–1B Nonimmigrants Subject to H–1B Caps

Most aliens seeking a new H–1B nonimmigrant classification are subject to a numerical cap of 65,000 visas each fiscal year. Exempt from this 65,000 cap are aliens who: (1) Are employed at, or have received an offer of employment from, an institution of higher education, or a related or affiliated nonprofit entity; (2) are employed at, or have received an offer of employment from, a nonprofit research organization or a governmental research organization; or (3) have earned a master's or higher degree from a U.S. institution of higher education. INA sec. 214(g)(5), 8 U.S.C. 1184(g)(5). The exemption for aliens who have attained a U.S. master's degree or higher is capped at 20,000 H–1B petitions per fiscal year ("20,000 cap"). *See* INA sec. 214(g)(5)(C), 8 U.S.C. 1184(g)(5)(C).

The spouses and children of H–1B nonimmigrants, classified as H–4 nonimmigrants, do not count toward the 65,000 and 20,000 caps. *See* INA sec. 214(g)(2), 8 U.S.C. 1184(g)(2); 8 CFR 214.2(h)(8)(ii)(A). In addition, USCIS does not apply the 65,000 and 20,000 caps in the following cases:

- Requests for H–1B petition extensions;
- Requests for extensions of stay in the United States; and
- Petitions filed on behalf of aliens who are currently in H–1B nonimmigrant status but seek to change the terms of current employment, change employers,[2] or work concurrently under a second H–1B petition.

These aliens have already been counted towards either the 65,000 or 20,000 cap in previous years. *See* INA sec. 214(g)(7), 8 U.S.C. 1184(g)(7); 8 CFR 214.2(h)(8)(ii)(A).

[1] Certain aliens are exempt from the six-year maximum period of admission under sections 104(c) and 106(a) and (b) of the American Competitiveness in the Twenty-First Century Act of 2000 (AC21), Public Law 106–313, 114 Stat. 1251 (Oct. 17, 2000).

[2] If the alien was previously employed by a cap-exempt petitioner and thus never counted against the cap, the worker must be counted against the cap when switching to an employer that is subject to the cap. *See* INA sec. 214(g)(6), 8 U.S.C. 1184(g)(6).

C. Current Random Selection Process

To manage the 65,000 and 20,000 caps, USCIS monitors the number of H–1B petitions it receives at each service center. The first day on which petitioners may file H–1B petitions can be as early as six months ahead of the projected employment start date. *See* 8 CFR 214.2(h)(9)(i)(B). For example, a U.S. employer seeking an H–1B worker for a job beginning October 1 (the first day of the next fiscal year) can file an H–1B petition no earlier than April 1 of the current fiscal year. Thus, an H–1B employer requesting a worker for the first day of FY 2012, October 1, 2011, would be allowed to file an H–1B petition on April 1, 2011. When USCIS determines, based on the number of H–1B petitions it has received for a cap season, that the 65,000 or 20,000 cap will be reached, it announces to the public the final day on which H–1B petitions can be filed for that cap season.

USCIS then randomly selects the number of petitions needed to reach the H–1B cap. The random selection process includes all petitions received on the final receipt date. USCIS makes projections on the number of petitions necessary to achieve the numerical limit of approvals, taking into account historical data related to approvals, denials, revocations, and other relevant factors. *See* 8 CFR 214.2(h)(8)(ii)(B). USCIS then randomly selects approximately 15–20% over the regular cap number of 65,000 and approximately 5–10% over the master's degree cap number of 20,000.

If USCIS receives sufficient H–1B petitions to reach the 65,000 and 20,000 caps for the upcoming fiscal year within the first five business days, USCIS randomly selects from all H–1B petitions filed within the first five business days, beginning first with H–1B petitions subject to the 20,000 cap. *Id.* Once the random selection process for the 20,000 cap is complete, USCIS conducts the random selection process for the 65,000 cap. Once the random selection process for the 65,000 cap is complete, USCIS rejects all remaining H–1B petitions, including those not selected during one of the random selections. USCIS also rejects all H–1B petitions received after the final receipt date. *See* 8 CFR 214.2(h)(8)(ii)(D).

D. Current Allocation Process

This proposed rule is designed to alleviate many of the difficulties and inefficiencies stemming from the current H–1B allocation process and to simplify the allocation of available H–1B cap numbers. The registration requirement also will aid USCIS in the administrative front-end processing of cap-subject H–1B petitions.

For example, during the first five business days of filing for FY 2009, USCIS received approximately 163,000 H–1B petitions, well in excess of the available H–1B cap numbers. Some of the front-end processing activities associated with handling this exceptionally high volume of receipts include, but are not limited to, opening and sorting mail, identifying properly filed petitions, placing petitions through the random selection process, notifying petitioners of selected petitions, receipting fees and entering data for selected petitions, and returning all of the nonselected and improperly filed petitions with associated fees.

Since USCIS first created the random selection process in 2005, it has twice received significant numbers of H–1B petitions that exceeded the 65,000 and 20,000 caps on April 1, the first day the petitions could be filed for a new fiscal year. Petitioning employers rushed to file H–1B petitions for FY 2008, because in the previous fiscal year, USCIS reached the H–1B cap on the second filing day. *See* USCIS Update, "USCIS Updates Count of FY 2008 H–1B Cap Filings," *http://www.uscis.gov/files/pressrelease/H1Bfy08CapUpdate041007.pdf*. Many petitioning employers apparently anticipated a similar shortage of H–1B cap numbers for FY 2009 and, as a result, hurried to file the petitions to ensure USCIS received them at the start of the filing period. In an effort to relieve some of the burdens associated with handling the huge volumes of petitions received on the first filing day, USCIS amended the regulations pertaining to the random selection process on March 24, 2008. *See* 73 FR 15389.

Although the current regulations at 8 CFR 214.2(h)(8)(ii)(B) provide some relief by authorizing USCIS to include in the random selection process all petitions filed during the first five business days, USCIS proposes to take further measures to alleviate administrative burdens and the current uncertainty faced by petitioners who must prepare and submit H–1B petitions for all potential beneficiaries. Petitioning employers often expend significant time and resources to prepare the H–1B petition for submission. These resources and costs are expended for every potential H–1B worker the employer wants to hire, regardless of whether the petition will ultimately be adjudicated by USCIS.

III. Proposed H–1B Registration Program

USCIS proposes to establish a mandatory Internet-based electronic registration process for U.S. employers seeking to file H–1B petitions for alien workers subject to either the 65,000 or 20,000 caps. *See* proposed 8 CFR 214.2(h)(8)(ii). The electronic registration process would be in advance of the start of the period during which actual petitions can be filed for a new fiscal year (*i.e.,* immediately prior to April 1). This process would require U.S. employers to register for consideration of available H–1B cap numbers in advance of having to file and receive a certified LCA from the DOL.

This rule also proposes to establish processes for selecting registrations. Upon notification of selection by USCIS, a registrant would proceed to submit the LCA to DOL for certification and prepare the corresponding H–1B petition on behalf of the desired beneficiary. USCIS would reject any H–1B petition filing that is not based on a selected registration. The proposed registration requirement, which would take approximately 30 minutes to complete, is preferable for petitioners because selected registrations would have a higher probability of receiving an H–1B slot before petitioners would be required to expend the time and expenses necessary to complete H–1B petitions.

The proposed registration process would greatly improve the agency's ability to manage the H–1B cap and reduce the burden on petitioning employers in terms of up-front form preparation and filing fee submission. Below is a more detailed discussion of the proposed registration process and petition filing procedures for H–1B petitions subject to registration.

A. Registration

1. Announcement of the Registration Period

USCIS proposes to establish a mandatory Internet-based electronic registration process for U.S. employers seeking to file H–1B petitions for alien workers subject to either the 65,000 or 20,000 cap. *See* proposed 8 CFR 214.2(h)(8)(ii)(B)(*1*). The entire Internet registration process would commence each year in advance of the filing period for actual petitions.

The proposed rule would clarify USCIS's discretionary authority to temporarily suspend the H–1B registration process for any given fiscal year or to permanently terminate the registration process. USCIS would notify the public of any program suspension or termination via an update on the USCIS public Web site. Proposed 8 CFR 214.2(h)(8)(ii)(A)(*3*). The public frequently turns to the USCIS Web site for information and uses the USCIS Web site for general information on immigration benefits rules and processes, statutes and regulations, downloadable immigration forms, specific case status information, and processing times at the various service centers and district offices. Some members of the public sign up for e-mail alerts that provide the latest information posted on the USCIS Web site regarding particular applications, petitions, or visa classifications. Because of the wide use of the USCIS Web site by the public, the posting of information on the dates of suspension or termination of the registration process on the USCIS Web site would provide a timelier and more efficient method of disseminating such information to the public than publication of the information in the **Federal Register.** For example, USCIS may need to suspend or terminate the availability of the registration process in the event that Congress greatly increases the annual number of H–1B visas that USCIS may allocate each fiscal year. This rule would afford USCIS the flexibility to adapt quickly when various contingencies arise while providing the public with adequate notice of any impact on the registration availability.

Under the proposed registration process, each petitioning employer would be required to file registrations electronically through the USCIS Web site (*http://www.uscis.gov*) in accordance with the instructions provided. *See* proposed 214.2(h)(8)(ii)(B)(*1*). USCIS proposes to establish a registration period that would begin no later than in the month of March each year, for a minimum period of two weeks. USCIS would notify the public of the respective start and end dates for the registration period via the USCIS Web site (*http://www.uscis.gov*). *See* proposed 8 CFR 214.2(h)(8)(ii)(A)(*2*). All registrations would be required to be filed during the timeframes announced by USCIS on its public Web site. USCIS would not accept any registrations filed either before or after the close of the specified registration period. USCIS invites the public to comment on whether the proposed start of the registration period would be sufficient time for prospective petitioners to submit their registrations.

Note that each annual registration period would be treated as separate from any earlier registration period. Therefore, employers from a previous registration period would not be automatically entered into a new registration period.

2. Information Required

This rule proposes that registrations must include basic information regarding the company and beneficiary: (1) The employer's name, employer identification number (EIN), and employer's mailing address; (2) the authorized representative's name, job title, and contact information (telephone number and e-mail address); (3) the beneficiary's full name, date of birth, country of birth, country of citizenship, gender and passport number; and (4) any additional information requested by the registration or USCIS. Proposed 8 CFR 214.2(h)(8)(ii)(B). USCIS seeks public comments on the type of information requested and whether the list should be expanded or in any way changed for U.S. employers.

USCIS has determined that the content noted above is the minimum information that USCIS will need to identify the prospective H–1B petitioner and specific named beneficiary, to eliminate duplicate registrations, and to match approved and selected registrations with subsequently filed H–1B petitions.

3. USCIS Acceptance of Registrations

USCIS proposes to require U.S. employers who choose to participate in the registration process to file a single registration for each prospective H–1B temporary worker they seek to hire. Multiple beneficiaries cannot be listed on a single registration. In addition, petitioners may not file multiple registrations for the same H–1B beneficiary. USCIS recognizes that, because this would be a new system, petitioners or their preparers may accidentally or unintentionally submit more than one registration on behalf of a single beneficiary. Therefore, this rule proposes that if USCIS receives more than one registration for a single H–1B beneficiary by the same petitioner, USCIS will accept the first valid registration and reject any subsequent duplicate requests.

Each U.S. employer who submits a properly completed H–1B Cap Registration request online will receive electronically an automatic notification that the registration request has been accepted by USCIS (note, acceptance is not the same as selection). The notification will be in a printable format and contain a unique identifying number for USCIS tracking and recordkeeping purposes. Registering employers can retain a hard copy of the acceptance notification for their files.

USCIS also proposes to assign a unique identifying number for each registration, which would be included on the electronic notification of registration acceptance.

B. Selection of Registrations

1. If the Number of Registrations Is Less Than the 65,000 or 20,000 Cap by April 1

In the event that the number of registrations is *less* than the number of available cap numbers before the first day that H–1B petition filings may be made (*e.g.,* April 1), USCIS would announce on its Web site that the registration period will remain open until such time as USCIS determines it has enough registrations to reach the cap. If the number of registrations received during the initial registration period is less than what is needed to reach the cap, all registrations accepted during that initial period would be selected. At such time USCIS believes it has enough registrations to meet the cap, it will announce the closing of the registration period on the USCIS Web site and will conduct a random selection of all registrations received on the last day of the registration period (*i.e.,* "final receipt date"). U.S. employers who receive notification that their registrations have been selected will be eligible to file an H–1B petition on behalf of the prospective H–1B worker named in the selected registration in accordance with the normal filing rules.

While the rule proposes to permit USCIS to keep the registration period open in the event that registrations remain low during the fiscal year, this rule would provide USCIS with the authority to close the registration period before the close of the fiscal year to allow petitioners sufficient time to complete and file their petitions and USCIS sufficient time to receive and process petitions. *See* proposed 8 CFR 214.2(h)(8)(ii)(A)(*3*).

2. If the Number of Registrations Is More Than the 65,000 or 20,000 Cap

In the event that USCIS would receive significantly *more* registrations than the H–1B cap, USCIS would conduct a random selection of the registrations timely received in a number sufficient to meet the 65,000 and 20,000 caps. Under such random selection process, USCIS would randomly select approximately 15–20% over the regular cap number of 65,000 and approximately 5–10% over the master's cap number of 20,000. The reason for selecting a percentage of registrations over the cap numbers of 65,000 and 20,000 is based on historical approval, denial and rejection rates, and in order to account for a variety of factors, such as: Randomly selected registrants that ultimately decide not to file an H–1B petition; H–1B petitions that are rejected as improperly filed or that are denied based on ineligibility; petitions that are later found revocable; and beneficiaries who ultimately decide not to seek an H–1B visa or are found ineligible for a visa. The random selection process will be conducted via a method approved by the Office of Immigration Statistics and will be similar to the current random, computer-generated selection process for H–1B petitions outlined at 8 CFR 214.2(h)(8)(ii)(B).

After the random selection process is complete, USCIS would be authorized to create a waitlist of remaining registrations. The waitlist of remaining registrations would be based on USCIS statistical estimates of how many more registrations may be needed to fill the caps should the pool of selected registrants unexpectedly fall short of reaching the caps. Waitlisted registrations would be randomly sorted and given a unique number in sequential order. USCIS would notify employers that their registrations have been placed on the waitlist. As H–1B numbers become available, waitlisted registrations would be selected so that employers can file H–1B petitions in accordance with the normal filing rules.

Employers with registrations that are neither randomly selected to file nor placed on the waitlist would receive notification that their registrations were not selected and that they are ineligible to file a petition for the applicable fiscal year.

C. Filing of H–1B Petition Following Selection

1. Eligibility To File

USCIS proposes to accept only cap-subject H–1B petitions based on selected registrations, and only for the H–1B beneficiary named in the original registration; others will be rejected. *See* proposed 8 CFR 214.2(h)(8)(ii)(D). No substitution of beneficiaries would be permitted. USCIS recognizes that employer needs often change and potential workers may become unavailable for a variety of reasons. However, USCIS is proposing to limit the filing of petitions to the beneficiary named on the original registration request in an effort to guard against the possibility of abuse from the minority of employers who might otherwise attempt to monopolize petition filing "slots" and create an illegitimate secondary market for H–1B beneficiaries. Furthermore, an employer is prohibited from filing more than one H–1B petition in the same fiscal year on behalf of the same alien if the alien is subject to the cap or is exempt from the cap because of having earned a master's degree or higher from a U.S. institution of higher education. However, if an H–1B petition is denied, on a basis other than fraud or misrepresentation, the employer may file a subsequent H–1B petition on behalf of the same alien in the same fiscal year, provided that the numerical limitation has not been reached or if the filing qualifies as exempt from the numerical limitation. *See* 8 CFR 214.2(h)(2)(i)(G).

2. Availability of Cap Numbers

Under the proposed registration and selection process, if an H–1B petition is otherwise approvable, a petitioner likely would be assured, but would not be guaranteed, the availability of an H–1B cap number under the 65,000 or 20,000 cap, whichever is applicable. USCIS notes that, while it takes every conceivable measure to accurately reach and not exceed the cap, and while the registration system is specifically designed to substantially increase the public's assurance that numbers are available for selected registrants, USCIS cannot guarantee every petitioner that an H–1B number will be available for the beneficiary at the time of filing their petition. As USCIS may accept more registrations than the prescribed statutory limit for H–1B petitions (to account for the variety of factors previously referenced, such as drop-outs or unapprovable petitions), there still exists a possibility that the applicable cap may be reached prior to the date that a selected registrant has filed a petition. This is especially true if, for example, a selected registrant does not file its petition until well after the filing period for petitions has begun (April 1st).

Once actual petition filings commence on April 1st of each fiscal year, USCIS monitors petition receipts closely to ensure adherence to the numerical caps. As explained, petitions filed with USCIS are adjudicated in the order they are received and USCIS cannot approve any petition that would cause it knowingly to exceed the statutory caps. However, the over-selection of registrations is necessary due to factors such as selected registrants who do not file Form I–129; petitions that are rejected, denied or withdrawn; approved petitions that are later revoked; and multiple petitions filed for the same individual. By over-selecting registrations, there is a risk of exceeding the statutory caps. Therefore,

the challenge is getting close to the numerical cap without exceeding it. In order to stay within the numerical limits of the cap, only 85,000 registrations (65,000 plus 20,000) would have to be selected from the lottery. However, by selecting only 85,000 registrations, USCIS will likely be under the numerical cap for the reasons stated above. Thus, there is a tradeoff between cap compliance certainty (being under 85,001) and cap utilization risk (getting close to the numerical cap). Nevertheless, the actual number of H–1B petition approvals is generally not known until the end of the fiscal year as a result of petitions being revoked, denied or withdrawn throughout the year. Although it is possible to exceed the numerical cap during the fiscal year in December or January, the actual number of petitions approved usually falls under the numerical cap by August or September as a result of ongoing revocations.

3. Filing Time Period

USCIS proposes that petitioners would have not less than 60 days from the date of notification of selection ("selection notice") to properly file a completed H–1B petition for the named beneficiary. USCIS would state the applicable filing deadline in each selection notice. Proposed 8 CFR 214.2(h)(8)(ii)(D)(*2*). Allowing USCIS to specify the filing period in the selection notice would give USCIS the flexibility to provide filing periods of longer than 60 days if necessary to accommodate processing backlogs.

If the H–1B petition is filed after the filing window closes, USCIS would reject the H–1B petition. In other words, a selected registrant who does not take advantage of the eligibility to file a petition on behalf of the named beneficiary within the timeframe stated on the selection notice would forego eligibility to file and, consequently, any consideration for an available cap number based on that selection notice.

USCIS is proposing to set a minimum 60-day filing window to ensure that the petitioner has adequate time to prepare the H–1B petition package, and, at the same time, that USCIS has adequate time to determine if a sufficient number of petitions have been filed to reach the H–1B annual numerical limitation. The proposed minimum 60-day filing window also would provide USCIS with a minimum time period within which it would be able to determine the number of selected registrants who actually filed a petition and whose petition was approved by USCIS. Calculating the H–1B approval rate during the 60-day filing period would allow USCIS to assess whether there is a need to resort to selecting registrations from the waitlisted pool of registrants, thereby allowing more registrants in the queue to file petitions to reach the cap.

The proposed minimum 60-day filing period in which a selected registrant may opt to file a petition on behalf of the named beneficiary would be read consistently with the existing regulation providing that a petitioner may file no earlier than six months before the date of actual need for the beneficiary's services or training. 8 CFR 214.2 (h)(9)(i)(B). In other words, while the proposed minimum 60-day filing window would provide a cutoff date for filing a petition, selected registrants would still be able to file a petition up to six months prior to the date of stated need. If, for example, an employer's selection notice dated March 31, 2010 contains a 60-day filing period, and the requested start date is October 1, 2010, the petition must be filed no later than May 30, 2010 or USCIS will reject the petition. Another example is if an employer receives the selection notice dated May 1, 2010 with a 60-day filing period, then the petition must be filed no later than June 30, 2010. If the H–1B petition is filed on June 30, 2010, the requested start date may be no later than December 30, 2010, which is six months after the filing date.

4. Submission of Selection Notice With H–1B Petition

The rule also proposes to require that selected registrants submit the selection notice with the actual H–1B petition at the time of filing. *See* proposed 8 CFR 214.2(h)(8)(ii)(D)(*2*). The submission of the selection notice is an anti-fraud measure to ensure the integrity of the H–1B cap number allocation system. Further, each selection notice will contain a unique identifying number and have a machine-readable zone that USCIS can use to verify the petitioner and intended beneficiary. Submission of the selection notice facilitates the proper and timely identification of petitioners and beneficiaries selected during the registration process. Failure to submit the selection notice will result in the rejection of the H–1B petition and the return of the filing fees.

IV. Miscellaneous Amendments

This proposed rule also includes modifications to the current H–1B cap management provisions at 8 CFR 214.2(h)(8)(ii)(B). The proposed amendments do not alter the current H–1B cap management process but instead clarify the provision so it better reflects how USCIS conducts the H–1B random selection process. The current cap management process is modified by running the random lottery on the registrations rather than the actual filed petition. The proposed system will not require the petitions to be returned as the lottery will be done prior to filing the actual petitions. This proposed rule also adds a cross reference to the registration process. *See* proposed 8 CFR 214.2(h)(8)(ii)(B).

V. Regulatory Requirements

A. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

B. Small Business Regulatory Enforcement Fairness Act of 1996

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

C. Executive Order 12866

This rule has been designated as significant under Executive Order 12866. Thus, under the Executive Order, USCIS has prepared an assessment of the benefits and costs anticipated to occur as a result of this rule and made it available for review in the rulemaking docket for this rule at *http://www.regulations.gov.* The costs and benefits of this rule are summarized as follows.

1. Summary

We estimate the total net savings to USCIS and H–1B petitioners from this rule is $23,611,393 at a three percent discount rate and $19,150,459 at a seven percent discount rate over the next ten years.

Over the next 10 years, this rule will result in a savings to those businesses that file H–1B petitions of $35,826,852 based on a discount rate of three percent, and $29,499,043 based on a discount rate of seven percent. However, the costs imposed on H–1B petitioners as a result of this rule over

the next 10 years will be $11,942,284 at the three percent discount rate, and $9,833,014 discounted at seven percent. Thus the net savings resulting from this rule for H–1B petitioners over the next 10 years will be $23,884,568 at three percent and $19,666,029 at seven percent.

In the next 10 years, this rule will result in USCIS saving approximately $3,520,244 when discounted at three percent, and $2,898,492 when discounted at seven percent. The total USCIS costs over the next 10 years as a result of the changes proposed in this rule will be $3,793,419 discounted at three percent and $3,414,062 at the seven percent discount rate. The net cost to USCIS over the 10 years following this rule, discounted at three percent, is $273,175, and discounted at seven percent the costs will be $515,570.

The impacts of this rule on employers wanting to hire an H–1B worker and the government are summarized in the following table.

10-Year cost category	Net present value at 3 percent per annum	Net present value at 7 percent per annum
H–1B filer savings	35,826,852	29,499,043
H–1B filer cost	11,942,284	9,833,014
Net H–1B filer savings	23,884,568	19,666,029
Government savings	3,520,244	2,898,492
Government costs	3,793,419	3,414,062
Net Government cost	273,175	515,570
Total Estimated net savings to the government and H–1B filers	$23,611,393	$19,150,459

2. Recent Petition Filing Volume [3]

65,000 cap.[4]

Fiscal year	*2010* [5]	*2009*	*2008*	*2007*	*2006*
Filings	68,000	133,000	120,000	67,000	74,000
Accepted [6]	65,000	74,000	71,000	67,000	74,000
Approved	48,000	60,000	64,000	65,000	63,000
Percent approved [7]	71%	45%	53%	97%	85%

Fiscal year	*2005*	*2004*	*2003*	*2002*	*9-year average* [8]
Filings	81,000	73,000	88,000	89,000	88,000
Accepted	79,000	71,000	86,000	87,000	75,000
Approved	72,000	65,000	78,000	79,000	66,000
Percent approved	89%	89%	89%	89%	75%

20,000 Master's exemption.[9]

Fiscal year	*2010* [10]	*2009*	*2008*	*2007*	*2006*	*5 year average*
Filings	28,000	30,000	21,000	21,000	21,000	24,000
Accepted	27,000	23,000	21,000	21,000	21,000	23,000
Approved	23,000	19,000	19,000	20,000	20,000	20,000
Percent approved	82%	63%	90%	95%	95%	83%

[3] Rounded to nearest thousand, except for average.

[4] The H–1B filing cap was 195,000 in fiscal years 2002 and 2003. In FY 2005, USCIS exceeded the 65,000 cap—*see* full report at *http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_05-49_Sep05.pdf http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_05-49_Sep05.pdf.*

[5] As of 18 December 2009. Additionally, since the 65,000 cap was not met for FY 2010, excess approved petitions for the Master's exemption were rolled into the 65,000 cap.

[6] A small percentage above the 65,000 or 20,000 are processed based on historic denial rates in order to ensure that all 85,000 spots are used by those selected.

[7] Percentage based on number of filings; rounded.

[8] These years are the dates when the current cap numbers were in effect and thus appropriate for comparison.

[9] FY 2006 was the first year the 20,000 Master's exemption (authorized by the 2004 H–1B Visa Reform Act) became operational.

[10] As of 18 December 2009. *See* additional information in footnote five.

3. Problems Being Addressed—Overwhelmed by Paper Petitions

The statutory numerical limits on H–1B visas have created complications for both employers and DHS. On the first two filing days for fiscal year 2008, April 2 and 3, 2007, USCIS received 123,000 H–1B petitions subject to the 65,000 cap or 20,000 Master's cap exemption. This was the first time since the random selection process was instituted that USCIS received more petitions than available cap numbers on the first two days. USCIS randomly selected 71,000 from those received on April 2 and April 3 for processing to fill the 65,000 cap and rejected 52,000 others.[11] In 2007, petitions for the 20,000 U.S. master's degree or higher visas for 2008 were rejected after filings reached approximately 21,000. In 2008 (for fiscal year 2009 workers), approximately 163,000 total petitions were received during the five day filing period. Of those, USCIS accepted 74,000 and 23,000 to process for both cap categories, and rejected 66,000. In 2008, the 20,000 master's degree exempt visas were filled by the final receipt date for the first time. USCIS believes that the master's degree cap exemption numbers will continue to be utilized by employers as quickly as the non-master's allotment. For that reason, it is proposed that they be made subject to registration under this rule.

In the filing periods to request H–1B workers for fiscal years 2008 and 2009, an average of 59,000 petitions per year were completed and mailed, usually by overnight carrier, along with fee payments, without even being accepted by USCIS for processing. Meanwhile, the USCIS service centers involved in the petitioning process were overwhelmed in those years by the quantity of paper petitions received in early April until the receipt date was closed. Much time and effort was spent to open the packages, process the mail, receipt the petition for processing, check the fee payments, and perform the associated tasks. Readying all submissions for the random selection process requires work by many employees. For fiscal years 2008 and 2009, multiple truckloads of petitions were stacked on pallets on loading docks, in offices, and in hallways. Then only around 60 percent of those submitted were processed. The logistical problems caused by the huge volume of filings result in effort wasted on petitions that cannot be processed in those years when the demand for H–1B visas greatly exceeds the available supply.

4. Changes Proposed—Registration

This rule proposes to require employers to register in a system for either the master's exemption or regular cap categories regardless of the anticipated employment start date. Once the registration period is over, 65,000 and 20,000 H–1B registrants, as applicable, will be randomly selected and invited to file an H–1B petition. This rule proposes that entries for the program must be submitted electronically through the USCIS Web site in a time frame as established on the USCIS Web site.

5. Benefits

No Unnecessary Petitions. The main benefit that will result from this rule is that employers that want to hire an H–1B worker will be able to forgo the time, effort, and expense associated with the preparation of a full H–1B petition, the Department of Labor (DOL) Labor Condition Application, and all of the necessary supporting documentation unless USCIS notifies the H–1B employer that space exists under the cap.[12]

This rule would result in savings for the typical H–1B employer from not incurring the expense of preparing an H–1B petition when cap space is not available. In an analysis of recent H–1B filings, USCIS records showed that 93 percent of H–1B petitions were accompanied by a USCIS Form G–28, Notice of Entry of Appearance as Attorney or Accredited Representative, indicating that the petitioner is represented. Thus, most H–1B filers pay an attorney to prepare and submit their Forms I–129. To the extent that such expenses are avoided by registering under this rule, these avoided costs represent a benefit to society.

The public reporting burden for Form I–129 that has been approved by OMB under the Paperwork Reduction Act is 2.75 hours per petition, including the time for reviewing instructions, completing, and submitting the form. As previously discussed, a majority of H–1B filers use an attorney to assist with the preparation of the I–129. For the purpose of this analysis, we will assume that the 2.75 hour burden associated with completing the I–129 is split between an attorney and a staff member equivalent to a human resource manager. According to the Bureau of Labor Statistics, the average hourly salary for a lawyer and human resource manager are, respectively, $59.98 and $49.96.[13] For the compensation costs required for this analysis, we used the average of those two wage rates, $54.97, and multiplied it by 1.43 to account for the full cost of employee benefits such as paid leave, insurance, retirement, *etc.*[14] Thus the cost to prepare an H–1B petition is approximately $78.61 per hour, and the total cost to complete a Form I–129 is $216.18 ($78.61 × 2.75). This cost estimate is conservative because many employers actually employ more costly outside counsel rather than "in-house" attorneys and managers to complete H–1B petitions.

By requiring a petitioner to register in order to be eligible to file, filing volume would be capped at around 91,000 petitions.[15] To illustrate the maximum possible savings that could result from this rule, if the same number of filings that were received for FY 2009 workers occurs again in the future, filings would exceed those accepted by 72,000.[16] This would result in a possible opportunity cost savings for unnecessary petition preparation of nearly $15.6 million in any year in which such a large number of filings are received. (72,000 × $216.18). There have been years, however, such as fiscal year 2007, where the number of petitions received did not exceed the number that could be processed under the cap. Taking account of this variation, once this proposed rule is in place, it is expected to reduce paper petition filing volumes by about 19,000 per year.[17] This would

[11] Petition returned and fee refunded.

[12] DOL *Form ETA 9035E,* Labor Condition Application (LCA). The INA directs the Secretary of Labor to certify that there are not sufficient workers who are able, willing, qualified and available and that the employment of an alien will not adversely affect the wages and working conditions of workers in the United States similarly employed. The regulations of the Department of Labor delineate the specific rules to be followed for each program that requires labor certification from the Secretary of Labor. 20 CFR part 655. *http://www.foreignlaborcert.doleta.gov/.*

[13] *See* United States Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, May 2008 National Occupational Employment and Wage Estimates at *http://www.bls.gov/oes/2008/may/oes_nat.htm#b11-0000.*

[14] U.S. Department of Labor, Bureau of Labor Statistics, Economic News Release, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, March 2009, viewed online at *http://www.bls.gov/news.release/ecec.t01.htm.*

[15] 70,000 + 21,000 (estimated petitions that would need to be accepted, based on historic denial rates, in order to achieve the 65,000 cap and the 20,000 master's exemption cap).

[16] 163,000 − 91,000.

[17] The average volume in the previous nine years for H–1B visa petitions subject to the 65,000 cap was 89,000. Since its inception in 2006, average filing volume for the 20,000 master's exemption H–

Continued

result in average petitioner preparation burden savings of $4.1 million per year.[18] Thus, based on past fiscal years' filing volume, the paperwork burden savings resulting from this rule would range from zero to $15.6 million, with average cost savings of $4.1 million per year based on future volume projections.

Reduced Mailing Expenses. While not required by regulations, in order to ensure receipt of a petition by USCIS, H–1B petitioners typically mail their petitions via overnight couriers. As indicated in the Small Business Impacts section below, USCIS estimates that the average sponsoring employer files three H–1B petitions, and each employer would, logically, mail all of its petitions in one package. Estimating the average mailing cost at $17.50 per mailed package,[19] this rule would result in cost savings for petitioning employers ranging from zero to $420,000, with a projected annual cost savings of about $111,000 per year.[20]

The 10-year savings to H–1B filers, discounted at three and seven percent, is summarized in the following table.

Year	Total yearly savings[21]	Yearly discounted savings 3%	Yearly discounted savings 7%
1	4,200,000	4,077,670	3,925,234
2	4,200,000	3,958,903	3,668,443
3	4,200,000	3,843,595	3,428,451
4	4,200,000	3,731,646	3,204,160
5	4,200,000	3,622,957	2,994,542
6	4,200,000	3,517,434	2,798,637
7	4,200,000	3,414,984	2,615,549
8	4,200,000	3,315,519	2,444,438
9	4,200,000	3,218,950	2,284,522
10	4,200,000	3,125,194	2,135,067
	Total Discounted Savings	$35,826,852	$29,499,043

Government Benefits. This rule would significantly ease the administrative burden on USCIS of managing the random selection lottery. When petitions filed significantly exceed those that can be approved, USCIS expends funds collected for other application types to open the mail and handle H–1B petition filings that do not result in any fee collections. Over the most recent three fiscal years, USCIS received an average of almost 133,000 petitions, accepted 93,000, and approved an average of approximately 78,000. This means that 55,000 more were received than were approved, and 40,000 more than were adjudicated. In addition, for fiscal years 2008 and 2009, about 10,700 petitions were filed for premium processing, all of which had to be acted on within 15 days of the day of the random selection.

This surge diverts resources away from normal duties to receive, unload, stack, and open the mail, verify that the mail contains H–1B petitions, perform minimal data entry, and place a bar-code on each petition for use in the random selection at a later date—all efforts estimated at 40 minutes for each petition.[22] Further time was spent over the following two-week period to complete the initial selection; enter chosen petitions into the tracking system; and return rejected petitions. The typical contract clerk that performs these steps earns on average $23.58 for regular time hours.[23] Therefore, this piece of the H–1B processing procedure needlessly costs USCIS about $298,680 each year.[24]

Additional costs were also incurred to shift 18,000 Form I–130 filings to California from Vermont, so Vermont could concentrate on the cap cases received. In such high demand and volume years, electronic registration would decrease the random selection preparation time, preclude the processing of most fee refunds, and reduce overtime costs and lost production. USCIS can better utilize this time, effort, and other resources to adjudicate other benefits.

Many savings associated with this rule are difficult to quantify; however, we are able to estimate mailing costs for returning unaccepted petitions. We estimate mailing costs for rejected H–1B filings at $6.00 per mailed package.[25] USCIS individually returns unaccepted petitions to petitioners. Again, using forecast approximations, we can calculate shipping savings at $114,000 annually.[26] Combining savings data generates a typical total annual savings for USCIS of about $412,680.

Registration would also add a qualitative benefit for future filers by averting a front log for H–1B petitions and allowing more efficient notification of the petitioners as to whether they will receive a cap number. Petitioners would be able to more efficiently plan employment and staffing levels, and would know whether or not an H–1B visa holder would be an option for a position vacancy.

The 10-year savings to USCIS, discounted at three and seven percent, is summarized in the following table.

1B visas totaled 23,000, resulting in a combined average of 112,000 filings annually. Based on these past results, recent upward trends in filings, and expected demand for H–1B visas in the future, USCIS projects that about 110,000 H–1B petitions would be filed per year in future years.

[18] 19,000 × $216.18 = $4,107,420.

[19] United States Postal Service, Express Mail Flat Rate Envelope, *see http://www.usps.com/prices/express-mail-prices.htm.*

[20] USCIS projects future petition filing volume of approximately 110,000 H–1B petitions annually, exceeding the 91,000 to be accepted for processing by around 19,000. Savings in largest volume year = 72,000/3 × $17.50 = $420,000. Savings in typical year of 110,000 projected filings = 19,000/3 × $17.50 = $110,833.

[21] $4.1 million preparation savings plus $111,000 mailing savings.

[22] 60/40 = 1.5 petitions received/guarded/sorted/stacked/opened/entered/notified per hour.

[23] Per USCIS Service Center Operations—fully burdened average rate for CA and VT.

[24] (19,000/1.5 petitions per hour) × $23.58 per hour average regular time = $298,680 annual regular time savings.

[25] *http://postcalc.usps.gov/Summary.aspx?m=2&p=1&o=0&dz=20529&oz=90210&MailingDate=1/4/2010&MailingTime=7:09%20AM&time=2%20days&mt=11&es=106.*

[26] 19,000 excess petitions × $6.00 per package mailing costs = $114,000 shipping savings per year.

Year	Total yearly savings	Yearly discounted savings-3%	Yearly discounted savings-7%
1	$412,680	$400,660	$385,682
2	412,680	388,990	360,451
3	412,680	377,661	336,870
4	412,680	366,661	314,832
5	412,680	355,981	294,235
6	412,680	345,613	274,986
7	412,680	335,547	256,996
8	412,680	325,773	240,184
9	412,680	316,285	224,471
10	412,680	307,073	209,786
	Total Discounted Savings	3,520,244	2,898,492

6. Costs

Government Implementation Costs. As part of this rule, USCIS is developing an Internet-based system for registration. Initial development is estimated to cost $800,000, including system design, creation of all required supporting documentation, hardware deployment, and testing the system. Initial hardware and equipment costs are estimated to be approximately $1,400,000. In addition, USCIS estimates that initial personnel costs to establish the system would require $150,000 to fund two positions.[27] Total first year cost would be $2,350,000. Continuing costs would be $200,000 per year—$150,000 for the two support personnel per year and maintenance charges of about $50,000 per year to maintain the system.

The cost to the government over the next 10 years, discounted at three and seven percent, is summarized in the following table.

Year	First year cost	Continuing cost	Total yearly cost	Discounted cost 3%	Discounted cost 7%
1	$2,350,000	$0	$2,350,000	$2,281,553	$2,196,262
2	0	200,000	200,000	188,519	174,688
3	0	200,000	200,000	183,028	163,260
4	0	200,000	200,000	177,697	152,579
5	0	200,000	200,000	172,522	142,597
6	0	200,000	200,000	167,497	133,268
7	0	200,000	200,000	162,618	124,550
8	0	200,000	200,000	157,882	116,402
9	0	200,000	200,000	153,283	108,787
10	0	200,000	200,000	148,819	101,670
			Total Discounted 10-year Government Cost	3,793,419	3,414,062

Registration. USCIS estimates that the public reporting burden for H–1B Cap Registration using the electronic system will average 30 minutes per response, including the time for reviewing instructions, completing, and submitting. Petitioners must file a separate registration for each requested beneficiary and each beneficiary must be named. After the closing date, DHS will run a random selection process and notify the lottery winners. Upon selection in the lottery system, a petitioner will be invited to submit a Form I–129 for adjudication of an H–1B visa.

While most employers hire an attorney to prepare Form I–129 for prospective H–1B employees, registrations are straightforward and should require minimal skills, rather than those of an attorney or management-level employee. The hourly cost for an employer would be the compensation costs for the time required for a petitioning firm's employee to complete the registration. USCIS has reviewed the Bureau of Labor Statistics' Occupational Classifications and believes that the job definition for a Human Resource Assistant indicates that a Human Resource Assistant should possess the skills necessary to provide the registration information, as the duties for that position includes compiling information and furnishing information to authorized persons. The average hourly salary for a Human Resource Assistant is $17.70.[28] Using a multiplier of 1.43 to account for the cost of benefits, the costs per hour to prepare an H–1B petition is $25.31. Thus, the

[27] Includes total compensation costs and benefits.

[28] According to BLS, the duties for Human Resource Assistant are to compile and keep personnel records, record data for each employee (such as address, weekly earnings, absences, amount of sales or production, supervisory reports on ability, and date of and reason for termination), compile and type reports from employment records, file employment records, search employee files, and furnish information to authorized persons. USCIS believes H–1B Registration will require a similar level of skill as these tasks. *See http://www.bls.gov/oco/ocos150.htm.* Average wage for 2008 is at: *http://www.bls.gov/oes/2008/may/oes_nat.htm#b11-0000.*

paperwork burden of each registration would cost about $12.66.[29] USCIS understands that some businesses may not have an employee with the title of "Human Resource Assistant." We believe that a fully loaded wage of $25.31 per hour is a reasonable proxy for the wage of the employee that would be required to submit the basic information being requested by the registration.

For the purposes of this analysis, we assume that a sufficient number of petitions would be received each year to approve the 85,000 maximum workers, or 91,000 per year. Thus, the costs added by this rule would range from $1.2 million for 91,000 registrants, to $2.1 million for 163,000 registrants, and average $1.4 million based on the 110,000 H–1B filings that are projected to be filed if registration is not implemented under this rule.

Start-up Costs. We assume that H–1B employers would not need to expend additional funds to procure computer equipment or acquire Internet connections. This assumption is based on the fact that the Employment and Training Administration (ETA) of DOL already requires employers to use Web-based electronic filing of Labor Condition Applications (LCAs), and an approved LCA is a requisite for requesting an H–1B employee.[30] Thus, any establishment that would be registering online as proposed by this rule must already have a computer and access to the Internet.[31] Further, the costs of learning how to apply for registration are considered in the time for reviewing instructions in the paperwork burden above. Therefore, this proposed rule would impose no start-up costs on the public.

The cost to H–1B filers over the next 10 years, discounted at three and seven percent, is summarized in the following table.

Year	Total yearly cost	Yearly discounted cost 3%	Yearly discounted cost 7%
1	$1,400,000	$1,359,223	$1,308,411
2	1,400,000	1,319,634	1,222,814
3	1,400,000	1,281,198	1,142,817
4	1,400,000	1,243,882	1,068,053
5	1,400,000	1,207,652	998,181
6	1,400,000	1,172,478	932,879
7	1,400,000	1,138,328	871,850
8	1,400,000	1,105,173	814,813
9	1,400,000	1,072,983	761,507
10	1,400,000	1,041,731	711,689
	Total Discounted Cost	11,942,284	9,833,014

7. Breakeven Threshold

The cost added by this rule is the cost of the extra step now required before a petition can be filed—registration. Registration would become a fixed cost for all potential and actual filers of an H–1B petition. Because registration is free except for the time required to register, the amount of the added fixed cost is the opportunity cost incurred by registrants to take this new step.

The breakeven threshold is calculated by setting benefits and costs equal and solving for the number of petitions. The benefits portion equals the cost of completing ($216.18) and mailing ($5.83) a Form I–129 (total $222.01) multiplied by the number of petitioners over the cap limit (unnecessary petitions). This amount represents the total amount saved by registrants. The next benefit is the amount saved by USCIS from not having to deal with unnecessary petitions ($412,680).[32]

Next, we include the cost component. Each filer will need to register online at a cost of $12.66 each, multiplied by the total number of registrants. The final component is the additional cost the rule imposes on USCIS which totals $486,086.[33]

Therefore, based on costs and the conservative estimates for aggregate savings for H–1B filers and the Government, the benefits to this rule exceed the added costs imposed on all successful and unsuccessful registrants when total registrations equal 96,854, or exceed the 91,000 to be accepted for processing by 5,854.[34]

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules.

Number of small entities to which the proposed rule would apply.

According to USCIS data on the participants in the employment based visa program, and the Small Business Administration (SBA) Small Business Size Regulations at 13 CFR part 121, almost all, or about 88.6 percent, of the petitions requesting an H–1B employee would be filed by firms that the size definitions indicate are small entities.[35] In fiscal year 2009 (the most recent breakdown available), forty-two percent of petitions approved were for workers in computer-related occupations. The second and third most numerous

[29] 60/30 = 0.5 hours × $25.31= $12.66.

[30] 20 CFR 655.705(c)(1); 20 CFR 655.720; 8 CFR 214.2(h)(ii)(B)(*1*).

[31] In the case of a hardship, ETA allows a paper request for an LCA to be filed. ETA received only one request to file in advance in the past few years and it was not filed when the requestor was asked for further information. ETA rejects about five LCAs per month that are filed on paper without approval to file non-electronically. No paper LCA has been approved in three years. Thus 100% computer ownership is assumed for this analysis. E-mail on file with author from Elissa McGovern, ETA, to Phillip Elder, USCIS, July 8, 2009, 11 a.m.

[32] Annual average savings totals $412,680 discounted at seven percent.

[33] $486,086 average annual equivalent costs at seven percent discount.

[34] In solving for x, we rounded to the nearest whole number.

[35] *See* Small Entity Impact Analysis for the 2010 Adjustment of USCIS Fee Schedule (Docket USCIS–2009–0033). While we acknowledge that the analysis provides estimates of size based on entities that file both Form I–129 and Form I–140, we still believe this to be an appropriate estimate for those entities that would be impacted by this proposed rule.

occupation groups were architecture, engineering, and surveying, followed by education (primary and secondary school teachers and college professors).[36]

USCIS records show that the employers who filed H–1B petitions hired an average of 2.24 to 4.16 H–1B employees in fiscal years 2007 and 2008.[37] Thus, USCIS estimates that the average number of H–1B petitions filed per employer is about three. Therefore, based on projected filings of 110,000 per year, it is estimated that around 36,667 firms that file a petition would be affected by this rule, with 32,487 of them being classified as small entities (110,000/3 = 36,667 × 0.886 = 32,487).

New Compliance Costs of the Proposed Rule. The proposed rule would require employers to electronically register their intention to apply for an H–1B worker for the applicable fiscal year. As indicated previously, this new requirement would add a cost of $12.66 per worker in public annual information collection costs. The average added cost per employer for three employees would total $37.98. However, USCIS expects that H–1B employers will save money due to this rule when the overall costs savings are considered, as these H–1B employers will no longer be filing "unnecessary" H–1B petitions.

Significance of Impact and Certification. Guidelines suggested by the SBA Office of Advocacy provide that, in order for the impact to be considered significant, the cost of a proposed regulation would have to exceed one percent of the gross revenues of the entities in a particular sector or 5 percent of the labor costs of the entities in the sector. The median salary for new H–1B workers in the information technology industry is about $50,000, based on USCIS filings. Thus, the costs added by this rule are only 0.0003 percent of the salary costs for the three workers ($150,000/$37.98 x 100). The average total revenue of the typical H–1B employer is unknown. Nonetheless, to exceed one percent of annual revenues, sales would have to be $3,798 per year or less. Firms with sales below $3,798 would be very unlikely to hire three employees and incur the $37.98 in added costs. USCIS believes that the costs of this rulemaking to small entities would not exceed one percent of annual revenues. Therefore, using both average annual labor costs and the percentage of the affected entities' annual revenue stream as guidelines and considering that this rule is expected to generate a net savings to H–1B employers, USCIS concludes that this rule would not have a significant economic impact on a substantial number of small entities. For this reason, DHS certifies that this rule would not have a significant economic impact on a substantial number of small entities.

[36] *See* USCIS Characteristics of H–1B Specialty Occupations Workers for FY 2009 at *http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/H-1B/h1b-fy-09-characteristics.pdf.*

[37] Calculated by dividing the total number of H–1B employees by the total number of unduplicated petitioner Employer Identification Numbers (EIN).

E. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995), all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a regulatory action. This rule introduces a new registration requirement for H–1B petitions subject to numerical limits, a new information collection under the Paperwork Reduction Act. Accordingly, this information collection has been submitted to OMB for review.

During the first 60 days, USCIS is requesting comments on this information collection. USCIS will therefore accept comments on this information collection until May 2, 2011. When submitting comments on this information collection, your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance 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 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 the information on those who are to respond, including through the use of any and all appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* H–1B Cap Registration.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Form Number. This information collection is via Internet only. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for profit. Petitioners seeking to file H–1B petitions for alien workers who are subject to the numerical limitations must timely submit a registration to USCIS prior to filing such H–1B petitions. By the close of the registration period USCIS will randomly select timely submitted registrations in a number sufficient to meet the numerical limit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 110,000 respondents at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 55,000 annual burden hours.

All comments and suggestions or questions regarding additional information should be directed to the Department of Homeland Security, U.S. Citizenship and Immigration Services, Chief, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign Officials, Health Professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, parts 214 and 299 of chapter I of title 8 of the Code of Federal Regulations are proposed to be amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 8 CFR part 2.

2. Section 214.2 is amended by:

a. Redesignating paragraph (h)(8)(ii) as paragraph (h)(8)(iii); and by

b. Adding new paragraph (h)(8)(ii).

The addition reads as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(8) * * *

(ii) *Registration for H–1B petitions subject to numerical limits*—(A) *General.* (*1*) *Registration requirement.* Employers seeking to file H–1B petitions for alien workers who are subject to the numerical limitations under section 214(g)(1)(A) of the Act or are exempt from those limitations under section 214(g)(5)(C) of the Act must register such aliens electronically during a designated registration period in accordance with this section and the registration instructions unless USCIS temporarily suspends or terminates the registration process, for a particular fiscal year, paragraph (h)(8)(ii)(A)(*3*) of this section. USCIS will notify the employer in writing of the selection of one or more of the employer's registered beneficiaries on whose behalf the employer may file an H–1B petition. An employer may file an H–1B petition on behalf of a registered beneficiary only after being notified that the petitioner's registration for that beneficiary has been selected. Properly filing an H–1B petition following receipt of this notification does not guarantee the availability of an H–1B number, the approval of the petitions, or the issuance of an H–1B visa.

(*2*) *Registration period.* The registration period will commence prior to the earliest date on which petitions may be filed for a particular fiscal year, as specified in paragraph (h)(9)(i)(B) of this section. USCIS will notify the public via the USCIS Web site of the respective start date for the registration period for a particular fiscal year prior to the earliest date for filing H–1B petitions for such fiscal year as specified in paragraph (h)(9)(i)(B) of this section. USCIS will monitor registration receipts and will notify the public via the USCIS Web site at *http://www.uscis.gov* of the end date of the registration period. Registrations submitted after the close of the registration period will not be considered.

(*3*) *Suspension or termination.* USCIS may temporarily suspend the registration process for a given fiscal year or permanently terminate the registration process by notice on the USCIS Web site at *http://www.uscis.gov*. USCIS will provide such notice at least 30 days prior to the earliest date for filing H–1B petitions. Upon suspension or termination of the registration process, USCIS will implement the procedures described in paragraph (h)(8)(iii) of this section for calculating the numerical limitation for that fiscal year.

(B) *Filing*—(*1*) *Electronic registration.* Any registration must be filed electronically with USCIS via its Web site at *http://www.uscis.gov*. No filing fee is required for registration. Employers are required to provide the following information about their business and the prospective alien beneficiary on the registration:

(*i*) The employer's name, employer identification number (EIN), and employer's mailing address;

(*ii*) The authorized representative's name, job title, and contact information (telephone number and e-mail address);

(*iii*) The beneficiary's full name, date of birth, country of birth, country of citizenship, gender and passport number; and

(*iv*) Any additional information requested by the registration or USCIS.

(*2*) *Registering for beneficiaries.* Employers must file a separate registration for each requested beneficiary, and each beneficiary must be named. Multiple beneficiaries cannot be listed in a single registration. Only one registration may be submitted by an employer for each beneficiary. If USCIS receives more than one registration by the same employer for the same H–1B beneficiary, USCIS will accept only the first valid registration submitted and reject any duplicate registration requests. USCIS will accept more than one registration for the same beneficiary so long as each registration relates to a different employer.

(*3*) *Confirmation.* Employers will receive electronic notification that USCIS has accepted the registration for processing.

(C) *Notifications to file H–1B petitions.*

(*1*) *Numerical limitations not reached by earliest date on which H–1B petitions may be filed.* If USCIS determines that it has received fewer registrations than the numerical limitations as of the earliest date on which H–1B petitions may be filed, USCIS will notify all employers that have properly registered their beneficiaries by this date that they are eligible to file H–1B petitions on behalf of such registered beneficiaries. The registration period will remain open until USCIS determines that it has received sufficient registrations to ensure that the numerical limitations will not be exceeded for that fiscal year. USCIS may, in its discretion, close the registration period at an earlier date to allow for a sufficient period of time to receive and process petitions for that fiscal year. USCIS will issue notices of selection to file H–1B petitions in the order that registrations are received. If USCIS anticipates that it will receive more registrations than the numerical limitations, USCIS will announce a final receipt date and the closing of the registration period, and will conduct a random selection of all registrations received on the final receipt date.

(*2*) *Numerical limitations reached before the earliest date on which H–1B petitions may be filed for the new fiscal year.* If USCIS determines that it has received more registrations than the numerical limitations before the earliest date on which H–1B petitions may be filed for the new fiscal year, USCIS will close the registration period and announce such closure via its Web site at *http://www.uscis.gov*. USCIS will randomly select timely submitted registrations in a number sufficient to meet the numerical limit under section 214(g)(1)(A) of the Act and the exemption under section 214(g)(5)(C) of the Act. USCIS will:

(*i*) Notify all selected employers with a selection notice that the employer is eligible to file an H–1B petition on behalf of the beneficiary named in the selection notice.

(*ii*) Maintain, in its discretion, a wait list of some or all accepted registrations that were not initially selected as eligible to file an H–1B petition, but which may be randomly selected should USCIS determine that cap numbers are or will likely remain available for a particular fiscal year.

(*iii*) Notify employers whose registrations are on the wait list;

(*iv*) Notify a wait-listed employer when its registration has been selected that it is eligible to file an H–1B petition on behalf of the beneficiary named in the selection notice.

(*v*) Notify employers whose registrations are not initially chosen or placed on the wait list that they will not be eligible to file an H–1B petition for the applicable fiscal year.

(D) *H–1B petition filing following registration*—(*1*) *General.* USCIS will consider properly filed only those H–1B petitions for beneficiaries subject to a numerical limitation or the exemption under section 214(g)(5)(C) from registered employers notified of selection and only for those alien beneficiaries named in the original registration, in addition to meeting all other filing requirements. Petitions filed by employers whose registrations were not selected by USCIS will be rejected.

(*2*) *Filing.* Selected employers must file the H–1B petition with required supporting documentation and filing fees in accordance with the form instructions and applicable statutes and regulations. H–1B petitions must be filed within the time period stated on the selection notice and must include the selection notice issued under paragraph (h)(8)(ii)(C) of this section. The filing period on the selection notice will not be less than 60 days. Failure to meet these requirements will result in rejection of the H–1B petition and return of the filing fees.

* * * * *

PART 299—IMMIGRATION FORMS

3. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

4. Section 299.1 is amended by adding the entry "H–1B Cap Registration" at the end of the table, to read as follows:

§ 299.5 Display of control numbers.

* * * * *

Form No.	Form title	Currently assigned OMB control No.
*	*	*
H–1B Cap Registration.		

Janet Napolitano,

Secretary.

[FR Doc. 2011–4731 Filed 3–2–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

14 CFR Chapters I, II, III

23 CFR Chapters I, II, III

46 CFR Chapter II

48 CFR Chapter 12

49 CFR Chapters I, II, III and V, VI, VII, VIII, X, XI

[Docket No. DOT–OST–2011–0025]

Notice of Retrospective Review of DOT Existing Regulations

AGENCY: Office of the Secretary of Transportation (OST), DOT.

ACTION: Notice of public meeting and tentative agenda; opportunities for public participation in review.

SUMMARY: On February 16, 2011, Department of Transportation (DOT) published a notice of regulatory review of existing DOT regulations. This review is in accordance with Executive Order 13563, "Improving Regulation and Regulatory Review." As part of the notice of review, DOT announced it will hold a public meeting to discuss and consider the public's comments. This notice provides information on how to participate in this meeting and opportunities for enhanced public participation in the review and the public meeting. Please note that the deadline for registering to speak at the public meeting has been extended to March 7, 2011.

DATES:

Deadline to register to attend hearing in person/watch Web stream/listen by phone—March 7, 2011.

Deadline to register to speak in person/by phone at the meeting—March 7, 2011.

Agenda released on *http://regs.dot.gov*—March 9, 2011.

Web streaming/call-in info distributed to registrants—March 10, 2011.

Deadline to submit any digital presentation materials—March 10, 2011.

Public Meeting—March 14, 2011—9:30 a.m.–4:30 p.m.

ADDRESSES:

Public Meeting Location: The public meeting will be held in the DOT Conference Center's Media Center, located on the ground floor of 1200 New Jersey Avenue, SE., Washington, DC 20590.

DOT Regulatory Review IdeaScale Web site: http://dotregreview.ideascale.com/.

FOR FURTHER INFORMATION CONTACT: Jennifer Abdul-Wali, Office of Regulation and Enforcement, Department of Transportation, (202) 366–6322; e-mail: *jennifer.abdulwali@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On January 18, 2011, President Obama issued Executive Order 13563, which outlined a plan to improve regulation and regulatory review (76 FR 3821, January 31, 2011). Executive Order 13563 reaffirms and builds upon governing principles of contemporary regulatory review, including Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), by requiring Federal agencies to design cost-effective, evidence-based regulations that are compatible with economic growth, job creation, and competitiveness. The President's plan recognizes that these principles should not only guide the Federal government's approach to new regulation, but to existing ones as well. To that end, Executive Order 13563 requires agencies to review existing significant rules to determine if they are outmoded, ineffective, insufficient, or excessively burdensome.

On February 16, 2011, DOT published a notice of regulatory review (76 FR 8940) that invited public comment on how to effectively implement Executive Order 13563 and set forth a number of issues and questions. Our notice stated that we would hold a public meeting on March 14, 2011. The following section provides the procedures for participating in the meeting and our IdeaScale Web site that can also be used to submit comments to DOT.

Public Meeting Procedures

1. As stated in our February 16 notice, those who wish to make presentations at the meeting should submit initial comments with sufficient details with

their registration to enable DOT to set an agenda and ensure that the appropriate officials are present for the discussions. We hope to be able to accommodate everyone who would like to speak at the meeting, but if there are more interested participants than time available, we will limit participants in order of date and time of registration. When registering to speak, please also estimate the amount of time that you would like to use for your presentation; final times will be allotted to participants based on the time available and the issues raised in their initial comments. Any person wishing to present an oral statement should notify Jennifer Abdul-Wali at the address above by March 7, 2011; any digital presentation materials for the meeting should be submitted to her by March 10, 2011. If available, time will be given for those people attending the meeting in person to speak, even if they had not previously registered to speak.

2. Due to security requirements, all public attendees must register to ensure their access to the building. To register, contact Jennifer Abdul-Wali. Foreign National registrants must provide your full name, title, country of citizenship, date of birth, passport number, and passport expiration date when registering. Because seating space is limited, we may have to limit attendees in order of date and time of registration.

3. Attendees are encouraged to arrive early for processing through security. All participants and attendees must enter through the New Jersey Avenue entrance (West Building—at the corner of New Jersey Avenue and M Street, SE.). Photo identification is required and Foreign National attendees must bring their passports with them. Participants or attendees who have Federal government identification will still need to register to attend. To facilitate security screening, all participants and attendees are encouraged to limit the bags and other items (laptops, cameras, *etc.*) they bring into the building. Anyone exiting the building for any reason will be required to re-enter through the security checkpoint at the New Jersey Avenue entrance.

4. DOT does not offer visitor parking; we suggest that attendees consider using alternative means of transportation to the building. DOT Headquarters is served by Metrorail (Navy Yard station), Metrobus, DC Circulator, and taxi service. There are a number of private parking lots near the DOT building, but the DOT cannot guarantee the availability of parking spaces.

5. For information on facilities or services for persons with disabilities, or to request special assistance at the meeting, contact Ms. Abdul-Wali as soon as possible.

6. For those unable to attend the public meeting in person, it will be broadcast via Web streaming (with captioning) and over a listen-only phone line. Registrants will be given the Web URL or phone number on March 10, 2011. Because the number of people who can participate in Web streaming and by phone is limited, we will provide access in order of date and time of registration.

7. We will post an Agenda for the public meeting at *http://regs.dot.gov* by March 9, 2011.

8. DOT's General Counsel will preside over the public meeting. Senior officials of DOT's operating administrations also will attend this meeting as part of a panel with the General Counsel to receive comments from the public. During the hearing, we may ask questions that will clarify statements or gather more information or data to help us understand the problems or issues raised by commenters.

9. The meeting is designed to solicit public views and gather additional information for our regulatory review. Therefore, the meeting will be conducted in an informal and non-adversarial manner. In developing prepared remarks, participants should leave time during their remarks for questions and discussion by the panel.

10. We plan to make a record of the meeting available to the public; information about how to access the record will be placed in the docket and posted on *http://regs.dot.gov.*

DOT IdeaScale Web Site

In order to provide the public with alternative means of providing feedback to DOT in ways that may better suit their needs, we have created a Web site using IdeaScale that will allow submissions to DOT in a less formal manner. This Web site will provide members of the public an opportunity to submit their ideas about our regulatory review, categorized by the DOT Operating Administration that administers the regulation. Participants in this site may discuss one another's ideas and agree/disagree with others. This Web site may be particularly useful for individuals and small entities (including State, local, and Tribal governments) who prefer a less formal method of submitting ideas to DOT. It may also assist participants in refining their suggestions and gathering additional information or data to support those suggestions.

To ensure that ideas are most useful in informing our deliberation and decision process, you should include the citation to the regulation on which you are commenting (*e.g.* 49 CFR 1.69), a description of any concerns regarding the regulation (*e.g.* it is duplicative, too costly, *etc.*), and any supporting information (*e.g.,* the citation to a duplicative regulation or actual cost or benefit data) that would assist DOT in making a decision. Please also include in your comment whether you found this Web site useful for your purposes, so that we can best plan how to deploy DOT's scarce resources to most effectively reach the public in the future. To go directly to the IdeaScale Web site use the following link: *http://dotregreview.ideascale.com/.*

Follow-Up Action by DOT

The comments received during our review will provide meaningful and significant information for DOT senior officials, including those in the Office of the Secretary and each of DOT's operating administrations. As soon as possible after the public meeting and the close of the comment period, taking account of the number of comments received and the complexity of issues raised, DOT will publish a report providing at least a brief response to the comments we receive, including a description of any further action we intend to take.

Privacy Act Statement

Anyone is able to search all comments entered 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, 04/11/2011) or at *http://www.dot.gov/privacy.html.*

Authority: 5 U.S.C. 610; E.O. 13563, 76 FR 3821, Jan. 21 2011; E.O. 12866, 58 FR 51735, Oct. 4, 1993.)

Issued on February 25, 2011, in Washington, DC.

Robert S. Rivkin,

General Counsel.

[FR Doc. 2011–4812 Filed 3–2–11; 8:45 am]

BILLING CODE 4910–9X–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AD49

Amendments to Commodity Pool Operator and Commodity Trading Advisor Regulations Resulting From the Dodd-Frank Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing to amend its regulations affecting the operations and activities of commodity pool operators (CPOs) and commodity trading advisors (CTAs) (Proposal) in order to have those regulations reflect changes made to the Commodity Exchange Act (CEA) by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

DATES: Comments must be received on or before May 2, 2011.

ADDRESSES: You may submit comments, identified by RIN 3038–AD49, by any of the following methods:

- *Agency Web Site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.
- *Hand delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov/.* Follow the instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov*. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act (FOIA),[1] a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in Commission Regulation 145.9.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Barbara S. Gold, Associate Director, or Christopher W. Cummings, Special Counsel, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. Telephone number: 202–418–5450 and electronic mail: *bgold@cftc.gov* or *ccummings@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act.[3] Title VII of the Dodd-Frank Act[4] amended the CEA[5] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The goal of this legislation was to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of SDs and MSPs; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight. Among the changes made by the Dodd-Frank Act to the CEA were to include within the CPO definition the operator of a collective investment vehicle that trades swaps, and to include within the CTA definition a person who provides advice concerning swaps.[6]

Part 4 of the Commission's regulations sets forth a comprehensive regulatory scheme for the operations and activities of CPOs and CTAs. It includes disclosure, reporting and recordkeeping requirements for registered CPOs and CTAs, registration and compliance exemptions for CPOs and CTAs, and other provisions, including anti-fraud provisions, applicable to CPOs and CTAs regardless of registration status. Many of the Part 4 regulations generally apply to CPOs and CTAs and, thus, they will be applicable to CPOs and CTAs with respect to their swap activities.[7] In other instances, however, the text of certain Part 4 regulations is specific to activities involving futures contracts, commodity options, and off-exchange retail foreign currency transactions, and it does not include, refer to or otherwise take account of swap activities.[8] The Proposal is intended to clarify and ensure that the requirements governing the operations and activities of CPOs and CTAs continue to apply to these intermediaries in the context of their involvement with swap transactions.[9]

The Commission is proposing still other rulemakings in response to the Dodd-Frank Act that could affect the Part 4 regulations.[10] The Commission intends to resolve any discrepancies that may arise between any of these other rulemakings and the Proposal in

[1] 5 U.S.C. 552.

[2] The Commission's regulations are found at 17 CFR Ch. I (2010) and can be accessed through the Commission's Web site, *http://www.cftc.gov.*

[3] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf.*

[4] Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[5] 7 U.S.C. 1 *et seq.* (2006). The CEA also can be accessed through the Commission's web site.

[6] *See* Section 721(a) of the Dodd-Frank Act, which re-organized (and in some cases amended) existing definitions in, and added new definitions to, Section 1a of the CEA. The CPO and CTA definitions, as amended, are to be codified respectively at CEA sections 1a(11) and 1a(12).

[7] *See, e.g.,* Regulations 4.21 and 4.31, which respectively require registered CPOs and CTAs to deliver a Disclosure Document to prospective pool participants and clients. *See also* Regulation 4.41, which proscribes fraudulent advertising by CPOs, CTAs, and their principals.

[8] *See, e.g.,* Regulations 4.24(*l*) and 4.34(k), which currently do not include "swap dealer" among the intermediaries for whom a CPO or CTA must provide information concerning material litigation in its Disclosure Document. *See also* Regulations 4.24(g) and 4.34(g), which do not specify any risks unique to trading swaps in calling for disclosure of principal risk factors.

[9] Part 4 applies to CPOs with respect to their activities affecting pool participants and to CTAs with respect to their activities affecting clients. Depending on the nature of its activities, a CPO or CTA may also come within the definition of the term "swap dealer" or "major swap participant" in new CEA Section 1a(49) or 1a(33), respectively (added to the CEA by Section 721(a) of the Dodd-Frank Act). As directed by the Dodd-Frank Act, the Commission has proposed new regulations that would establish business conduct standards for swap dealers and major swap participants. *See* 75 FR 80638 (Dec. 22, 2010). These new regulations would apply to swap dealers and major swap participants with respect to the counterparties with whom they transact swap business, and would govern different activity than that to which the Part 4 regulations apply.

[10] *See, e.g., Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations,* 76 FR 7976 (Feb. 11, 2011); and *Swap Data Recordkeeping and Reporting Requirements; Proposed Rule,* 75 FR 76574 (Dec. 8, 2010).

the course of finalizing its rulemaking under the Dodd-Frank Act.

II. The Proposal

The Part 4 regulations employ the term "commodity interest" throughout.[11] This term currently is defined in Regulation 1.3(yy) to mean:

(1) Any contract for the purchase or sale of a commodity for future delivery;

(2) Any contract, agreement or transaction subject to Commission regulation under section 4c or 19 of the Act; and

(3) Any contract, agreement or transaction subject to Commission jurisdiction under section 2(c)(2) of the Act.

To ensure that the Part 4 regulations adequately and accurately encompass swap transactions, the Proposal would adopt in new Regulation 4.10(a) a definition of the term "commodity interest" to be employed for the purposes of Part 4. That definition would include the text of existing Regulation 1.3(yy) along with reference to the term "swap" as defined in Section 1a(47) of the CEA.[12]

At various regulations throughout Part 4, the Proposal would insert "swap," "swap transaction" or a similar term. *See* the proposed amendments to Regulations 4.23(a)(1), 4.24(g), (h)(1), and (i)(2) for CPOs and Regulations 4.34(g) and 4.34(i)(2) for CTAs. For example, regulation 4.23(a)(1) would be amended to include "swap type and counterparty" in the itemized daily record that a CPO must make and keep with respect to a pool's commodity interest transactions.

At other Part 4 regulations, the Proposal would include the term "swap dealer" among the persons for whom a CPO or CTA must provide information in its Disclosure Document and a CPO must provide information in a pool's periodic Account Statement. *See* the proposed amendments to Regulations 4.22(a)(3), 4.24(j)(1), (j)(3), (*l*)(1), and (*l*)(2) for CPOs and Regulations 4.34(j)(1), (j)(3), (k)(1) and (k)(2) for CTAs. For example, Regulations 4.24(j) and 4.34(j) would be amended to include swap dealers in the group of persons as to which conflicts of interest must be disclosed by CPOs and CTAs. Also, the Proposal would include a registered swap dealer among the persons listed in Regulation 4.7(a)(2) that do not have to satisfy a portfolio requirement in order to be a qualified eligible person (QEP), such that a CPO or CTA that has claimed relief under Regulation 4.7 may accept the swap dealer as a pool participant or advisory client without regard to the size of its investment portfolio. This would be consistent with the current treatment of other financial intermediaries registered with the Commission (such as futures commission merchants and retail foreign exchange dealers) as QEPs under Regulation 4.7(a)(2).

Yet other proposed amendments would require a CPO or CTA to make and keep certain books and records generated by the swap transactions in which they engage on behalf of not only their pool participants and clients, but also themselves. *See* the proposed amendments to Regulations 4.23(a)(7) and (b)(1) for CPOs and Regulations 4.33(a)(6) and (b)(1) for CTAs. The proposed amendments to Regulations 4.23(a)(7) and 4.33(a)(6) would require CPOs and CTAs to retain each acknowledgment of a swap transaction received from a swap dealer. The proposed amendments to Regulations 4.23(b)(1) and 4.33(b)(1) would make clear that if a CPO or CTA was a counterparty to a swap transaction, then it would be subject to the swap data recordkeeping and reporting requirements of Part 45.[13]

The Proposal would also amend Regulation 4.30. Currently, this regulation provides:

No commodity trading advisor may solicit, accept or receive from an existing or prospective client funds, securities or other property in the trading advisor's name (or extend credit in lieu thereof) to purchase, margin, guarantee or secure any commodity interest of the client; *Provided, however,* That this section shall not apply to a futures commission merchant that is registered as such under the Act or to a leverage transaction merchant that is registered as a commodity trading advisor under the Act or to a retail foreign exchange dealer that is registered as such under the Act.

Because swap dealers will generally fall within the statutory definition of CTA, and because a swap dealer engaging in uncleared swap transactions may be accepting funds or other property from its counterparties as variation and initial margin payments,[14] the Commission is proposing to amend Regulation 4.30 by excluding a registered swap dealer from the regulation's prohibition in connection with a swap that is not cleared through a derivatives clearing organization. This action would result in four distinct categories of intermediaries being excluded from the operative requirements of Regulation 4.30. Accordingly, the Commission also is proposing to amend the regulation by reorganizing its text where applicable to these exclusions.

Finally, the Proposal would delete Regulation 4.32. This regulation deals with trading by a registered CTA on or subject to the rules of a derivatives transaction execution facility (DTEF) for non-institutional numbers. Section 734(a) of the Dodd-Frank Act repeals Section 5a of the CEA, which is the section establishing and providing for the regulation of DTEFs. Accordingly, because subsequent to the effective date of the Dodd-Frank Act[15] Regulation 4.32 will no longer have a statutory basis or purpose, the Proposal would remove and reserve Regulation 4.32.

The Commission requests comment on the foregoing. In addition, the Commission seeks comment on any other amendments it should make to the Part 4 regulations to clarify and ensure that that the requirements governing the operations and activities of CPOs and CTAs continue to apply to these intermediaries in the context of their involvement with swap transactions.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[16] requires that agencies, in proposing rules, consider the impact of those rules on small businesses.[17] The Commission previously has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the

[11] *See, e.g.,* Regulations 4.10(f) and (g), which respectively define the terms "direct" and "trading program;" 4.12(b)(1)(i)(D), which provides an exemption from CPO registration where, among other things, the pool at issue "will trade * * * commodity interests in a manner solely incidental to its securities trading activities;" 4.22(a)(1), which requires itemization in a pool's periodic Account Statement of certain information concerning commodity interest trading; 4.23 and 4.33, which respectively require CPOs and CTAs to make and keep certain books and records relating to commodity interest trading; and 4.24 and 4.34, which respectively require CPOs and CTAs to disclose specified information with respect to "commodity interests."

[12] Section 721(a) of the Dodd-Frank Act added this new definition to Section 1a of the CEA.

[13] *See* Proposed Regulation 45.2, 75 FR 76574. In this regard, the Commission notes that it intends to propose regulations concerning recordkeeping and reporting requirements for "pre-enactment swaps" and "transition swaps," as those terms will be defined in that proposal. The Commission further intends to provide a cross-reference in Regulations 4.23(b)(1) and 4.33(b)(1) to any such requirements it may adopt.

[14] The Commission intends to address the circumstances in which non-bank swap dealers may be required or permitted to accept margin payments in uncleared swap transactions in a future proposed rulemaking. Accordingly, this proposed amendment to Regulation 4.30 should not be interpreted to impose or authorize any such margin requirements.

[15] Subject to certain limited exceptions, the provisions of the Dodd-Frank Act become effective 360 days after its enactment (Jul. 21, 2010).

[16] 5 U.S.C. 601 *et seq.*

[17] By its terms, the RFA does not apply to "individuals." *See* 48 FR 14933, n. 115 (Apr. 6, 1983).

RFA.[18] With respect to CPOs, the Commission previously has determined that a CPO is a small entity for the purpose of the RFA if it meets the criteria for an exemption from registration under Regulation 4.13(a)(2).[19] Thus, because the Proposal applies to registered CPOs, the RFA is not applicable to it. As for CTAs, the Commission previously has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of the particular rule. In this regard, the Commission notes that the Proposal applies to registered CTAs. Moreover, the Proposal would not have a significant economic impact on any CPO or CTA who would be affected thereby, because it would merely bring within the current Part 4 regulatory structure of disclosure, reporting and recordkeeping information with respect to swap activities. It would not impose any additional operative requirements or otherwise direct or confine the activities of CPOs and CTAs.[20] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the Proposal would not have a significant economic impact on a substantial number of small entities. However, the Commission invites the public to comment on this certification.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) [21] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Proposal would not, if adopted, require any new collection of information from any entity that would be subject to the affected regulations. Accordingly, for purposes of the PRA, the Chairman, on behalf of the Commission, certifies that the proposed amendments to Part 4, if adopted, would not impose any new reporting or recordkeeping requirements.

C. Cost-Benefit Analysis

Section 15(a) of the CEA [22] requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the CEA. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a rule or to determine whether the benefits of the rulemaking outweigh its costs; rather, it simply requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the CEA.

Summary of Proposed Amendments. As is explained above, the proposed amendments to Part 4 would ensure that the Commission's regulations governing the operations and activities of CPOs and CTAs reflect changes made to the CEA by the Dodd-Frank Act by, *e.g.,* including swap dealers among the intermediaries for whom CPOs and CTAs must disclose information to prospective pool participants and clients, and swap transaction confirmations among the books and records that CPOs and CTAs must make and keep.

Costs. With respect to costs, the Commission has determined that the costs of the Proposal would not be significant. This is because the Proposal would simply conform the language of the existing Part 4 regulatory scheme to take into account the changes made to the Commission's overall regulatory scheme as a result of the Dodd-Frank Act. There will be additional disclosure and recordkeeping requirements on CPOs and CTAs as a result of the Proposal. The information required for compliance should be readily available, with minimal administrative burdens, to CPOs and CTAs.

Benefits. With respect to benefits, the Commission has determined that the benefits of the Proposal would be significant. This is because it would enhance the customer protections currently provided under Part 4 by increasing the transparency of swap activities by CPOs and CTAs to their pool participants and clients. This will be accomplished by including information on swap activities in the disclosure, reporting and recordkeeping scheme already existing under Part 4.

Public Comment. The Commission invites public comment on its cost-benefit considerations. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the Proposal with their comment letters.

List of Subjects in 17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Customer protection, Reporting and recordkeeping requirements, Swaps.

For the reasons presented above, the Commission proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 is amended to read as follows:

Authority: 7 U.S.C. 1a, 2, 6b, 6c, 6*l,* 6m, 6n, 6*o,* 12a and 23, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (Jul. 21, 2010).

2. Section 4.7 is amended by adding paragraph (a)(2)(i)(C) to read as follows:

§ 4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.

* * * * *

(a) * * *

(2) * * *

(i) * * *

(C) A swap dealer registered pursuant to section 4s(a)(1) of the Act, or a principal thereof;

* * * * *

3. Section 4.10 is amended by adding paragraph (a) to read as follows:

§ 4.10 Definitions.

* * *

(a) *Commodity interest* means:

(1) Any contract for the purchase or sale of a commodity for future delivery;

(2) Any contract, agreement or transaction subject to Commission regulation under section 4c or 19 of the Act;

(3) Any contract, agreement or transaction subject to Commission jurisdiction under section 2(c)(2) of the Act; and

[18] *See* 47 FR 18618 (Apr. 30, 1982).

[19] *Id.* at 18619–20.

[20] While the Proposal would amend Regulation 4.30, which concerns prohibited activities by a CTA regardless of registration status, that amendment would extend to persons registered as a swap dealer the existing exclusion from the regulation's scope.

[21] 44 U.S.C. 3501 *et seq.*

[22] 7 U.S.C. 19(a).

(4) A swap as defined under section 1a(47) of the Act and any Commission regulations implemented thereunder.

* * * * *

4. Section 4.22 is amended by revising paragraph (a)(3) to read as follows:

§ 4.22 Reporting to pool participants.

(a) * * *

(3) The Account Statement must also disclose any material business dealings between the pool, the pool's operator, commodity trading advisor, futures commission merchant, retail foreign exchange dealer, swap dealer, or the principals thereof that previously have not been disclosed in the pool's Disclosure Document or any amendment thereto, other Account Statements or Annual Reports.

* * * * *

5. Section 4.23 is amended by:

a. Revising paragraphs (a)(1) and (a)(7); and

b. Revising paragraph (b)(1), to read as follows:

§ 4.23 Recordkeeping.

* * * * *

(a) * * *

(1) An itemized daily record of each commodity interest transaction of the pool, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, swap type and counterparty, the futures commission merchant and/or retail foreign exchange dealer carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold (including, in the case of a retail forex transaction, offset), exercised, expired (including, in the case of a retail forex transaction, whether it was rolled forward), and the gain or loss realized.

* * * * *

(7) Copies of each confirmation or acknowledgment of a commodity interest transaction of the pool, and each purchase and sale statement and each monthly statement for the pool received from a futures commission merchant or retail foreign exchange dealer or swap dealer.

* * * * *

(b) * * *

(1) An itemized daily record of each commodity interest transaction of the commodity pool operator and each principal thereof, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant or retail foreign exchange dealer carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold, exercised, or expired, and the gain or loss realized; *Provided, however,* that if the pool operator is a counterparty to a swap, it must comply with the swap data recordkeeping and reporting requirements of part 45 of this chapter.

* * * * *

6. Section 4.24 is amended by:

a. Revising paragraph (g);

b. Revising paragraph (h)(1)(i);

c. Revising paragraph (i)(2)(xii);

d. Revising paragraphs (j)(1)(vi) and (j)(3); and

e. Revising paragraphs (l)(1)(iii), (l)(2) introductory text and (l)(2)(i), to read as follows:

§ 4.24 General disclosures required.

* * * * *

(g) *Principal risk factors.* A discussion of the principal risk factors of participation in the offered pool. This discussion must include, without limitation, risks relating to volatility, leverage, liquidity, counterparty creditworthiness, as applicable to the types of trading programs to be followed, trading structures to be employed and investment activity (including retail forex and swap transactions) expected to be engaged in by the offered pool.

(h) * * *

(1) * * *

(i) The approximate percentage of the pool's assets that will be used to trade commodity interests, securities and other types of interests, categorized by type of commodity or market sector, type of swap, type of security (debt, equity, preferred equity), whether traded or listed on a regulated exchange market, maturity ranges and investment rating, as applicable;

* * * * *

(i) * * *

(2) * * *

(xii) Any costs or fees included in the spread between bid and asked prices for retail forex or, if known, swap transactions; and

* * * * *

(j) * * *

(1) * * *

(vi) Any other person providing services to the pool, soliciting participants for the pool, or acting as a counterparty to the pool's retail forex transactions, acting as a swap dealer with respect to the pool, or acting as a counterparty to the pool's swap transactions.

* * * * *

(3) Included in the description of such conflicts must be any arrangement whereby a person may benefit, directly or indirectly, from the maintenance of the pool's account with the futures commission merchant and/or retail foreign exchange dealer and/or from the maintenance of the pool's positions with a swap dealer, or from the introduction of the pool's account to a futures commission merchant and/or retail foreign exchange dealer and/or swap dealer by an introducing broker (such as payment for order flow or soft dollar arrangements) or from an investment of pool assets in investee pools or funds or other investments.

* * * * *

(l) * * *

(1) * * *

(iii) The pool's futures commission merchants and/or retail foreign exchange dealers and/or swap dealers and its introducing brokers, if any.

(2) With respect to a futures commission merchant and/or retail foreign exchange dealer and/or swap dealer or an introducing broker, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant's, retail foreign exchange dealer's, swap dealer's or introducing broker's financial statements prepared pursuant to generally accepted accounting principles;

* * * * *

7. Section 4.30 is revised to read as follows:

§ 4.30 Prohibited activities.

(a) Except as provided in paragraph (b) of this section, no commodity trading advisor may solicit, accept or receive from an existing or prospective client funds, securities or other property in the trading advisor's name (or extend credit in lieu thereof) to purchase, margin, guarantee or secure any commodity interest of the client.

(b) The prohibition in paragraph (a) of this section shall not apply to:

(1) A futures commission merchant that is registered as such under the Act;

(2) A leverage transaction merchant that is registered as a commodity trading advisor under the Act;

(3) A retail foreign exchange dealer that is registered as such under the Act; or

(4) A swap dealer that is registered as such under the Act, with respect to funds, securities or other property accepted to purchase, margin, guarantee

or secure any swap that is not cleared through a derivatives clearing organization.

§ 4.32 [Removed and Reserved]

7. Section 4.32 is removed and reserved.

8. Section 4.33 is amended by

a. Revising paragraph (a)(6); and

b. Revising paragraph (b)(1), to read as follows:

§ 4.33 Recordkeeping.

* * * * *

(a) * * *

(6) Copies of each confirmation or acknowledgment of a commodity interest transaction, and each purchase and sale statement and each monthly statement received from a futures commission merchant or a retail foreign exchange dealer or a swap dealer.

* * * * *

(b) * * *

(1) An itemized daily record of each commodity interest transaction of the commodity trading advisor, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant and/or retail foreign exchange dealer carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold (including, in the case of a retail forex transaction, offset), exercised, expired (including, in the case of a retail forex transaction, whether it was rolled forward), and the gain or loss realized; *Provided, however,* that if the trading advisor is a counterparty to a swap, it must comply with the swap data recordkeeping and reporting requirements of part 45 of this chapter.

* * * * *

9. Section 4.34 is amended by

a. Revising paragraph (g);

b. Revising paragraph (i)(2);

c. Revising paragraph (j)(3); and

d. Revising paragraphs (k)(1)(iii), (k)(2) introductory text and (k)(2)(i), to read as follows:

§ 4.34 General disclosures required.

* * * * *

(g) *Principal risk factors.* A discussion of the principal risk factors of this trading program. This discussion must include, without limitation, risks due to volatility, leverage, liquidity, and counterparty creditworthiness, as applicable to the trading program and the types of transactions and investment activity expected to be engaged in pursuant to such program (including retail forex and swap transactions, if any).

* * * * *

(i) * * *

(2) Where any fee is determined by reference to a base amount including, but not limited to, "net assets," "gross profits," "net profits," "net gains," "pips" or "bid-asked spread," the trading advisor must explain how such base amount will be calculated. Where any fee is based on the difference between bid and asked prices on retail forex or swap transactions, the trading advisor must explain how such fee will be calculated;

* * * * *

(j) * * *

(3) Included in the description of any such conflict must be any arrangement whereby the trading advisor or any principal thereof may benefit, directly or indirectly, from the maintenance of the client's commodity interest account with a futures commission merchant and/or retail foreign exchange dealer, and/or from the maintenance of the client's positions with a swap dealer or from the introduction of such account through an introducing broker (such as payment for order flow or soft dollar arrangements).

(k) * * *

(1) * * *

(iii) Any introducing broker through which the client will be required to introduce its account to the futures commission merchant and/or retail foreign exchange dealer and/or swap dealer.

(2) With respect to a futures commission merchant, retail foreign exchange dealer, swap dealer or introducing broker, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant's, retail foreign exchange dealer's, swap dealer's or introducing broker's financial statements prepared pursuant to generally accepted accounting principles;

* * * * *

Issued in Washington, DC, on February 24, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Amendments to Commodity Pool Operator and Commodity Trading Advisor Regulations Resulting from the Dodd-Frank Act—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, Chilton and O'Malia voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed rule that will amend certain provisions of Part 4 of the Commission's regulations regarding the operations and activities of commodity pool operators (CPOs) and commodity trading advisors (CTAs). The proposed amendments would ensure that CFTC regulations with regard to CPOs and CTAs reflect changes made to the Commodity Exchange Act by the Dodd-Frank Act. Consistent with the Dodd-Frank Act revisions to the definitions of CPOs and CTAs to include pools involved in swaps and advising on swaps, the proposed amendments will enhance current customer protections by increasing the transparency of swap activities by CPOs and CTAs to their pool participants and clients. The proposed rule would require that this information be included in the disclosure, reporting and recordkeeping scheme that currently exists for CPOs and CTAs under Part 4.

[FR Doc. 2011–4657 Filed 3–2–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

28 CFR Part 26

[Docket No. OJP (DOJ) 1540; AG Order No. 3255–2011]

RIN 1121–AA77

Office of the Attorney General; Certification Process for State Capital Counsel Systems

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: Section 2265 of title 28, United States Code, instructs the Attorney General to promulgate regulations to implement certification procedures for States seeking to qualify for the expedited Federal habeas corpus review procedures in capital cases under chapter 154 of title 28. The procedural benefits of chapter 154 are available to States that establish mechanisms for providing counsel to indigent capital defendants in State postconviction proceedings that satisfy certain statutory requirements. This proposed rule sets forth the required regulations for the certification procedure.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before June 1, 2011. Comments received by mail will be considered timely if they are

postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

ADDRESSES: Comments may be mailed to Regulations Docket Clerk, Office of Legal Policy, Department of Justice, 950 Pennsylvania Avenue, NW., Room 4234, Washington, DC 20530. To ensure proper handling, please reference OAG Docket No. 1540 on your correspondence. You may submit comments electronically or view an electronic version of this proposed rule at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lisa Ellman, Office of Legal Policy, (202) 514–4601 (not a toll-free number).

SUPPLEMENTARY INFORMATION: *Posting of Public Comments.* Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name and address) voluntarily submitted by the commenter.

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Overview

Chapter 154 of title 28, United States Code, makes special procedures available to a State respondent in Federal habeas corpus proceedings involving review of State capital judgments, but only if the Attorney General has certified "that [the] State has established a mechanism for providing counsel in postconviction proceedings as provided in section 2265," and if "counsel was appointed pursuant to that mechanism, petitioner validly waived counsel, petitioner retained counsel, or petitioner was found not to be indigent." 28 U.S.C. 2261(b). Section 2265(a)(1) provides that, in order for a State to qualify for the special habeas procedures, the Attorney General must determine that "the State has established a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings brought by indigent [capital] prisoners" and that the State "provides standards of competency for the appointment of counsel in [such proceedings]."

Chapter 154 has been in place since the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Public Law 104–132, section 107, 110 Stat. 1214, 1221–26 (1996), but was amended by the USA PATRIOT Improvement and Reauthorization Act of 2005, Public Law 109–177, section 507, 120 Stat. 192, 250–51 (2006). Prior to the 2006 amendment, the determination of a State's eligibility for the special procedures was left to the Federal habeas courts. The 2006 amendment assigned responsibility for chapter 154 certifications to the Attorney General of the United States, subject to de novo review by the Court of Appeals for the District of Columbia Circuit.

Rulemaking History

Section 2265(b) directs the Attorney General to promulgate regulations to implement the certification procedure. To fulfill this mandate, the Department of Justice published a proposed rule in the **Federal Register** on June 6, 2007, that proposed adding a new subpart entitled "Certification Process for State Capital Counsel Systems" to 28 CFR part 26. 72 FR 31217. The comment period ended on August 6, 2007. The Department published a notice on August 9, 2007, reopening the comment period, 72 FR 44816, and the reopened comment period ended on September 24, 2007. The final rule establishing the chapter 154 certification procedure was published on December 11, 2008, 73 FR 75327, with an effective date of January 12, 2009.

In January 2009, the United States District Court for the Northern District of California enjoined the Department "from putting into effect the rule * * * without first providing an additional comment period of at least thirty days and publishing a response to any comments received during such period." *Habeas Corpus Resource Ctr.* v. *U.S. Dep't of Justice,* No. 08–2649, 2009 WL 185423, at *10 (Jan. 20, 2009) (preliminary injunction); *Habeas Corpus Resource Ctr.* v. *U.S. Dep't of Justice,* No. 08–2649, slip op. at 1 (Jan. 8, 2009) (temporary restraining order). On February 6, 2009, the Department solicited further public comment, with the comment period closing on April 6, 2009. 74 FR 6131.

As the Department reviewed the submitted comments, it considered further the statutory requirements governing the regulatory implementation of the chapter 154 certification procedures. The Attorney General determined that chapter 154 gave him greater discretion in making certification determinations than the December 11, 2008 regulations would have allowed. Therefore, the Department published a notice in the **Federal Register** on May 25, 2010, proposing to revoke the December 11, 2008 regulations by removing them from the Code of Federal Regulations pending the completion of a new rulemaking process, during which the Department would further consider what standards and procedures were appropriate. 75 FR 29217. The comment period closed on June 24, 2010. On November 23, 2010, the Department published a final rule removing the December 11, 2008 regulations. 75 FR 71353.

The rule proposed today is the result of the Attorney General's reconsideration of the appropriate standards and procedures for chapter 154 certification. Sections 26.20 and 26.21 of the proposed rule are, respectively, a general statement of purpose and a section defining certain terms appearing in chapter 154. These sections are unchanged from the December 11, 2008 final rule. Section 26.22 explains the requirements for certification under chapter 154, relating to appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings in capital cases. It is significantly different from the corresponding section in the December 11, 2008 regulations, particularly with respect to counsel

competency and compensation standards. Section 26.23 sets out the procedures for accepting, obtaining public comment on, and deciding State requests for chapter 154 certification. It is similar in substance to the corresponding section of the December 11, 2008 regulations, but in some respects simplified and updated. A section-by-section analysis of the new proposed rule follows.

Section-by-Section Analysis

Section 26.20

Section 26.20, which is unchanged from the December 11, 2008 regulations, explains the rule's purpose to implement the certification procedure for chapter 154.

Section 26.21

Section 26.21, which is also unchanged from the December 11, 2008 regulations, defines certain terms used in chapter 154 and the regulations.

Under 28 U.S.C. 2265(a), a certification request must be made by "an appropriate State official." Prior to the 2006 amendments to chapter 154, Federal courts entertaining habeas corpus applications by State prisoners under sentence of death would decide which set of habeas corpus procedures applied—chapter 153 or chapter 154 of title 28—and State attorneys general responsible for such litigation could request determinations that their States had satisfied the requirements for the applicability of chapter 154. The 2006 amendments to chapter 154 were not intended to disable the State attorneys general from their pre-existing role in this area and State attorneys general continue in most instances to be the officials with the capacity and motivation to seek chapter 154 certification for their States. *See* 73 FR at 75329–30. Section 26.21 of the rule accordingly provides that the appropriate official to seek chapter 154 certification is normally the State attorney general. In those few States, however, where the State attorney general does not have responsibilities relating to Federal habeas corpus litigation, the Chief Executive of the State will be considered the appropriate State official to make a submission on behalf of the State.

Section 26.21 defines "State postconviction proceedings" as "collateral proceedings in State court, regardless of whether the State conducts such proceedings after or concurrently with direct State review." Collateral review normally takes place following the completion of direct review of the judgment, but some States have special procedures for capital cases in which collateral proceedings and direct review may take place concurrently. Formerly separate provisions for the application of chapter 154 in States with "unitary review" procedures (concurrent collateral and direct review) were replaced by the 2006 amendments with provisions that permit chapter 154 certification for all States under uniform standards, regardless of their timing of collateral review vis-a-vis direct review. *Compare* 28 U.S.C. 2261(b), 2265 (2006) (as amended by the USA PATRIOT Improvement and Reauthorization Act of 2005), *with* 28 U.S.C. 2261(b), 2265 (2000) (as enacted by AEDPA); *see* 152 Cong. Rec. S1620 (daily ed. Mar. 2, 2006) (remarks of Sen. Kyl) (explaining that the current provisions simplify the chapter 154 qualification standards, "which obviates the need for separate standards for those States that make direct and collateral review into separate vehicles and those States with unitary procedures").

The definition of "State postconviction proceedings" in the rule reflects the underlying objective of chapter 154 to provide expedited Federal habeas corpus review in capital cases arising in States that have gone beyond the constitutional requirement of appointing counsel for indigents at trial and on appeal by extending the appointment of counsel to indigent capital defendants in State collateral proceedings. *See* 73 FR at 75332–33, 75337 (reviewing relevant legislative and regulatory history). The provisions of chapter 154, as well as its legislative history, reflect the understanding of "postconviction proceedings" as not encompassing all proceedings that occur after conviction (e.g., sentencing proceedings, direct review), but rather as referring to collateral proceedings. *See* 28 U.S.C. 2261(e) (providing that ineffectiveness or incompetence of counsel during postconviction proceedings in a capital case cannot be a ground for relief in a Federal habeas corpus proceeding); 28 U.S.C. 2263(a), (b)(2) (180-day time limit for Federal habeas filing under chapter 154 starts to run "after final State court affirmance of the conviction and sentence on direct review or the expiration of the time for seeking such review" subject to tolling "from the date on which the first petition for post-conviction review or other collateral relief is filed until the final State court disposition of such petition"); 152 Cong. Rec. S1620, 1624–25 (daily ed. Mar. 2, 2006) (remarks of Sen. Kyl) (explaining that chapter 154 provides incentives for States to provide counsel in State postconviction proceedings, equated to collateral proceedings); 151 Cong. Rec. E2639–40 (daily ed. Dec. 22, 2005) (extension of remarks of Rep. Flake) (same understanding); *see also, e.g., Murray* v. *Giarratano,* 492 U.S. 1 (1989) (equating postconviction and collateral proceedings).

Section 26.22

Section 26.22 sets out the requirements for certification that a State must meet to qualify for the application of chapter 154. These are the requirements in 28 U.S.C. 2261(c)–(d) and 2265(a)(1).

Paragraph (a) of § 26.22—Appointment of Counsel

Paragraph (a) of § 26.22 sets out the requirements of chapter 154 concerning appointment of counsel that appear in 28 U.S.C. 2261(c)–(d).

Paragraph (b) of § 26.22—Competent Counsel

Paragraph (b) of § 26.22 explains how States may satisfy the requirement to provide for appointment of "competent counsel" and to provide "standards of competency" for such appointments. 28 U.S.C. 2265(a)(1)(A), (C).

The corresponding portion of the December 11, 2008 regulations construed the reference to appointment of "competent counsel" in section 2265(a)(1)(A) as a cross-reference to counsel meeting the competency standards provided by the State pursuant to section 2265(a)(1)(C). It accordingly treated the definition of such standards as a matter of State discretion, not subject to further review by the Attorney General. *See* 73 FR at 75331. However, these provisions may also reasonably be construed as permitting the Attorney General to require a threshold of minimum counsel competency, while recognizing substantial State discretion in setting counsel competency standards. *See generally* Memorandum for the Attorney General from David J. Barron, Acting Assistant Attorney General, Office of Legal Counsel, *Re: The Scope of the Attorney General's Authority in Certifying Whether a State Has Satisfied the Requirements for Appointment of Competent Post-Conviction Counsel in Chapter 154 of Title 28, United States Code* (Dec. 16, 2009), *available at http://www.justice.gov/olc/.* The latter understanding is supported by cases interpreting chapter 154, *see, e.g., Spears* v. *Stewart,* 283 F.3d 992, 1013 (9th Cir. 2002) (recognizing that "Congress * * * intended the states to have substantial discretion to determine the substance of the competency

standards" under chapter 154 while still reviewing the adequacy of such standards), and by the original Powell Committee proposal from which many features of chapter 154 ultimately derive, *see* 135 Cong. Rec. 24692, 24696 (Oct. 16, 1989). This understanding is adopted in § 26.22(b) of the proposed rule.

The specific minimum standards set forth in paragraph (b) are based on judgments by Congress in federal laws concerning adequate capital counsel competency standards and on judicial interpretation of the counsel competency requirements of chapter 154. Three broad options are provided for States to satisfy this requirement—an option involving an experience requirement derived from the standard for appointment of counsel in Federal court proceedings in capital cases (paragraph (b)(1)); an option involving qualification standards set in a manner consistent with relevant portions of the Innocence Protection Act (paragraph (b)(2)); and an option of assuring an appropriate level of proficiency in other ways, such as by requiring some combination of experience and training (paragraph (b)(3)).

Option 1: § 26.22(b)(1)—The Competency Standards for Federal Court Proceedings

As provided in paragraph (b)(1) of § 26.22, a State may satisfy chapter 154's requirement relating to counsel competency by requiring appointment of counsel "who have been admitted to the bar for at least five years and have at least three years of felony litigation experience." This is based on the standard for appointed counsel in capital case proceedings in Federal court. *See* 18 U.S.C. 3599(a)–(e). Because Congress has determined that such a counsel competency standard is adequate for capital cases in Federal court proceedings, including postconviction proceedings, *see id.* § 3599(a)(2), it will also be considered adequate for chapter 154 purposes when such cases are at the stage of State postconviction review.

The counsel competency standards for Federal court proceedings in capital cases under 18 U.S.C. 3599 do not require adherence to the five-year/three-year experience requirement in all cases, but provide that the court "for good cause, may appoint another attorney whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant," with due consideration of the seriousness of the penalty (i.e., capital punishment) and the nature of the litigation. *Id.* § 3599(d). For example, a court might consider it appropriate to appoint an attorney who is a law professor with expertise in capital punishment law and training in capital postconviction litigation to represent a prisoner under sentence of death, even if the attorney has less than three years of felony litigation experience. The rule in paragraph (b)(1) accordingly does not require the imposition of a five-year/three-year minimum experience requirement in all cases, but allows States that generally impose such a requirement to permit the appointment of other counsel who would qualify for appointment under the standards of 18 U.S.C. 3599, i.e., those whose background, knowledge, or experience would otherwise enable them to properly represent prisoners under sentence of death considering the seriousness of the penalty and the nature of the litigation. This is reflected in the language in paragraph (b)(1) allowing appointment of counsel "who would otherwise qualify for appointment pursuant to the standards for Federal habeas corpus proceedings reviewing State capital cases under 18 U.S.C. 3599."

Option 2: § 26.22(b)(2)—The Innocence Protection Act Standards

Paragraph (b)(2) in § 26.22 sets forth a second option for States to satisfy the counsel competency requirements of chapter 154, specifically, by setting qualification standards for appointment of postconviction capital counsel in a manner consistent with the Innocence Protection Act (IPA), 42 U.S.C. 14163–14163e. The IPA directs the Attorney General to provide grants to States to create or improve "effective system[s] for providing competent legal representation" in capital cases, 42 U.S.C. 14163(c)(1), and provides a definition of "effective system" that is largely based on elements of the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (rev. ed. Feb. 2003) (ABA Guidelines), 42 U.S.C. 14163(e). The IPA specifies that such effective systems are to include appointment of capital counsel (i) by a public defender program, (ii) by an entity composed of individuals with demonstrated knowledge and expertise in capital cases (other than current prosecutors) that is established by statute or by the highest State court with criminal case jurisdiction, or (iii) by the court appointing qualified attorneys from a roster maintained by a State or regional selection committee or similar entity pursuant to a pre-existing statutory procedure. 42 U.S.C. 14163(e)(1).

Under the IPA requirements, the appointing authority or an appropriate designated entity must "establish qualifications for attorneys who may be appointed to represent indigents in capital cases." 42 U.S.C. 14163(e)(2)(A). The IPA does not prescribe the content of these qualifications but assumes that the specifications regarding the nature of the appointment or selection authority and the associated requirements for establishment of qualifications can be relied on to provide appropriate competency standards. Paragraph (b)(2) in § 26.22 follows this legislative judgment in relation to States' satisfaction of the counsel competency requirements of chapter 154. Thus, a State's capital counsel mechanism will be deemed adequate for purposes of chapter 154's counsel competency requirements if it provides for the appointment of counsel in State postconviction proceedings in capital cases in a manner consistent with 42 U.S.C. 14163(e)(1) and establishes standards of competency for such counsel in a manner consistent with 42 U.S.C. 14163(e)(2)(A).

Option 3: § 26.22(b)(3)—Other Standards Reasonably Assuring Proficiency

In enacting chapter 154, "Congress did not envision any specific competency standards but, rather, intended the states to have substantial discretion to determine the substance of the competency standards." *Spears,* 283 F.3d at 1013 (citing 177 Cong. Rec. S3191, S3220 (daily ed. Mar. 13, 1991)). The options described in paragraphs (b)(1) and (b)(2) in § 26.22 accordingly do not exhaust the means by which States may satisfy chapter 154's requirements concerning counsel competency. Indeed, Congress in formulating chapter 154 rejected a recommendation that States uniformly be required to satisfy the standards for Federal court proceedings in capital cases that currently appear in 18 U.S.C. 3599, *see* 73 FR at 75331, and in amending chapter 154 in 2006 Congress did not modify chapter 154 to require adherence by States to the IPA standards that had been enacted in 2004 but rather reenacted the more general language of chapter 154 relating to counsel competency.

Consequently, as provided in paragraph (b)(3) in § 26.22, the Attorney General will consider whether a State's counsel competency standards reasonably assure appointment of counsel with a level of proficiency appropriate for State postconviction litigation in capital cases, even if they do not meet the particular criteria set

forth in paragraph (b)(1) or (b)(2). As in the courts' consideration of the adequacy of State competency standards prior to the 2006 amendments to chapter 154, no definite formula can be prescribed for this review, and the Attorney General will assess such State mechanisms individually. Measures that will be deemed relevant include standards of experience, knowledge, skills, training, education, or combinations thereof that a State requires attorneys to meet in order to be eligible for appointment in State capital postconviction proceedings. *Cf.* 18 U.S.C. 3599(d) (allowing appointment of counsel whose background, knowledge, or experience would otherwise enable such counsel to properly represent the defendant); *Spears,* 283 F.3d at 1012–13 (finding that competency standards involving combination of experience, proficiency, and education were adequate under chapter 154); ABA Guidelines §§ 5.1.B.2, 8.1.B, pp. 35, 46 (recommending skill and training requirements for capital counsel). Also, the rule in paragraphs (b)(1) and (b)(2) of § 26.22 identifies particular approaches that will be considered adequate, specifically, those of the Federal capital counsel statute (18 U.S.C. 3599) and of the Innocence Protection Act (42 U.S.C. 14163(e)(1), (2)(A)). These approaches accordingly may serve as benchmarks, and States' adoption of competency requirements that are similar or that are likely to result in even higher levels of proficiency will weigh in favor of a finding of adequacy for purposes of chapter 154. As indicated in the prefatory language in paragraph (b) of § 26.22, State capital counsel mechanisms will be deemed adequate in relation to counsel competency if they meet or exceed the standards identified in the paragraph. States will not be penalized for going beyond the minimum required by the rule. Thus, for example, in relation to paragraph (b)(1), State competency standards will be considered sufficient if they require, e.g., five years of felony litigation experience rather than three, uniform satisfaction of the five-year/three-year experience requirement rather than allowing some exception as in 18 U.S.C. 3599(d), or training requirements for appointment in addition to the specified experience requirement.

The rule does not require that all counsel in a State qualify under the same standard. Alternative standards may be used so long as the State mechanism requires that all counsel satisfy some standard qualifying under paragraph (b). *Cf.* 18 U.S.C. 3599(d) (allowing exceptions to categorical experience requirement); *Spears,* 283 F.3d at 1013 (finding that alternative standards are allowed under chapter 154). Hence, for example, a State system could pass muster by requiring that appointed counsel either satisfy an experience standard sufficient under paragraph (b)(1) or satisfy an alternative standard sufficient under paragraph (b)(3) involving more limited experience but an additional training requirement.

Paragraph (c) of § 26.22—Compensation of Counsel

Paragraph (c) of § 26.22 explains how a State may satisfy the requirement that it have established a mechanism for the compensation of appointed counsel. 28 U.S.C. 2265(a)(1)(A). The corresponding portion of the December 11, 2008 regulations assumed that levels of compensation for purposes of chapter 154 were a matter of State discretion, not subject to review by the Attorney General, because the statute refers simply to "compensation" and imposes no further requirement that the authorized compensation be "adequate" or "reasonable." *See* 73 FR at 75331–32. However, the broader statutory context is the requirement that the State establish a mechanism "for the appointment [and] compensation * * * of competent counsel." 28 U.S.C. 2265(a)(1)(A). This requirement reflects a determination by Congress that reliance on unpaid volunteers to represent indigent prisoners under sentence of death is insufficient, and a State mechanism affording inadequate compensation could similarly fall short in ensuring the availability of competent counsel for appointment. Hence, when a State relies on a compensation incentive to secure competent counsel, chapter 154 is reasonably construed to permit the Attorney General to review the adequacy of authorized compensation. This understanding is adopted in § 26.22(c) of the proposed rule.

Paragraph (c)(1) in § 26.22 describes a number of possible compensation standards that will be considered adequate for purposes of chapter 154, generally using as benchmarks the authorizations for compensation of capital counsel that have been deemed adequate in other Acts of Congress.

The first option, appearing in paragraph (c)(1)(A), is compensation comparable to that authorized by Congress for representation in Federal habeas corpus proceedings reviewing State capital cases. 18 U.S.C. 3599(g)(1). This level of compensation should similarly be adequate to ensure the availability of competent counsel for appointment in such cases at the stage of State postconviction review.

The second option, appearing in paragraph (c)(1)(B), is compensation comparable to that of retained counsel who meet competency standards sufficient under paragraph (b). The Innocence Protection Act and the ABA Guidelines similarly endorse reliance on market rates for legal representation to provide adequate compensation for appointed capital counsel. *See* 42 U.S.C. 14163(e)(2)(F)(ii)(II); ABA Guidelines § 9.1.B.3, p. 49. Compensation sufficient to induce competent attorneys to carry out such representation for hire should likewise be sufficient to attract competent attorneys to accept appointments for such representation.

The third option, appearing in paragraph (c)(1)(C), is compensation comparable to that of appointed counsel in State appellate or trial proceedings in capital cases. *Cf.* 18 U.S.C. 3599(g)(1) (authorization for compensation of capital counsel not differentiating between compensation at different stages of representation). The compensation afforded at the stages of trial and appeal must be sufficient to secure competent attorneys to provide representation because effective legal representation of indigents is constitutionally required at those stages. Comparable compensation should accordingly be sufficient for that purpose at the postconviction stage.

The fourth option, appearing in paragraph (c)(1)(D), is compensation comparable to that of attorneys representing the State in State postconviction proceedings in capital cases. This option also follows the Innocence Protection Act and the ABA Guidelines, which provide that capital counsel employed by defender organizations should be compensated on a salary scale commensurate with the salary scale of prosecutors in the jurisdiction. 42 U.S.C. 14163(e)(2)(F)(ii)(I); ABA Guidelines § 9.1.B.2, p. 49. The rule allows this approach for compensation of both public defenders and private counsel, but recognizes that private defense counsel may have to pay from their own pockets overhead expenses that publicly employed prosecutors do not bear. The rule accordingly specifies that, if paragraph (c)(1)(D) is relied on to justify the level of compensation authorized for private counsel, the compensation standard should take account of overhead costs (if any) that are not otherwise payable as reasonable litigation expenses. *Cf. Baker* v. *Corcoran,* 220 F.3d 276, 285–86 (4th Cir. 2000) (finding that compensation resulting in substantial losses to

appointed counsel was inadequate under chapter 154).

In comparing a State's compensation standards to the benchmarks identified in paragraph (c)(1), both hourly rates and overall limits on compensation will be taken into account. For example, under paragraph (c)(1)(C), suppose that State law authorizes the same hourly rate for compensation of appointed capital counsel at the appellate stage and in postconviction proceedings, but it specially imposes a low overall limit on compensable hours at the postconviction stage. The compensation authorized at the respective stages may then not be comparable in any realistic sense, and the objective of ensuring the availability of competent counsel for postconviction representation may not be realized, because counsel who accepted such representation would effectively be required to function as uncompensated volunteers to the extent they needed to work beyond the maximum number of compensable hours. This does not mean that State compensation provisions will be deemed inadequate if they specially prescribe presumptive limits on overall compensation at the postconviction stage, but comparability to the paragraph (c)(1) benchmarks may then depend on whether the State provides means for authorizing compensation beyond the presumptive maximum where necessary. *Cf. Spears,* 283 F.3d at 1015 (approving a presumptive 200-hour limit under chapter 154 where compensation was available for work beyond that limit if reasonable); *Mata* v. *Johnson,* 99 F.3d 1261, 1266 (5th Cir. 1996), *vacated in part on reh'g on other grounds,* 105 F.3d (5th Cir. 1997) (overall $7500 limit on compensation was not facially inadequate under chapter 154 and was not shown inadequate in the particular case).

As with the counsel competency standards of paragraph (b), the counsel compensation standards of paragraph (c)(1) provide only a floor that States are free to exceed, and not all counsel must be compensated in conformity with a single standard. Rather, a State may adopt alternative standards, each comparable to or exceeding some benchmark identified in paragraph (c)(1), and provide for compensation of different counsel or classes thereof in conformity with different standards. For example, a State might provide for representation of some indigent capital defendants in postconviction proceedings by appointed private counsel and some by public defender personnel, compensate the private counsel in conformity with paragraph (c)(1)(C), and compensate the public defender counsel in conformity with paragraph (c)(1)(D).

The rule recognizes that the compensation options set out in paragraph (c)(1) of § 26.22 are not necessarily the only means by which a State may provide competent counsel. State compensation provisions for capital counsel have been deemed adequate for purposes of chapter 154 and other Federal laws independent of any comparison to the benchmarks in paragraph (c)(1). *See* 42 U.S.C. 14163(e)(2)(F)(i) (State may compensate under qualifying statutory procedure predating the Innocence Protection Act); *Spears,* 283 F.3d at 1015 (State could compensate at "a rate of up to $100 an hour, a rate that neither Petitioner nor amici argue was unreasonable"). Also, a State may secure representation for indigent capital defendants in postconviction proceedings by means not dependent on any special financial incentive for accepting appointments, such as by providing salaried public defender personnel to carry out such assignments as part of their duties. Accordingly, under paragraph (c)(2) in § 26.22, capital counsel mechanisms involving compensation provisions that do not satisfy paragraph (c)(1) are approvable if they are otherwise reasonably designed to ensure the availability of competent counsel.

Paragraph (d) of § 26.22—Payment of Reasonable Litigation Expenses

Paragraph (d) of § 26.22 incorporates the requirement in 28 U.S.C. 2265(a)(1)(A) to provide for the payment of reasonable litigation expenses. An inflexible cap on reimbursable litigation expenses in capital postconviction proceedings could contravene this requirement by foreclosing the payment of costs incurred by counsel, even if determined by the court to be reasonably necessary. However, the requirement does not foreclose a presumptive limit if the State provides means for authorizing payment of litigation expenses beyond the limit where necessary. *Cf.* 18 U.S.C. 3599(f), (g)(2) (establishing presumptive $7500 limit on payment for litigation expenses in federal court proceedings in capital cases, with authority for chief judge or delegee to approve higher amounts); *Mata,* 99 F.3d at 1266 (concluding that overall $2500 limit on payment of litigation expenses was not facially inadequate under chapter 154 and was not shown to be inadequate in the particular case).

Section 26.23

Section 26.23 in the rule sets out the mechanics of the certification process for States seeking to opt in to chapter 154.

Paragraph (a) provides that an appropriate State official may request in writing that the Attorney General determine whether the State meets the requirements for chapter 154 certification. Paragraph (b) provides that the Attorney General will make the request available on the Internet and solicit public comment on the request by publishing a notice in the Federal Register. It requires Internet availability because State requests for certification may include supporting materials not readily reproducible or viewable in the **Federal Register**, such as copies of State statutes, rules, and judicial decisions bearing on the State's satisfaction of chapter 154's requirements for certification.

As provided in paragraph (c), the Attorney General will review the State's request, including consideration of timely public comments received in response to the **Federal Register** notice. The Attorney General will decide whether the State has satisfied the requirements for chapter 154 certification and will publish the certification in the **Federal Register** if certification is granted. The certification will include a determination of the date the capital counsel mechanism qualifying the State for certification was established, as that date is the effective date of the certification. 28 U.S.C. 2265(a)(2).

Paragraph (d) addresses the effect of changes or alleged changes in a State's capital counsel mechanism after that mechanism has been certified by the Attorney General. The paragraph first addresses situations involving changes or alleged changes in a State's capital counsel mechanism prior to State postconviction proceedings in a capital case. Chapter 154's expedited Federal habeas corpus procedures are available only in cases in which both of two statutory conditions are met: (i) The State's capital counsel mechanism has been certified by the Attorney General, 28 U.S.C. 2261(b)(1), and (ii) "counsel was appointed pursuant to that mechanism"—i.e., the mechanism certified by the Attorney General—unless the petitioner "validly waived counsel * * * [or] retained counsel * * * or * * * was found not to be indigent," 28 U.S.C. 2261(b)(2). The first sentence of paragraph (d) therefore notes that certification by the Attorney General under chapter 154 reflects the Attorney General's determination that the State capital counsel mechanism examined in the Attorney General's review satisfies chapter 154's requirements. If a State later

discontinues that mechanism before counsel is appointed in a given State postconviction proceeding, then counsel in that case will not have been "appointed pursuant to" the mechanism that was approved by the Attorney General and chapter 154 would accordingly be inapplicable. Similarly, if a State later changes or is alleged to have changed its capital counsel mechanism, then chapter 154 may lead to litigation in Federal habeas courts, with those courts responsible for deciding whether the State has actually changed its mechanism and, if so, whether the change means that counsel (even if appointed) was appointed pursuant to what is in effect a new and uncertified mechanism, rather than the mechanism certified by the Attorney General.

To avoid such litigation, the second sentence of paragraph (d) provides that a State may seek a new certification by the Attorney General if it changes or is alleged to have changed a previously certified capital counsel mechanism. If a State wishes to improve on a certified capital counsel mechanism, then certification by the Attorney General of the new or revised mechanism will allow the State to avoid Federal habeas court litigation over whether chapter 154 is applicable to cases involving appointments made pursuant to that mechanism. Similarly, if legal questions are raised about the continued applicability of chapter 154 based on changes or alleged changes in a certified capital counsel mechanism, a State may seek a new certification by the Attorney General that its current mechanism satisfies chapter 154's requirements, ensuring the continued applicability of chapter 154's expedited Federal habeas corpus procedures. By seeking a new certification of a new or revised capital counsel mechanism, a State may ensure that it is the Attorney General, subject to review by the D.C. Circuit Court of Appeals, who determines whether its capital counsel mechanism is in present compliance with chapter 154's requirements, *see* 28 U.S.C. 2261(b)(1), 2265(c)(2), and avoid litigation over that matter in the Federal habeas courts.

The final sentence in paragraph (d) states that subsequent changes in a State's capital counsel mechanism do not affect the applicability of chapter 154 in cases in which a mechanism certified by the Attorney General existed throughout State postconviction proceedings in the case. For example, suppose that the Attorney General certifies a State's capital counsel mechanism in 2012, the State postconviction proceedings in a capital case are carried out in 2013 and 2014 and counsel is appointed in those proceedings pursuant to the certified mechanism, and Federal habeas corpus proceedings in the case commence in 2015. Suppose further that the State makes some change in 2015 to its counsel competency or compensation standards. Because a certified capital counsel mechanism would have been in place throughout State postconviction review, the prerequisites for expedited Federal habeas corpus review under chapter 154 would be satisfied, *see* 28 U.S.C. 2261(b). That result would not be affected by later changes in the State's postconviction capital counsel mechanism.

Regulatory Certifications

Executive Order 12866—Regulatory Planning and Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), and, accordingly, this rule has been reviewed by the Office of Management and Budget. The determination that this is a significant regulatory action, however, does not reflect a conclusion that it is "likely to result in a rule that may * * * [h]ave an annual effect on the economy of $100 million or more" or other adverse effects as described in section 3(f)(1) of the Executive Order. This rule will have no economic effect unless particular States (i) decide, in their discretion, that any costs entailed in meeting the chapter 154 capital counsel requirements are offset or justified by resulting cost reductions or other benefits to the State under chapter 154, and (ii) accordingly undertake to make any changes needed in their capital counsel systems to meet the chapter 154 requirements and apply to the Attorney General for certification.

If States decide to apply for chapter 154 certification, their resulting costs will mainly depend on (i) the number of capital cases these States litigate in State postconviction proceedings, and (ii) the incremental difference (if any) between their current per-case capital litigation costs and the corresponding costs under a chapter 154-compliant system. Regarding the number of capital cases, at the end of 2009, 36 states held 3,118 prisoners under sentence of death. *See* Bureau of Justice Statistics, Office Justice Programs, U.S. Department of Justice, *Capital Punishment, 2009—Statistical Tables* at 8, table 4 (Dec. 2010), *available at http://bjs.ojp.usdoj.gov/content/pub/pdf/cp09st.pdf.* Regarding the incremental costs of satisfying the chapter 154 standards, States accounting for the great majority of capital cases in the United States already provide for appointment of counsel in State postconviction proceedings. These States may still fall short of satisfying the chapter 154 standards relating to payment of litigation expenses or compensation of counsel. However, the costs necessary to correct such deficiencies would be limited to the difference between existing caps and any higher amounts necessary to defray reasonable litigation expenses and to secure competent attorneys for appointment, and this rule affords States a variety of options that may minimize any resulting increase in costs.

Even assuming that all States will upgrade their postconviction capital counsel mechanisms to the extent necessary to satisfy the proposed rule, and that the number of capital cases pending at any time in State postconviction proceedings is as high as 2,000, the total cost for the States could not reach $100 million annually unless the average increase in litigation costs were $50,000 each year for each case in State postconviction proceedings. There is no reason to believe that costs would increase to that degree, and any increased costs at that stage would be subject to offset by savings resulting from chapter 154's expedited procedures in subsequent Federal habeas corpus review. *See* 28 U.S.C. 2262, 2264, 2266. Moreover, because the States would more fully defray the costs of representing indigent capital defendants in State postconviction proceedings, there would be less need for representation by private counsel on a pro bono basis, often arranged through postconviction capital defense projects. Thus, State costs also would be offset by reduced costs for private entities and individuals who otherwise would provide representation, reducing the overall economic effect. For the foregoing reasons, it is not expected that this rule will or may have an annual effect on the economy of $100 million or more.

Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. It provides only a framework for those States that wish to qualify for the benefits of the expedited

habeas procedures of chapter 154 of title 28 of the United States Code. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12988—Civil Justice Reform

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

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This rule provides only a framework for those States that wish to qualify for the benefits of the expedited habeas procedures of chapter 154 of title 28 of the United States Code.

Unfunded Mandates Reform Act of 1995

This rule will not result in aggregate expenditures by state, local and tribal governments or by the private sector of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 28 CFR Part 26

Law enforcement officers, Prisoners.

Accordingly, for the reasons set forth in the preamble, part 26 of chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 26—DEATH SENTENCES PROCEDURES

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

Authority: 5 U.S.C. 301; 18 U.S.C. 4001(b), 4002; 28 U.S.C. 509, 510, 2261, 2265.

2. Add Subpart B to read as follows:

Subpart B—Certification Process for State Capital Counsel Systems

Sec.
26.20 Purpose.
26.21 Definitions.
26.22 Requirements.
26.23 Certification process.

§ 26.20 Purpose.

Sections 2261(b)(1) and 2265(a) of title 28 of the United States Code require the Attorney General to certify whether a State has a mechanism for providing legal representation to indigent prisoners in State postconviction proceedings in capital cases that satisfies the requirements of chapter 154 of title 28. If certification is granted, sections 2262, 2263, 2264, and 2266 of chapter 154 of title 28 apply in relation to Federal habeas corpus review of capital cases from the State. Subsection (b) of 28 U.S.C. 2265 directs the Attorney General to promulgate regulations to implement the certification procedure under subsection (a) of that section.

§ 26.21 Definitions.

For purposes of this part, the term—

Appropriate state official means the State Attorney General, except that, in a State in which the State Attorney General does not have responsibility for Federal habeas corpus litigation, it means the Chief Executive thereof.

State postconviction proceedings means collateral proceedings in State court, regardless of whether the State conducts such proceedings after or concurrently with direct State review.

§ 26.22 Requirements.

The Attorney General will certify that a State meets the requirements for certification under 28 U.S.C. 2261 and 2265 if the Attorney General determines that the State has established a mechanism for the appointment of counsel for indigent prisoners under sentence of death in State postconviction proceedings that satisfies the following standards:

(a) As provided in 28 U.S.C. 2261(c) and (d), the mechanism must offer to all such prisoners postconviction counsel, who may not be counsel who previously represented the prisoner at trial unless the prisoner and counsel expressly requested continued representation, and the mechanism must provide for the entry of an order by a court of record—

(1) Appointing one or more attorneys as counsel to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer;

(2) Finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or

(3) Denying the appointment of counsel, upon a finding that the prisoner is not indigent.

(b) The mechanism must provide for appointment of competent counsel as defined in State standards of competency for such appointments that meet or exceed any of the following:

(1) Appointment of counsel who have been admitted to the bar for at least five years and have at least three years of felony litigation experience or who would otherwise qualify for appointment pursuant to the standards for Federal habeas corpus proceedings reviewing State capital cases under 18 U.S.C. 3599;

(2) Appointment of counsel meeting qualification standards established in conformity with 42 U.S.C. 14163(e)(1), (2)(A); or

(3) Appointment of counsel satisfying qualification standards that reasonably assure a level of proficiency appropriate for State postconviction litigation in capital cases.

(c) The mechanism must provide for compensation of appointed counsel.

(1) A State's provision for compensation will be deemed adequate if the authorized compensation is comparable to or exceeds—

(i) The compensation of counsel appointed pursuant to 18 U.S.C. 3599 in Federal habeas corpus proceedings reviewing capital cases from the State;

(ii) The compensation of retained counsel in State postconviction proceedings in capital cases who meet State standards of competency sufficient under paragraph (b) of this section;

(iii) The compensation of appointed counsel in State appellate or trial proceedings in capital cases; or

(iv) The compensation of attorneys representing the State in State postconviction proceedings in capital cases, subject to adjustment for private counsel to take account of overhead costs not otherwise payable as reasonable litigation expenses.

(2) Provisions for compensation not satisfying the criteria in paragraph (c)(1) of this section will be deemed adequate only if the State mechanism is otherwise reasonably designed to ensure the availability for appointment of counsel who meet State standards of competency sufficient under paragraph (b) of this section.

(d) The mechanism must provide for payment of reasonable litigation expenses of appointed counsel, which may include presumptive limits on

payment only if means are authorized for payment of necessary expenses above such limits.

§ 26.23 Certification process.

(a) An appropriate State official may request in writing that the Attorney General determine whether the State meets the requirements for certification under § 26.22.

(b) Upon receipt of a State's request for certification, the Attorney General will make the request publicly available on the Internet (including any supporting materials included in the request) and publish a notice in the **Federal Register**—

(1) Indicating that the State has requested certification;

(2) Identifying the Internet address at which the public may view the State's request for certification; and

(3) Soliciting public comment on the request.

(c) The State's request will be reviewed by the Attorney General. The review will include consideration of timely public comments received in response to the **Federal Register** notice under paragraph (b) of this section. The certification will be published in the **Federal Register** if certification is granted. The certification will include a determination of the date the capital counsel mechanism qualifying the State for certification was established.

(d) A certification by the Attorney General reflects the Attorney General's determination that the State capital counsel mechanism reviewed under paragraph (c) of this section satisfies 28 U.S.C. chapter 154's requirements. A State may request a new certification by the Attorney General to ensure the continued applicability of chapter 154 in cases in which State postconviction proceedings occur after a change or alleged change in the State's certified capital counsel mechanism. Changes in a State's capital counsel mechanism do not affect the applicability of chapter 154 in any case in which a mechanism certified by the Attorney General existed throughout State postconviction proceedings in the case.

Dated: February 25, 2011.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2011–4800 Filed 3–2–11; 8:45 am]

BILLING CODE 4410–18–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[Docket No. OW–2009–0090; FRL–9274–2]

RIN 2040–AF10

Revisions to the Unregulated Contaminant Monitoring Regulation (UCMR 3) for Public Water Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The 1996 amendments to the Safe Drinking Water Act (SDWA) require that the United States Environmental Protection Agency (EPA or the Agency) establish criteria for a program to monitor unregulated contaminants and to publish a list of contaminants to be monitored every five years. This action meets the SDWA requirement by proposing the design for the third UCMR cycle (*i.e.,* UCMR 3). EPA is proposing six EPA-developed analytical methods, and four equivalent consensus organization-developed methods to monitor for 28 new UCMR chemical contaminants. In addition, EPA proposes monitoring for two viruses, for a total of 30 UCMR 3 contaminants. As envisioned, virus analysis (along with related analysis for pathogen indicators) would be conducted in laboratories under EPA contract. UCMR 3 provides EPA and other interested parties with scientifically valid data on the occurrence of these contaminants in drinking water, permitting the assessment of the number of people potentially being exposed and the levels of that exposure. These data are the primary source of occurrence and exposure information the Agency uses to determine whether to regulate these contaminants. In addition, as part of an Expedited Methods Update, this proposed action also would amend regulations concerning inorganic chemical sampling and analytical requirements. A minor editorial correction to the table moves methods from the "Other" column to the "ASTM" column, as it applies to the inorganic chemical sampling and analytical requirements. The UCMR program is not affected by these changes.

DATES: Comments must be received on or before May 2, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. OW–2009–0090, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: OW–Docket@epa.gov.*
- *Mail:* Send three copies of your comments and any enclosures to: Water Docket, United States Environmental Protection Agency, Mail Code 282211T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2009–0090. Commenters should use a separate paragraph for each issue discussed. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* Deliver your comments to Water Docket, EPA Docket Center, Environmental Protection Agency, Room 3334, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OW–2009–0090. 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–OW–2009–0090. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or 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 *http://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.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. This Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: David J. Munch, Technical Support Center, Office of Ground Water and Drinking Water, United States Environmental Protection Agency, Office of Water, 26 West Martin Luther King Drive (MS 140), Cincinnati, OH 45268; telephone (513) 569–7843; or e-mail at *munch.dave@epa.gov;* or Brenda D. Parris, Technical Support Center, Office of Ground Water and Drinking Water, United States Environmental Protection Agency, Office of Water, 26 West Martin Luther King Drive (MS 140), Cincinnati, Ohio 45268; telephone (513) 569–7961; or e-mail at *parris.brenda@epa.gov.* For general information, contact the Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding legal holidays, from 10 a.m. to 4 p.m., Eastern time. The Safe Drinking Water Hotline may also be found on the Internet at: *http://water.epa.gov/aboutow/ogwdw/hotline/.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities regulated by this action are public water systems (PWSs). All large community and non-transient non-community water systems serving more than 10,000 people would be required to monitor. A community water system (CWS) means a PWS which has at least 15 service connections used by year-round residents or regularly serves an average of at least 25 year-round residents. A non-transient non-community water system (NTNCWS) means a PWS that is not a CWS and that regularly serves at least 25 of the same people over six months per year. Only a nationally representative sample of community and non-transient non-community systems serving 10,000 or fewer people would be required to monitor for chemical analytes (see USEPA, 2001 for a description of the statistical approach for the nationally representative sample). Transient non-community systems (*i.e.,* systems that do not regularly serve at least 25 of the same people over six months per year) would not be required to monitor for the chemical analytes. However, transient ground water systems serving 1,000 or fewer would be subject to possible selection for virus monitoring. If selected, these systems would be required to permit EPA to sample and analyze for List 3 contaminants and pathogen indicators. EPA would pay for all sampling and analysis costs associated with virus monitoring at these small systems. States, Territories, and Tribes with primary enforcement responsibility (primacy) to administer the regulatory program for PWSs under the Safe Drinking Water Act (SDWA) may participate in the implementation of UCMR 3 through Partnership Agreements (PAs) (see discussion of PAs in section III.G. of today's action: "What Is the States' Role in the UCMR Program?"). These primacy agencies may choose to conduct analyses to measure for contaminants in water samples collected for the UCMR 3; however, the PWS remains responsible for compliance. Regulated categories and entities are identified in the following table.

Category	Examples of potentially regulated entities	NAICS [a]
State, Local, & Tribal Governments.	States, local and Tribal governments that analyze water samples on behalf of public water systems required to conduct such analysis; States, local and Tribal governments that directly operate community, transient and non-transient non-community water systems required to monitor.	924110
Industry	Private operators of community and non-transient non-community water systems required to monitor.	221310
Municipalities	Municipal operators of community and non-transient non-community water systems required to monitor.	924110

[a] NAICS = North American Industry Classification System.

This table is not exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware may potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definition of PWS in § 141.2 of Title 40 of the Code of Federal Regulations, and applicability criteria in § 141.40(a)(1) and (2) of today's proposed action. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Copies of This Document and Other Related Information

This document is available for download at: *http://www.regulations.gov.* For other related information, see preceding discussion on docket.

Abbreviations and Acronyms

μg/L Microgram per liter
ASDWA Association of State Drinking Water Administrators
ASTM American Society for Testing Materials
CBI Confidential Business Information
CCL Contaminant Candidate List
CFR Code of Federal Regulations
CWS Community water system
DSMRT Distribution system maximum residence time
EPA United States Environmental Protection Agency
EPTDS Entry point to the distribution system
FR Federal Register
GC/MS Gas Chromatography/Mass Spectrometry
GWUDI Ground water under the direct influence of surface water
HCFC–22 Chlorodifluoromethane
IC/MS Ion Chromatography/Mass Spectrometry
ICR Information collection request
IHS Indian Health Service
LCMRL Lowest concentration minimum reporting level
LC/MS/MS Liquid Chromatography/Tandem Mass Spectrometry
LFSM Laboratory fortified sample matrix
LFSMD Laboratory fortified sample matrix duplicate
MRL Minimum reporting level

NAICS North American Industry Classification System
NCOD National Drinking Water Contaminant Occurrence Database
NPDWR National primary drinking water regulation
NTNCWS Non-transient non-community water system
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
PA Partnership Agreement
PFBS Perfluorobutanesulfonic acid
PFHpA Perfluoroheptanoic acid
PFHxS Perfluorohexane sulfonic acid
PFNA Perfluorononanoic acid
PFOA Perfluorooctanoic acid
PFOS Perfluorooctane sulfonic acid
PT Proficiency testing
PWS Public water system
qPCR Quantitative polymerase chain reaction
RFA Regulatory Flexibility Act
SM Standard Methods
SRF State Revolving Fund
SBA Small Business Administration
SDWA Safe Drinking Water Act
SDWIS/Fed Federal Safe Drinking Water Information System
UCMR Unregulated Contaminant Monitoring Regulation
UMRA Unfunded Mandates Reform Act of 1995
USEPA United States Environmental Protection Agency
VOC Volatile Organic Compound

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II. Statutory Authority and Background

A. What is the statutory authority for this action?

Section 1445(a)(2) of the Safe Drinking Water Act (SDWA), as amended in 1996, requires that once every five years, beginning in August 1999, the United States Environmental Protection Agency (EPA) issue a new list of no more than 30 unregulated contaminants to be monitored by public water systems (PWSs). It also requires that EPA enter the monitoring data into the Agency's National Drinking Water Contaminant Occurrence Database (NCOD). EPA's Unregulated Contaminant Monitoring Regulation (UCMR) program must ensure that only a national representative sample of PWSs serving 10,000 or fewer people would be required to monitor. EPA must vary the frequency and schedule for monitoring based on the number of persons served, the source of supply, and the contaminants likely to be found.

B. How does EPA meet these statutory requirements?

Today's notice proposes 30 contaminants for monitoring during the third five-year cycle, referred to as "UCMR 3." These contaminants include: 28 chemicals using six analytical methods and/or four equivalent consensus organization-developed methods, and two viruses using one analytical method. EPA has developed a proposed contaminant list (Exhibit 1) and sampling design for UCMR 3 (2012–2016) with input from both stakeholders and an EPA–State working group.

EXHIBIT 1—PROPOSED CONTAMINANT LISTS

List 1, Assessment Monitoring	
17-β-estradiol	chlorodifluoromethane (HCFC–22)
17-α-ethynylestradiol (ethinyl estradiol)	bromochloromethane (Halon 1011)
estriol	1,4-dioxane
equilin	vanadium
estrone	molybdenum
testosterone	cobalt
4-androstene-3,17-dione	strontium
1,2,3-trichloropropane	chlorate
1,3-butadiene	perfluorooctane sulfonic acid (PFOS)
chloromethane (methyl chloride)	perfluorooctanoic acid (PFOA)
1,1-dichloroethane	perfluorononanoic acid (PFNA)
n-propylbenzene	perfluorohexane sulfonic acid (PFHxS)
bromomethane (methyl bromide)	perfluoroheptanoic acid (PFHpA)
sec-butylbenzene	perfluorobutanesulfonic acid (PFBS)
List 3, Pre-Screen Testing	
enteroviruses	noroviruses

EPA published the first list for the Unregulated Contaminant Monitoring Regulation cycle (*i.e.,* UCMR 1) in the **Federal Register** on September 17, 1999 (64 FR 50556), and the second list (*i.e.,* UCMR 2) on January 4, 2007 (72 FR 367). The monitoring lists that were applicable under UCMR 1 and 2 are available at: *http://water.epa.gov/lawsregs/rulesregs/sdwa/ucmr/.*

In UCMR 1, EPA established a three-tiered approach for monitoring contaminants based on the availability of analytical methods. Assessment Monitoring for List 1 contaminants typically relies on analytical methods that are in common use in drinking water laboratories. Screening Survey monitoring for List 2 contaminants relies on newly developed analytical methods that are not commonly used in drinking water laboratories. Laboratory capacity to perform List 2 analyses is expected to be limited. Finally, UCMR 1 established the option of Pre-Screen Testing for List 3 contaminants to address contaminants with analytical methods that are in an early stage of development. The expectation was that it would be used at a limited number of systems determined to be most vulnerable to the targeted contaminants.

For UCMR 2, EPA built on this established structure, and instituted some changes to the rule design. These changes were based upon lessons learned during UCMR 1. All large PWSs, serving more than 10,000 people, and a nationally representative selection of 800 small PWSs serving 10,000 or fewer people monitored for List 1 contaminants. This monitoring was conducted during a continuous 12-month period during the January 2008 to December 2010 sampling time frame (quarterly for surface water systems, and twice, at 6-month intervals, for ground water systems). Systems subject to UCMR 2 included community water systems (CWSs) and non-transient non-community water systems (NTNCWSs), except those systems that purchase all of their finished water from another PWS.

EPA designed the Assessment Monitoring sampling frame to ensure that sample results would yield a high level of confidence and a low margin of error. The design for a nationally representative sample of small systems called for the sample to be stratified by water source type (ground or surface water), service size category, and State (where each State is allocated a minimum of two systems in its State Monitoring Plan). With monitoring data from all large PWSs (a census of all large systems) and a statistically representative sample of 800 small PWSs (for a total of over 4,000 systems), UCMR1 and UCMR 2 Assessment Monitoring provided sample data suitable to characterize exposure, as would UCMR 3. Twenty eight chemicals are being proposed for Assessment Monitoring under UCMR 3.

For the UCMR 2 Screening Survey, monitoring for List 2 contaminants was conducted by approximately 400 PWSs serving more than 100,000 people (*i.e.,* a census of all systems in this largest size category), with a randomly selected sample of 320 PWSs serving between 10,001 and 100,000 people, and 480 small PWSs serving 10,000 or fewer people (EPA included additional PWSs in the Screening Survey design under UCMR 2—as compared to UCMR 1—to increase the statistical power of the sample). During UCMR 2, Screening Survey systems were required to monitor during a continuous 12-month period during the time frame of January 2008 to December 2010 (quarterly for surface water systems, and twice, at 6-month intervals, for ground water systems). With approximately 1,200 systems participating in the Screening Survey, sufficient data were generated to provide an overall national estimate of population exposure. No List 2 Screening Survey monitoring is being proposed under UCMR 3.

As under UCMR 1, no Pre-Screen Testing was conducted during the UCMR 2. However, in UCMR 3, two viruses are proposed for Pre-Screen monitoring.

EPA is proposing that UCMR 3 include: Assessment Monitoring for 28 chemicals; no Screening Survey; and, Pre-Screen Testing for two viruses. Other proposed changes between UCMR 2 and UCMR 3 are summarized in section III.A. "What Are the Changes Being Proposed for UCMR 3?", and discussed in further detail throughout today's proposed rule preamble.

C. How are the contaminant candidate list, the National Contaminant Occurrence Database, and the UCMR interrelated?

The 1996 amendments to SDWA instituted the Contaminant Candidate List (CCL) and UCMR programs to provide information EPA needs to determine which drinking water contaminants have the greatest potential to present a meaningful opportunity to reduce health risk through a national primary drinking water regulation (NPDWR). The CCL is the primary mechanism for the identification of contaminants that may require regulation while UCMR provides EPA with the data necessary to determine if a contaminant occurs at a frequency and concentration that would be a public health concern. The CCL and UCMR are coordinated parts of EPA's risk management process, and they support each other. The UCMR sampling program is limited by statute to 30 contaminants at one time, and was designed in consideration of the technical difficulty and expense of analyzing up to 30 contaminants, as well as their potential to occur in treated drinking water at levels of public health concern. The data collected through the UCMR program are being stored in the NCOD to: facilitate analysis and review of contaminant occurrence; guide the conduct of the CCL process; and support the Administrator's determination whether to regulate a contaminant in the interest of protecting public health, as required under SDWA section 1412 (b)(1). Results of the UCMR 1 and 2 monitoring can be viewed by the public at EPA's UCMR Web site: *http://water.epa.gov/lawsregs/rulesregs/sdwa/ucmr/data.cfm.*

III. Requirements of the Unregulated Contaminant Monitoring Program

A. What are the changes being proposed for UCMR 3?

EPA developed, and is proposing in today's action, a slightly revised design for UCMR 3 based on experience with UCMR 1 and UCMR 2. EPA reviewed various aspects of the UCMR 1 and 2 programs and identified several critical changes that would improve implementation. EPA's proposed approach and rationale for changes are described in the following sections. Key aspects of the UCMR program that would remain the same include direct implementation of the rule by EPA, the design of Assessment Monitoring, and EPA funding for the small system testing. In addition to requesting comment on the proposed list of contaminants, EPA also requests comment on: Monitoring based on retail population; revised data elements; and other changes between UCMR 2 and UCMR 3 that are outlined in Exhibit 2. Updates to Web addresses, applicability dates, corrections of minor typographical errors, and other minor clerical edits are reflected in rule language, but do not appear in Exhibit 2.

EXHIBIT 2—NOTABLE CHANGES BEING PROPOSED FOR UCMR 3

Rule section		Description of change	Corresponding preamble section
Number	Title/description		
141.35(a) and 141.40(a)	Population-based applicability and related applicability date.	Base applicability on retail population. Under UCMR 1 and 2, systems that purchased all of their water were not required to monitor. These systems would now be subject to UCMR monitoring requirements. The new SDWIS/Fed applicability date (*i.e.,* the date used to determine which systems are subject to monitoring) is also specified	III.E.
141.35(c)(3)(ii)	Demonstrating representative ground water sampling locations.	Clarifies that when identifying a representative well, the well must be one of the higher annual volume producing and consistently active wells. Should this location go off-line, an alternative location must be sampled.	III.F.
141.35(c)(6)(ii) and 141.40(a)(5)(vi).	Reporting schedule	Reduces time for labs to electronically report results (from 120 to 60 days); and for systems to review, approve, and report data (from 60 to 30 days).	III.F.
141.35(c)(6) and 141.35(d)(2)	Reporting monitoring results	Requires small and large systems to report all data elements in Table 1 with each sample. Previously, only a subset of the data elements were to be reported with each sample.	III.F.
141.35(e)	Data elements	Revises Table 1 of § 141.35 to: • Add the zip code, optional zip code extension, and zip codes served to Data Element 4—Sampling Point Identification Code. • Clarify and update the definition of Data Element 6—Disinfectant Type.	III.F. and V.J.
141.40(a)(1)	Applicability to transient systems.	Removes exemption for transient systems, which would now be subject to monitoring for List 3 contaminants if notified by EPA or State.	III.E.
141.40(a)(2)(ii)(C) and 141.40(a)(3).	Pre-Screen Testing viruses and indicators.	Systems participating in List 3 monitoring would be required to allow EPA to monitor for enterovirus and norovirus and collect specified pathogen indicators.	III.B. and III.F.
141.40(a)(3)	Analytes to be monitored and related specifications.	Revises Table 1 of this section to include: New list of 28 priority contaminants, with 6 EPA-developed and 4 consensus organization developed analytical methods, as well as new monitoring dates of January 2013 through December 2015.	III.B. and III.F.
141.40(a)(4)(i)(B)	Sampling requirements—frequency.	Specifies that schedules must be adjusted based on sample point availability. Clarifies that sampling points within a system may have different schedules.	
		Also, revises Table 2 of this section to include monitoring requirements for microbiological contaminants for ground water systems at a frequency of two times during a consecutive 12-month period.	III.F.
141.40(a)(4)(i)(C)	Location	Requires systems conducting Assessment Monitoring to collect metal and chlorate samples at distribution system maximum residence time (DSMRT) sampling locations. If these locations are not defined, requires PWS to collect samples at locations that best represents the maximum residence time in the distribution system.	III.F.
141.40(a)(5)(iii)	Minimum Reporting Level (MRL) definition.	Revises the definition of the MRL	III.C.

B. What priority contaminants were selected for UCMR 3?

EPA used a stepwise prioritization process to identify potential UCMR 3 contaminants. As a first step, the Agency reviewed the recently promulgated CCL 3 list and the "pre-CCL" contaminants considered in the development of CCL 3. Under the CCL 3 process, the Agency considered the best available data and information on health effects and occurrence to evaluate 7,500 unregulated contaminants. The final CCL 3 is comprised of 104 chemicals or chemical groups and 12 microbiological contaminants that were selected through a data-driven process that considered adverse health effects (potency and severity) and occurrence (prevalence and magnitude). The list includes pesticides, biological toxins, disinfection byproducts, chemicals used in commerce, and waterborne pathogens (74 FR 51850, October 8, 2009 (USEPA, 2009c)). EPA used CCL 3, along with additional sources of information about other emerging contaminants of potential concern, to establish an initial list of approximately 150 potential UCMR 3 contaminants.

The proposed contaminant list for UCMR 3 was further pared down as follows: (1) Contaminants with no currently available methods, or methods that would not be ready in time for UCMR 3 monitoring were eliminated; and, (2) those contaminants included in UCMR 1 or UCMR 2 monitoring were also eliminated from inclusion. This narrowed list of fewer than 35 analytes was further considered by an EPA and State working group, and prioritized using health effects data and other critical endpoints, to arrive at a final proposed list of 30 analytes listed in Exhibit 3. Further information on this

prioritization process, and on the health effects and occurrence data EPA used to select the chemical analytes proposed for UCMR 3 are contained in "Possible Contaminants for Inclusion on UCMR 3—Information Compendium" (USEPA, 2010d).

EPA has not included hexavalent chromium (chromium-6) in the proposed list of chemicals for UCMR 3 monitoring; however, EPA is aware of potential concerns about chromium-6 occurrence in public water supplies. EPA thus requests comment on whether the Agency should include chromium-6 as one of the 30 contaminants for UCMR 3 Assessment Monitoring. EPA has recently issued voluntary guidance to water systems on monitoring for chromium-6, including recommendations regarding the use of a modified version of EPA Method 218.6 for the analysis of samples and a recommended reporting level of 0.06 ug/L (see *http://water.epa.gov/drink/info/chromium/guidance.cfm*). If EPA were to include chromium-6 in UCMR 3, the Agency would incorporate it into Assessment Monitoring. Under this approach, EPA would make chromium-6 monitoring mandatory for all large water systems and a subset of small systems; see also Section III.F.2 for further discussion of the Assessment Monitoring approach. EPA requests comments on what contaminant(s) should be removed from the list of 30 UCMR 3 contaminants if chromium-6 were added, as well as comments regarding the recommended and alternative analytical method(s) and the appropriate reporting level. EPA also requests comments on whether total chromium should also be measured concurrent with chromium-6. Side-by-side measurements may provide valuable information on relative occurrence and the utility of total chromium monitoring as a surrogate for chromium-6.

EPA compiled background information for each of the 28 chemicals being proposed for monitoring, including: Source and use; health effects; production and release; occurrence in water; and persistence and mobility (USEPA, 2010d). Health effects, occurrence in water, transmission and treatment information were considered for the two viruses. The primary source of this information is CCL 3 (74 FR 51850, October 8, 2009 (USEPA, 2009c)). Where newer or additional information was available and for those proposed UCMR 3 contaminants that were not part of CCL 3, references are provided separately. In addition, preliminary occurrence data are included that were collected as part of EPA's second Six-Year Review of NPDWRs (75 FR 15500, March 29, 2010 (USEPA, 2010b)).

EXHIBIT 3—30 PROPOSED UCMR 3 ANALYTES

7 Hormones using EPA Method 539 (LC/MS/MS)[1]:	
17-β-estradiol 17-α-ethynylestradiol (ethinyl estradiol) estriol (16-α-hydroxy-17-β-estradiol)	estrone testosterone 4-androstene-3,17-dione
equilin	
9 Volatile Organic Compounds (VOC) using EPA Method 524.3 (GC/MS)[2]:	
1,2,3-trichloropropane 1,3-butadiene chloromethane (methyl chloride) 1,1-dichloroethane n-propylbenzene	bromomethane (methyl bromide) sec-butylbenzene chlorodifluoromethane (HCFC–22) bromochloromethane (halon 1011)
Synthetic Organic Compound using EPA Method 522 (GC/MS)[3]:	
1,4-dioxane	
4 Metals using EPA Method 200.8 (IC/MS)[4] or alternate SM[5] or ASTM Methods[6]:	
cobalt molybdenum	strontium vanadium
Oxyhalide Anion using EPA Method 300.1 (IC/Conductivity)[7] or alternate SM[8] or ASTM Methods[9]:	
chlorate	
6 Perfluorinated Chemicals using EPA Method 537 (LC/MS/MS)[10]:	
perfluorooctane sulfonate (PFOS) perfluorooctanoic acid (PFOA) perfluorononanoic acid (PFNA)	perfluorohexane sulfonic acid (PFHxS) perfluoroheptanoic acid (PFHpA) perfluorobutane sulfonic acid (PFBS)
2 Viruses (see Section III.B.7 for methods discussion):[11]	
enterovirus	norovirus

1. EPA Method 539 (LC/MS/MS) (USEPA, 2010c)
2. EPA Method 524.3 (GC/MS) (USEPA, 2009a)
3. EPA Method 522 (GC/MS) (USEPA, 2008)
4. EPA Method 200.8 (ICP/MS) (USEPA, 1994)
5. SM 3125 (SM, 1997)
6. ASTM D5673–10 (ASTM, 2010)
7. EPA Method 300.1 (IC/Conductivity) (USEPA, 1997)
8. SM 4110D (SM, 1997)
9. ASTM D6581–08 (ASTM, 2008)

10. EPA Method 537 (LC/MS/MS) (USEPA, 2009b)
11. Monitoring also includes sampling for pathogen indicators such as total coliforms, *E.coli,* bacteriophage, *Enterococci* and aerobic spores. EPA would pay for all sampling and analysis costs associated with virus monitoring at these small systems.

1. Twenty-Eight Chemicals

EPA proposes monitoring for 28 chemicals in UCMR 3. Details of the health effects and occurrence data EPA used to make these selections are contained in "Possible Contaminants for Inclusion on UCMR 3—Information Compendium" (USEPA, 2010d), available at Docket ID No. OW–2009–0090.

2. Two Viruses

a. Enterovirus and Norovirus

EPA proposes to monitor for enterovirus and norovirus in UCMR 3. Both enterovirus and norovirus (a group of viruses in the Caliciviruses family) are listed on CCL3. They are proposed for UCMR 3 monitoring because very limited data are available (Francy *et al.,* 2004) on their occurrence in undisinfected PWSs located in sensitive hydrogeological areas. Of particular concern are PWSs in areas with karst or fractured bedrock, as well as in non-community water systems. Recent data indicate that undisinfected ground water systems with low total coliform occurrence (and no Total Coliform Rule violations) had significant viral presence and disease manifestation (Borchardt, 2008). This draft study showed a statistically significant correlation between viral qPCR (quantitative polymerase chain reaction) and self-reported acute gastrointestinal illness. This indicates that qPCR can be used as an indicator of relative vulnerability and potential disease incidence. Borchardt's work showed a viral occurrence of 9% for enterovirus and 4% for norovirus in CWSs, almost all of which were in aquifers not considered sensitive. EPA proposes to perform this monitoring as a Pre-Screen Testing of targeted undisinfected ground water systems located in karst or fractured bedrock. The monitoring would include CWSs, as well as non-transient and transient non-community water systems. Monitoring would also include sampling for pathogen indicators such as total coliforms, *E.coli,* bacteriophage, *Enterococci* and aerobic spores.

The objectives of this monitoring are to obtain information concerning the occurrence of enterovirus and norovirus for further evaluation, and to gain a better understanding of the co-occurrence of pathogen indicators and viruses.

Enterovirus would be monitored using one method that has two detection assays. The first is a tissue culture assay also used in the Information Collection Rule survey conducted by EPA (USEPA, 1996), with one change; the 1 MDS filter would be replaced with the NanoCeram® filter, to significantly reduce sampling cost. The NanoCeram® filter has proven to be as effective as 1 MDS filter for the recovery of enteroviruses (Karim *et al.,* 2009) and norovirus (Gibbons *et al.,* 2010). The second assay is the qPCR, which detects the viral nucleic acid.

Norovirus would only be monitored using qPCR, as there is no tissue culture method available. Both norovirus and enterovirus qPCR would be performed as per the protocol in Lambertini *et al.* (2008). The qPCR primers and probe for GI Norovirus would be as referenced in Jothikumar *et al.* (2005), while GII Norovirus primers and probe would be as referenced in Ando *et al.* (1995). Primers and probe referenced in De Leon *et al.* (1990) and Monpoeho *et al.* (2000) would be used for enterovirus qPCR.

A technical presentation describing Borchardt's work, and supporting EPA's rationale for including these viruses in UCMR 3, is available through the docket. EPA welcomes comments on the Borchardt data and on the merits of the proposed UCMR 3 monitoring. EPA anticipates that a peer-reviewed journal article describing the Borchardt work will be published in advance of the publication of the UCMR 3 final rule, and is committed to conducting appropriate peer review of the UCMR 3 virus data before any final regulatory determination by the Agency.

C. How were minimum reporting levels determined?

The quality of measurement definition is based on a standard tool of analytical chemistry, percent recovery of a known amount of analyte added to a reagent water sample (spiked blank). The lowest concentration minimum reporting level (LCMRL) is defined as the lowest spiking concentration at which recovery of between 50 and 150% is expected 99% of the time by a single analyst.

The LCMRL is estimated using sophisticated statistical procedures that have been incorporated into an LCMRL calculator tool that is available on EPA's Web site (*http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods_ogwdw.cfm*). The statistical tool estimates a probability distribution for spike recovery as a function of spiking concentration. This requires regression modeling that estimates expected value and expected variance for repeated measurements as functions of spiking concentration. Often this variance is an increasing function of spiking level. In this case, ordinary least squares regression is not appropriate to estimate the expected value function. Weighted least squares is used with weights proportional to the reciprocal of the expected variance, multiplied by a weight (Tukey's biweight) that gives robustness against outliers. The variance model is estimated using a Generalized Linear Model. To estimate these regressions, an experimental design with replicate spiking at multiple concentrations is required. If the LCMRL estimate is below the lowest non-blank spiking concentration or above the highest spiking concentration, another set of blanks must be spiked so that the LCMRL is bracketed by the lowest and highest spike concentrations when the LCMRL is re-estimated. The spiked concentrations must be contained within the instrument calibration curve that is routinely used for each analyte. The combined procedure provides a robust estimator of the LCMRL and a sophisticated and useful measure of method capability.

MRL

In today's action, EPA is proposing revisions to the definition of the minimum reporting level (MRL). The proposed definition of the MRL reflects improvements in the statistical procedures for determining the LCMRL and MRL. These improvements were implemented by EPA to make the models more robust, *i.e.,* so that the models can accommodate a wider range of observed LCMRL data sets. The MRL for an analyte measured by a specified analytical method is designed to be an estimate of an LCMRL that is achievable, with 95% confidence, by a capable analyst/laboratory at least 75% of the time. Such a demonstration of ability to reliably make quality measurements at the MRL is intended to achieve high quality across the nation's laboratories.

In UCMR 2, the MRL was established by EPA by adding the mean of the LCMRL determined according to the procedure detailed in "Statistical Protocol for the Determination of The Single-Laboratory Lowest Concentration Minimum Reporting Level (LCMRL) and

Validation of the Minimum Reporting Level (MRL)" (USEPA, 2004), (*http://www.epa.gov/ogwdw/methods/pdfs/methods/methods_lcmrl.pdf*) by the primary and secondary laboratories conducting the development and validation of the analytical method to three times the difference of the LCMRLs. If LCMRL data from three or more laboratories were available, the MRL was established by EPA by adding three times the standard deviation of the LCMRLs to the mean of the LCMRLs.

In UCMR 3, EPA estimated the MRL for an analyte/method by obtaining data from several laboratories performing corresponding LCMRL studies. These data are used to construct an approximation to the distribution that would result from picking at random a laboratory/analyst proficient in performing the analytical method, and having them perform an LCMRL study and compute an LCMRL estimate. The strategy for computing the MRL is two-fold. First, for each LCMRL data set, a distribution for repeated LCMRL determinations by the same laboratory/analyst is estimated by generating a large number of simulated values using a Bayesian bootstrap approach. Second, these values are combined to create an estimated overall distribution. If a result from one of the laboratories is significantly higher than that of other laboratories, this value would be down-weighted using a robust weight function. The resulting weighted values are used to construct a probability distribution from which the MRL is computed as the 95th percentile. EPA requests comments regarding the proposed definition of the MRL.

D. How would laboratories conduct UCMR analyses?

As proposed, all laboratories conducting analyses for UCMR 3 List 1 contaminants would need to receive EPA approval to perform those analyses. Laboratories seeking approval would be required to provide EPA with data that demonstrate their successful completion of an initial demonstration of capability as outlined in each method, verification of successful performance at the MRLs as specified in today's action, and successful participation in an EPA Proficiency testing (PT) program for the analytes of interest. On-site audits of selected candidate laboratories may be conducted. Details of the EPA laboratory approval program are contained in the technical manual titled: "UCMR 3 Laboratory Approval Requirements and Information Document" (USEPA, 2010e). This document will be available on the electronic docket at: *http://www.regulations.gov* and will be provided to laboratories that register for the laboratory approval program. In addition, EPA may supply analytical reference standards of known concentrations for selected analytes to participating/approved laboratories, where such standards are not readily available through commercial sources.

Laboratory Approval Process for UCMR 3

The proposed UCMR 3 laboratory approval program is the same as that employed in previous UCMR cycles. It is designed to assess and confirm the capability of laboratories to perform analyses using the methods listed in § 141.40(a)(3), Table 1, of today's proposed rule. The UCMR 3 laboratory approval process is designed to assess whether laboratories meet the required equipment, laboratory performance, and data reporting criteria described in today's action. This evaluation program is voluntary in that it only applies to laboratories intending to analyze UCMR 3 samples. However, EPA would require systems to use UCMR 3 approved laboratories when conducting monitoring for those analytes listed in Table 1 of § 141.40(a)(3) of this proposed rule. A list of laboratories approved for UCMR 3 would be posted to EPA's UCMR Web site: *http://water.epa.gov/lawsregs/rulesregs/sdwa/ucmr/ucmr3/labs.cfm.* Laboratories are encouraged to apply for UCMR 3 approvals as early as possible, as schedules for large PWS sampling would be completed soon after the final rule is promulgated. The steps for the laboratory approval process are listed in the following paragraphs, a through f.

a. Request to Participate.

To request participation in the UCMR 3 laboratory approval process, the laboratory must contact EPA. Laboratories must send this request to: UCMR 3 Laboratory Approval Coordinator, USEPA, Technical Support Center, 26 West Martin Luther King Drive (MS 140), Cincinnati, OH 45268; or e-mail at: *UCMR_Sampling_Coordinator@epa.gov.* EPA plans to begin accepting requests for registration forms for the List 1 (Assessment Monitoring) methods beginning March 3, 2011. EPA anticipates that the final opportunity for a laboratory to request the necessary registration forms would be 90 days after final rule publication, though laboratories are encouraged to apply as early as is practical after the publication of today's proposed rule.

b. Registration.

Each laboratory that wishes to participate in UCMR 3 monitoring would be required to complete a registration form. EPA expects this registration information to include: Laboratory name; mailing address; shipping address; contact name; phone number; fax number; e-mail address; and a list of the UCMR 3 methods for which the laboratory is seeking approval. The purpose of the registration step is to provide EPA with the necessary contact information, and ensure that each laboratory receives a customized application package of materials and instructions for the methods that it plans to use.

c. Application Package.

When EPA receives the registration information, a customized application package would be sent to the laboratory for completion. Information requested in the application would include the following: Initial demonstration of capability data, including precision, accuracy, and results of MRL studies, information regarding analytical equipment, proof of current drinking water laboratory certification, and example chromatograms for each method under review.

The laboratory would be required to confirm that it will post UCMR 3 monitoring results (on behalf of its PWS clients) to EPA's UCMR electronic data reporting system.

d. EPA Review of Application Package.

EPA would review the application package and, if necessary, request follow-up information. Satisfactory completion of this portion of the process would be required for the laboratory to participate in the UCMR 3 Proficiency Testing (PT) program.

e. Proficiency Testing.

A PT sample is a synthetic sample containing a concentration of an analyte that is known to EPA, but unknown to the laboratory being tested. To complete the initial laboratory approval process, a laboratory would be expected to meet specific acceptance criteria for the analysis of a UCMR 3 PT sample(s) for each method for which the laboratory is seeking approval. EPA intends to offer up to four opportunities for a laboratory to successfully analyze the UCMR 3 PT samples. Up to three of these studies would be conducted prior to the publication of the final rule, but at least one study would be conducted after publication of the final rule. This would allow laboratories to complete their portion of the laboratory approval process prior to publication of the final rule, and therefore, receive their approval, immediately following the publication of the final rule, or to wait until the final rule is published before completing the required laboratory approval analyses. A laboratory only

needs to pass one of the PT studies for each analytical method for which they are requesting approval. Laboratories applying for UCMR 3 approval, and laboratories conducting UCMR 3 analyses, may be subject to on-site laboratory audits. No PT studies would be conducted after the start of monitoring; however, laboratory audits would be ongoing throughout the entire monitoring period of 2013–2015. Initial laboratory approval would be contingent upon successful completion of a PT study. Continued laboratory approval is contingent upon successful completion of audits.

f. Written EPA Approval.

After steps "a" through "e" of the PT approval process have been successfully completed, EPA would send the laboratory a letter listing the methods for which approval is pending (if the PT study and laboratory evaluation is conducted prior to promulgation of the final rule) or approval is granted (after promulgation of the final rule). Laboratories receiving a pending approval may then be approved without further action, following promulgation of the final rule, or they may need to take additional action, contingent upon what changes are applied to the rule between this proposal and promulgation of the final rule.

E. What are the new applicability considerations?

In section 141.40(a) of today's proposed rule changes, EPA is proposing a new applicability date for information in the SDWIS/Fed system inventory. As proposed, the determination of whether a PWS is required to monitor under UCMR 3 would be based on the type of system (*e.g.,* community water system, non-transient non-community water system, etc.), and its retail population served, as indicated by SDWIS/Fed on December 31, 2010.

In addition, EPA is proposing two changes to the applicability of UCMR 3 to PWSs. First, EPA proposes that applicability be based on retail population served. Whereas under UCMR 1 and 2 systems that purchased all of their water were not required to monitor; these systems would now be subject to UCMR monitoring requirements. Second, under UCMR 1 and 2, transient systems were exempt from monitoring. EPA's proposed changes would include transient systems in the universe from which EPA may select small PWSs for List 3 monitoring. Such systems would only be included in UCMR 3 List 3 monitoring if they are notified by EPA that they have been selected, and this monitoring would be done by EPA or its contractor. All other applicability criteria for UCMR 3 remain the same as those under UCMR 2.

1. Applicability Based on Population Served

Under UCMR 1, large PWSs were defined as those systems that served a population of more than 10,000 people and small PWSs were those that served 10,000 or fewer people. While this included the sum of the population served by the combined distribution system, this requirement was occasionally misunderstood. For UCMR 2, EPA clarified the population definition to include the sum of the retail population served directly by the PWS plus the population served by any consecutive system(s), receiving all or part of its finished water from that PWS. As established in the Stage 2 Disinfectants and Disinfection Byproducts Rule (68 FR 49548, August 18, 2003 (USEPA, 2003)), EPA defines a "consecutive system" as a PWS that buys or otherwise receives some or all of its finished water from one or more wholesale system(s). Under the population definition of UCMR 2, systems that purchased all of their water from other systems were not required to monitor. EPA is proposing a change in the definition of system population to include only a system's retail population. UCMR 3 requirements for systems would be based on their retail population served as reported to SDWIS/Fed as "Population Served" (*i.e.,* wholesale or consecutive populations are not included).

EPA is proposing that PWSs be required to monitor for UCMR 3 contaminants, regardless of whether they purchase any or all of their water from another system. The population definitions used for the previous UCMRs created an inconsistency for PWSs purchasing their water. If a PWS purchased all of their water, they were not required to monitor at all, and systems that had no retail connections did have to monitor. If a PWS purchased some of their water, they were required to monitor from their own sources as well as their purchased source. The new proposed definition would eliminate this inconsistency. It would also eliminate the requirements for systems with no retail connections to monitor. EPA is aware that PWSs that purchase water evaluate their supply needs and associated costs, and may make adjustments during the UCMR monitoring period. They have been known to change wholesale suppliers or switch sources that they can directly access and treat for their retail customers. The dynamic nature of wholesale water supply is prompting EPA to propose and solicit stakeholder comment on establishing retail population as a clearer measure for determining applicability of the UCMR 3 requirements. Retail population is a consistent factor for applicability determination and evaluating the direct sources (all entry points including wholesale connections) would improve data quality by directly assessing the drinking water served to the respective retail population. It is also difficult to accurately determine the total population served by each source of water. For example, if PWS "A" buys all of its water from three different PWSs ("B, C, D"), it is unclear how to divide PWS A's retail population among the three PWSs to determine the wholesale populations for systems B, C, and D. Under the previous UCMR specifications, the total population of all systems was added together, which could lead to overestimating the population served by each source of water.

Moreover, a system's population is used to determine exposure estimates. Because the retail population comprises all of the people exposed to water from a particular system, EPA would have a clearer understanding of the number of people exposed to a detected contaminant. The proposed change to the definition of population would allow EPA to better estimate the total population served by a water system and ensures that exposure calculations are more accurate.

PWSs are required to report their retail population to the Safe Drinking Water Information System-Federal (SDWIS/Fed), so this population is readily accessible to EPA when determining which systems are required to monitor for the UCMR 3. Using a system's retail population would also make the list of PWSs subject to UCMR more stable over the UCMR 3 monitoring period, and eliminate another inconsistency in previous UCMRs. In past UCMRs, if a PWS began purchasing all of their water after the applicability date, the PWS would still have to monitor under UCMR. If, however, a system began using its own water sources after the UCMR applicability date, the system would not be required to begin monitoring under UCMR. Using a system's retail population to determine whether a system is subject to UCMR requirements would eliminate this disparity.

Note that systems that purchase water with multiple connections from the same wholesaler would be permitted to propose one representative connection

from that wholesaler. PWSs would choose a sampling location from among the higher annual volume EPTDS connections. If the connection selected as the representative EPTDS was not available for sampling, an alternate representative connection would need to be sampled.

2. Applicability for Transient Systems

Under UCMR 1 and 2, Section 141.40(a)(1), transient non-community water systems were specifically exempted from UCMR monitoring. EPA is proposing revisions that would allow for certain transient systems to be selected for Pre-Screen Testing for List 3 contaminants. Under UCMR 3, EPA is proposing to conduct Pre-Screen Testing for enterovirus and norovirus and related pathogen indicators at targeted undisinfected ground water systems that serve 1,000 or fewer customers. EPA is proposing to include transient systems among the possible targeted systems—and to focus on viruses and not chemicals at those systems—since viruses are acute pathogens and exposure through a one-time ingestion (*e.g.,* at a transient system) is of potential health concern. EPA requests comments regarding the inclusion of transient systems in UCMR 3 Pre-Screen Testing.

As proposed under 141.40(a)(1) and 141.40(a)(2)(ii)(C), if any system (including transient systems) is notified by EPA or their state that they have been selected for Pre-Screen Testing the system must permit EPA (at EPA's expense) to sample and analyze for List 3 contaminants, and pathogen indicators, such as total coliform, *E. coli,* bacteriophage, *Enterococci,* and aerobic spores.

F. UCMR 3 Sampling Design and Reporting Considerations

As proposed, PWSs and EPA would conduct sampling and analysis for List 1 and List 3 contaminants at each PWS during a 12 month period within the 2013 to 2015 timeframe. Preparation would begin prior to 2013 and would include coordination of laboratory approval, selection of representative samples of small systems, development of State Monitoring Plans, establishment of monitoring schedules, and notification of participating PWSs. As proposed, UCMR 3 would not include a Screening Survey for List 2 contaminants. Exhibit 4 illustrates the major activities that would take place in preparation for and during implementation of UCMR 3.

Exhibit 4: Proposed Timeline of UCMR 3 Activities

2012	2013	2014	2015	2016
After proposed rule publication: EPA lab approval program begins *After final rule publication:* (1) EPA/State primacy authorities (PAs) and State monitoring plans developed (including national representative sample, and ground water systems for List 3);(2) Inform PWSs/ establish monitoring plans	**Assessment Monitoring** List 1 Contaminants *All systems serving more than 10,000; 800 systems serving 10,000 or fewer* **Pre-Screen Testing** List 3 Contaminants *800 non-disinfecting ground water wells from systems serving 1,000 or fewer*			Complete reporting and analysis of data

To minimize the impact of the rule on small systems (those serving 10,000 or fewer people), EPA would pay for the sample kit preparation, sample shipping fees, and analysis costs for these systems. In addition, no small system would be required to monitor for both List 1 and List 3 contaminants. Large systems (those serving more than 10,000 people) would pay for the cost of shipping and laboratory testing.

1. UCMR 3 Reporting Considerations

EPA is proposing a few notable changes to reporting requirements based on lessons learned from UCMR 1 and UCMR 2, as well as some necessary changes related to new UCMR 3 analytes.

Demonstrating Representative Ground Water Sampling Locations: As established under UCMR 2, large systems that use ground water sources and have multiple EPTDSs can, with prior approval, conduct monitoring at representative entry point(s) rather than

at each EPTDS. To monitor at representative EPTDSs, large systems must meet the reporting criteria specified in § 141.35(c)(3)(ii), and receive approval from EPA or the State. Today's proposed changes to the rule language clarify that when identifying a representative well, the well must be one of the higher annual volume producing and consistently active wells. In addition, should this location go off-line, an alternative location must be sampled.

Reporting Schedule: As under previous UCMR cycles, large systems would be responsible for reviewing, approving, and submitting (i.e., "reporting") monitoring results to EPA. To help ensure that monitoring and reporting is conducted as scheduled, EPA is proposing that systems must require their laboratories to post data to the EPA's electronic data reporting system—Safe Drinking Water Accession and Review System—within 60 days of sample collection; and that large systems must review, approve, and submit the data to the State and EPA within 30 days of when the laboratory posts the data. These time frames are specified in 141.35(c)(6)(ii) and 141.40(a)(5)(vi) and compare to 120 days, and 60 days, (respectively) that were allowed under UCMR 1 and 2. With the previous turn-around times, it was sometimes difficult to ensure compliance with established monitoring schedules; these new turnaround times would reduce the chance of scheduled monitoring being missed or delayed. If systems do not electronically approve the laboratory data within 30 days of the laboratory's posting to EPA's electronic reporting system, the data would be considered approved for EPA and State review. EPA and the State would conduct its quality control reviews of the data after the system reports the data. States would also be given at least 60 days for their quality control review. After the EPA and State quality control review, EPA would place the data in the NCOD at the time of the next database update, typically three to four times per year. EPA requests comment on these shortened reporting timeframes.

Changes to Data Elements and their Reporting: EPA is proposing two changes to the data elements listed in Table 1 of 141.35(e). In addition, EPA is proposing a related change that would require systems to report all data elements with each sample.

- Adding zip code, optional zip code extension, and zip codes served to Data Element 4—Sampling Point Identification Code: This additional location information is being requested related to sampling points because current information identifying the location of sampling points is limited. Zip code of the sampling point would assist with future vulnerability assessments. Zip codes tying the populations served to each sampling point would assist with future occurrence and exposure analyses.
- Clarifying and updating the definition of Data Element 6—Disinfectant Type: Under UCMR 2, Data Element 6 was established to provide information on "Disinfectant Residual Type" as it related to distribution system monitoring for nitrosamines (part of Screening Survey monitoring). EPA is proposing modification to the definition of this data element to account for changes to the analyte and monitoring specifications between UCMR 2 and UCMR 3. This revised definition lists additional disinfectant types to accommodate recent advances and changes to disinfectant technologies being used by water systems, and it provides that this data element be reported with all sample results.
- Reporting all data elements with each sample: Under UCMR 2 Assessment Monitoring, systems were required to report data elements 1 through 5 and 7 through 15. Data Element 6 (Disinfectant Residual Type) was only reported as required by systems subject to the List 2 Screening Survey monitoring of nitrosamines in distribution systems. EPA is proposing revisions to UCMR that would require systems to report all data elements with each sample (including Data Element 6 (Disinfectant Type)) since Assessment Monitoring within the distribution system is proposed and since the information on disinfectant type would be useful in the Agency's evaluation of results for chlorate and the metals on List 1—Assessment Monitoring and confirming no disinfection is applied at systems subject to List 3—Pre-Screen Testing.

2. Assessment Monitoring

As proposed, Assessment Monitoring for List 1 contaminants would be conducted from January 1, 2013 through December 31, 2015 by all large systems (those systems serving more than 10,000 people), and by a nationally representative sample of 800 small systems (those serving 10,000 people or fewer). Other than these new monitoring dates, there are no other changes to the schedule and frequency of Assessment Monitoring between UCMR 2 and UCMR 3. Small systems would be selected using the same type of stratified, random selection process as used in previous UCMRs. Samples would be collected from the entry point to the distribution systems (EPTDSs). Large ground water systems with multiple EPTDSs would be permitted to sample at representative sampling locations for each ground water source if those sites have been approved by EPA or the State. In addition to EPTDS monitoring, the four metals—cobalt, molybdenum, vanadium, and strontium—as well as chlorate, would be sampled at one distribution system sampling point per treatment plant (*i.e.,* at the distribution system maximum residence time (DSMRT)). If the system's treatment plant/water source is subject to sampling requirements under § 141.132(b)(1) (the Stage 2 Disinfectants and Disinfection Byproducts Rule), samples for the metals and chlorate must be collected at the DSMRT sampling location(s) identified for that rule. If a treatment plant/water source is not subject to the sampling required in 40 CFR 141.132(b)(1), then the distribution system samples must be collected at a location that, in the judgment of the PWS, represents the maximum residence time in the distribution system.

Chlorate is being monitored at both the EPTDS and the DSMRT to determine the magnitude of chorate increases in the distribution system. The metals are monitored at both locations to assess any potential contribution from the distribution system. EPA is requesting comment on DSMRT sampling for the metals and chlorate.

As under previous UCMR cycles, samples at ground water locations would be collected twice during a designated consecutive 12-month period. Samples at locations that are fed in whole or part by a surface water or ground water under the direct influence of surface water (GWUDI) source would be collected quarterly during a designated consecutive 12-month period. Large system schedules (year and months of monitoring) would initially be determined by EPA in conjunction with the States (as described in section III.G. of today's action) and these systems would have an opportunity to modify this schedule. In today's proposed action, EPA has incorporated clarifying revisions in 141.40(a)(4)(i)(B) to specify that large system monitoring schedules must be adjusted based on sample point availability. If it is not possible for a system to meet its specified sampling schedule (if, for instance, a particular sampling point is inactive during the scheduled sampling timeframe), the system must notify EPA to reschedule their sampling. As under previous UCMR cycles, the Agency would continue to schedule and coordinate

small system monitoring, working closely with partnering States. State monitoring plans would provide a venue for States to review and revise the initial sampling schedules that EPA proposes (*see* discussion of State monitoring plans in section III.G. of today's action: "What is the States' Role in the UCMR Program?"). The 28 proposed List 1 contaminants to be monitored under Assessment Monitoring are listed in Exhibit 3, in section III.B of today's action.

3. Pre-Screen Testing

As proposed, sampling under the Pre-Screen Testing for List 3 contaminants would be conducted from January 1, 2013 through December 31, 2015 by a targeted sample of 800 PWSs serving 1,000 or fewer people. Sampling would occur twice during a designated consecutive 12-month period at each PWS.

EPA proposes to monitor for enterovirus and norovirus (as well as associated pathogen indicators) in UCMR 3. Both enterovirus and norovirus are listed on CCL3. EPA proposes to perform this monitoring under Pre-Screen Testing at 800 targeted undisinfected ground water wells from systems serving 1,000 or fewer customers that include CWSs, NTNCWSs and transient non-community water systems. This monitoring is proposed for systems that serve 1,000 or fewer customers because these smaller systems are the least likely to be disinfected, and therefore, would be most vulnerable to contamination with viruses. The wells would be selected from vulnerable areas such as karst or fractured bedrock. Monitoring would also include sampling for pathogen indicators such as total coliforms, *E. coli,* bacteriophage, *Enterococci,* and aerobic spores. The objectives of this monitoring are: (1) To obtain occurrence information to support regulatory determinations for enterovirus and norovirus; (2) to gain a better understanding of pathogen indicator and viral co-occurrence; and, (3) to gain more exposure/health risk information on viruses and indicators.

A summary of the estimated number of systems to monitor under each UCMR 3 component is listed in Exhibit 5.

EXHIBIT 5—SYSTEMS TO PARTICIPATE IN UCMR 3 MONITORING

System size (number of people served)	Assessment monitoring for 28 List 1 chemicals	Pre-screen testing for two List 3 microbials [1]	Total [2]
	National sample		
Small Systems			
25–10,000	800 randomly selected systems	800 selected undisinfected ground water wells from systems serving 1,000 or fewer.	1,600
Large Systems [3]			
10,001 and over	All (4,200)	0	4,200
Total	5,000	800	5,800

[1] Sampling for List 3 contaminants to be conducted at 800 undisinfected wells, located in karst or fractured bedrock, in systems serving 1,000 or fewer customers. Monitoring also includes sampling for pathogen indicators: Total coliforms, *E. coli,* bacteriophage, *Enterococci* and aerobic spores. EPA would pay for all sampling and analysis costs associated with virus and pathogen indicator monitoring at these small systems.

[2] Total for small systems is additive because these systems would only be selected for one component of UCMR 3 sampling. Number is approximate.

[3] Large system counts are approximate.

G. What is the States' role in the UCMR program?

Under UCMR 1 and UCMR 2, EPA described implementation and oversight activities that States could agree to through a Partnership Agreement (PA) process. Because the UCMR is a direct implementation rule, State participation is voluntary. Under UCMR 1, specific activities for individual States were identified in the rule language. Beginning with UCMR 2, specific activities for individual States are identified and established exclusively through the PAs, not through rule language. UCMR 3 would maintain this previously established process for UCMR 2.

In compliance with SDWA section 1445(a)(2)(C)(i), the UCMR program provides a role for States in developing a representative monitoring plan for small systems. This is important because States/primacy agencies most often have the best information about PWSs in their State. Through PAs, States can help EPA implement the UCMR program and help ensure that the UCMR data used for future regulatory determinations are of the highest quality possible. EPA would continue to use the previously established PA structure during implementation of UCMR 3 to address the following: The process for review and revision of the state monitoring plans; replacing and updating system information; modifying timing for monitoring, review and approval of proposed representative EPTDS; notification and instructions for systems; and compliance assistance.

As established under UCMR 1 and 2, state monitoring plans include tabular listings of the systems that EPA selected to conduct monitoring and the EPA proposed date on which they are to be sampled. Initial state monitoring plans also include instructions to States for revising and/or correcting the state monitoring plans, including modifications to sampling schedules for small systems. EPA incorporates revisions from States, and returns the final state monitoring plans to each State.

IV. Cost of This Proposed Action

In today's action, EPA proposes a new set of contaminants for monitoring in the third five-year UCMR monitoring cycle. In addition, UCMR 3 incorporates modifications to improve the rule design. UCMR 3 Assessment Monitoring (for List 1 contaminants) would be conducted from January 2013 through December 2015 by 800 systems serving 10,000 or fewer people, and by all systems serving more than 10,000 people. Eight hundred small systems would be randomly selected for List 1 monitoring. The Pre-Screen Testing for List 3 contaminants would also be conducted from January 2013 through December 2015 in 800 undisinfected ground water wells from systems serving 1,000 or fewer persons. It is assumed for this cost estimation that one-third of systems would monitor

during each of the three monitoring years.

Labor costs pertain to systems, States, and EPA. They include activities such as reading the regulation, notifying systems selected to participate, sample collection, data review, reporting, and recordkeeping. Non-labor costs would be incurred primarily by EPA and by large PWSs. They include the cost of shipping samples to laboratories for testing and the cost of the actual laboratory analyses.

In today's action, EPA proposes six EPA developed analytical methods and four equivalent consensus organization developed methods to monitor for 28 new UCMR 3 chemical contaminants. While the preamble to this proposed rule also describes the analytical methods that would be used for the proposed virus monitoring, the proposal does not address these methods. Laboratory approval for virus monitoring is not expected to be necessary since all of the analyses for the two viruses are expected to be conducted in laboratories under EPA contract and at EPA's expense. However, estimated system and EPA costs are based on the analytical costs for all UCMR 3 methods. With the exception of Methods 200.8 and 300.1, these methods are comparatively new and would not coincide with other compliance monitoring (*i.e.,* no cost savings for coincident monitoring can be realized). Laboratory analysis and shipping of samples account for approximately 86% of the total national cost for UCMR 3 implementation. These costs are calculated as follows: The number of systems, multiplied by the number of sampling locations, multiplied by the sampling frequency, multiplied by the unit cost of laboratory analysis. Under UCMR 3, for List 1 Assessment Monitoring, surface water (and GWUDI) sampling points would be monitored four times during the applicable year of monitoring, and ground water sample points would be monitored twice during the applicable year of monitoring. Systems would monitor for the four metals—cobalt, molybdenum, vanadium, and strontium—as well as chlorate, at their EPTDS sampling locations and at one distribution system sampling point per treatment plant (*i.e.,* at the DSMRT). Pre-Screen Testing systems would monitor two times during the three-year monitoring period (2013 through 2015) at their EPTDS. EPA estimates of laboratory fees are based on consultations with national drinking water laboratories and a review of the costs of analytical methods similar to those proposed in today's action. The cost of the Assessment Monitoring analysis for the UCMR 3 chemicals is estimated at $1,320 per sample set (at the EPTDS); the cost of the Pre-Screen analyses for viruses and related pathogen indicators (*i.e.,* total coliform, *E. coli,* bacteriophage, *Enterococci,* and aerobic spores) is estimated at $1,650 per sample set. Shipping estimates are added to the calculated costs to derive the total direct analytical non-labor costs. Estimated shipping costs were based on the average cost of shipping a 25-pound package.

In preparing the UCMR 3 information collection request (ICR), EPA relied on standard assumptions and data sources used in the preparation of other drinking water program ICRs. These include the PWS inventory, number of sampling points per system, and labor rates. EPA expects that States would incur only labor costs associated with voluntary assistance with UCMR 3 implementation. State costs were estimated using the relevant modules of the State Resource Model that was developed by the Association of State Drinking Water Administrators (ASDWA) in conjunction with EPA (ASDWA, 2003) to help States forecast resource needs. Model estimates were adjusted to account for actual levels of State participation under UCMR 2. Because State participation would be voluntary, level of effort would vary across States and depend on their individual agreements with EPA.

Over the UCMR implementation period of 2012–2016, EPA estimates that nationwide, the average annual cost of UCMR 3 is approximately $14.9 million. These total estimated annual costs (labor and non-labor) are incurred as follows:

Respondent	Average annual cost (all respondents (2012–16))
Small Systems (25–10,000), including labor only, non-labor costs paid for by EPA	$0.049 m
Large Systems (10,001–100,000), including labor and non-labor costs	8.75 m
Very Large Systems (100,001 and greater), including labor and non-labor costs	2.1 m
States, including labor costs related to implementation coordination	0.75 m
EPA, including labor for implementation, non-labor for small system testing	3.3 m
Average Annual National Total	14.949 m

Additional details regarding EPA's cost assumptions and estimates can be found in the ICR Number 2192.04 amendment prepared for this proposed rule (Office of Management and Budget (OMB) number 2040—NEW), which presents estimated cost and burden for the 2012–2014 period. Estimates of costs over the entire third five-year UCMR cycle of 2012–2016 are attached as an appendix to the ICR. Copies of the ICR and its amendment may be obtained from the EPA public docket for this proposed rule, which includes this ICR, under Docket ID Number OW–2004–0001.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs associated with this action. This analysis is briefly summarized in section IV of the preamble of this proposed rule.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2192.04.

The information to be collected under today's proposed rule fulfills the statutory requirements of section 1445(a)(2) of SDWA, as amended in 1996. The data to be collected would

describe the source of the water, location, and test results for samples taken from PWSs. The concentrations of any identified UCMR contaminants would be evaluated regarding health effects and would be considered for future regulation accordingly. Reporting is mandatory. The data are not subject to confidentiality protection.

The annual burden and cost estimates described in this section are for the implementation assumptions described in section IV. Cost and Benefits of the Rule, in today's proposed action. Respondents to the UCMR 3 would include 1,600 small water systems (800 for Assessment Monitoring, and 800 wells for Pre-Screen Testing), the 4,191 large PWSs, and the 56 States and Primacy agencies (5,047 total respondents). The frequency of response varies across respondents and years. System costs (particularly laboratory analytical costs) vary depending on the number of sampling locations. For cost estimations, it is assumed that systems would conduct sampling evenly across January 2013 through December 2015 (*i.e.,* one-third of systems in each of the 3 consecutive 12-month periods). Because the applicable ICR period is 2012–2014, there is one year of monitoring activity (*i.e.,* January through December of 2015) that is not captured in the ICR estimates.

Small systems (those serving 10,000 or fewer) that are selected for UCMR 3 monitoring would sample an average of 1.5 times per system (*i.e.,* number of responses per system) across the three-year ICR period of 2012–2014. The average burden per response for small systems is estimated to be 3.0 hours. Large systems (those serving 10,001 to 100,000 people) and very large systems (those serving more than 100,000 people) would sample and report an average of 2.7 and 3.7 times per system, respectively, across the three-year ICR period of 2012–2014. The average burden per response for large and very large systems is estimated to be 6.1 and 6.3 hours, respectively. States are assumed to have an average of 1.0 response per year, related to coordination with EPA and systems, with an average burden per response of 184 hours. In aggregate, during the ICR period of 2012–2014, the average response (*e.g.,* responses from systems and States) is associated with a burden of 8.3 hours, with a labor plus non-labor cost of $2,714 per response.

The annual average per respondent burden hours and costs for the ICR period of 2012–2014 are: small systems—1.5 hour burden at $34 for labor; large systems—5.5 hours at $170 for labor, and $2,381 for analytical costs; very large systems—7.7 hours at $295 for labor, and $5,460 for analytical costs; and States—233.4 hours at $13,992 for labor. Annual average burden and cost per respondent (including both systems and States) is estimated to be 8.3 hours, with a labor plus non-labor cost of $1,985 per respondent (note that small systems do not pay for testing costs, and thus only incur labor costs). Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OW–2009–0090. Submit any comments related to the ICR to EPA and OMB. *See* **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after March 3, 2011, a comment to OMB is best assured of having its full effect if OMB receives it by April 4, 2011. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. Small entities are defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." However, the RFA also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment (5 U.S.C. 601(3)–(5)). In addition, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's proposed rule on small entities, EPA considered small entities to be PWSs serving 10,000 or fewer people, because this is the system size specified in SDWA as requiring special consideration with respect to small system flexibility. As required by the RFA, EPA proposed using this alternative definition in the **Federal Register**, (63 FR 7606, February 13, 1998 (USEPA, 1998a)), requested public comment, consulted with the SBA, and finalized the alternative definition in the Consumer Confidence Reports rulemaking, (63 FR 44512, August 19, 1998 (USEPA, 1998b)). As stated in that Final Rule, the alternative definition would be applied to future drinking water regulations, including this regulation.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are PWSs serving 10,000 or fewer people. EPA has determined that the small entities subject to the requirements of this proposed rule are a subset of the small PWSs (those serving 10,000 or fewer people). The Agency has determined that 1,600 small PWSs (across Assessment Monitoring and Pre-Screen Testing), or approximately 3% of small systems, would experience an impact of less than 0.4% of revenues; the remainder of small systems would not be impacted.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. To ensure that this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA will assume all costs for analyses of the samples and for shipping the samples from these systems to the laboratories contracted by EPA to analyze UCMR 3 samples. EPA has set

aside $2.0 million each year from the State Revolving Fund (SRF) with its authority to use SRF monies for the purposes of implementing this provision of SDWA. Thus, the costs to these small systems will be limited to the labor hours associated with collecting a sample and preparing it for shipping.

The Agency continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

The evaluation of the overall impact on small systems, summarized in the preceding discussion, is further described as follows. EPA analyzed the impacts for privately-owned and publicly-owned water systems separately, due to the different economic characteristics of these ownership types, such as different rate structures and profit goals. However, for both publicly- and privately-owned systems, EPA used the "revenue test," which compares annual system costs attributed to the rule to the system's annual revenues. Median revenue data from the not yet published 2006 Community Water System Survey were used for public and private water systems. EPA assumes that the distribution of the sample of participating small systems will reflect the proportions of publicly- and privately-owned systems in the national inventory. The estimated distribution of the representative sample, categorized by ownership type, source water, and system size, is presented in Exhibit 6.

EXHIBIT 6—NUMBER OF PUBLICLY- AND PRIVATELY-OWNED SMALL SYSTEMS SUBJECT TO UCMR 3

System size (number of people served)	Publicly-owned	Privately-owned	Total
Ground Water			
500 and under	126	378	504
501 to 3,300	477	182	659
3,301 to 10,000	207	48	255
Subtotal GW	*810*	*608*	*1,418*
Surface Water (and GWUDI)			
500 and under	2	3	5
501 to 3,300	35	13	48
3,301 to 10,000	100	29	129
Subtotal SW	*137*	*45*	*182*
Total of Small Water Systems	*947*	*653*	*1,600*

The basis for the UCMR 3 RFA certification for this proposed rule is as follows: for the 1,600 small water systems that would be affected, the average annual costs for complying with this rule represent less than 0.4% of system revenues (the highest estimated percentage is for ground water systems serving 500 or fewer people, at 0.38% of its median revenue). Exhibit 7 presents the yearly costs to small systems, and to EPA for the small system sampling program, along with an illustration of system participation for each year of the UCMR 3 program.

EXHIBIT 7—EPA AND SYSTEMS COSTS FOR IMPLEMENTATION OF UCMR 3 AT SMALL SYSTEMS

Cost description	*2012*	*2013*	*2014*	*2015*	*2016*	*Total*
Costs to EPA for Small System Program (including Assessment Monitoring, and Pre-Screen Testing)						
	$0	$3,943,827	$3,943,827	$3,943,827	$0	$11,831,481
Costs to Small Systems (including Assessment Monitoring, and Pre-Screen Testing):						
	$0	$81,707	$81,707	$81,707	$0	$245,121
Total Costs to EPA and Small Systems for UCMR 2:						
	$0	$4,025,533	$4,025,533	$4,025,533	$0	$12,076,599
System Monitoring Activity Timeline:[1]						
Assessment Monitoring.		1/3 PWSs Sample	1/3 PWSs Sample	1/3 PWSs Sample		800
Pre-Screen Testing.		1/3 PWSs Sample	1/3 PWSs Sample	1/3 PWSs Sample		800

[1] Total number of systems is 1,600. No small system conducts more than one type of monitoring study.

System costs are attributed to the labor required for reading about their requirements, monitoring, reporting, and record keeping. The estimated average annual burden across the five-year UCMR 3 implementation period of 2012–2016 is estimated to be 1.3 hours at $31 per small system. Average annual cost, in all cases, is less than 0.4% of

system revenues. As required by the SDWA, the Agency specifically structured the rule to avoid significantly affecting small entities by assuming all costs for laboratory analyses, shipping, and quality control for small entities. As a result, EPA incurs the entirety of the non-labor costs associated with UCMR 3 small system monitoring, or 98% of total small system testing costs. Exhibits 8 and 9 present the estimated economic impacts in the form of a revenue test for publicly- and privately-owned systems.

EXHIBIT 8—UCMR 3 RELATIVE COST ANALYSIS FOR SMALL PUBLICLY-OWNED SYSTEMS (2012–2016)

System size (number of people served)	Annual number of systems impacted	Average annual hours per system (2012–2016)	Average annual cost per system (2012–2016)	Revenue test [1] (percent)
Ground Water Systems				
500 and under	25	1.1	$22.63	0.07
501 to 3,300	96	1.2	26.84	0.02
3,301 to 10,000	41	1.7	43.71	0.01
Surface Water (and GWUDI) Systems				
500 and under	1	1.8	38.06	0.07
501 to 3,300	7	1.9	41.99	0.02
3,301 to 10,000	20	2.0	51.02	0.005

[1] The Revenue Test was used to evaluate the economic impact of an information collection on small government entities (e.g., publicly-owned systems); costs are presented as a percentage of median annual revenue in each size category.

EXHIBIT 9—UCMR 3 RELATIVE COST ANALYSIS FOR SMALL PRIVATELY-OWNED SYSTEMS (2012–2016)

System size (number of people served)	Annual number of systems impacted	Average annual hours per system (2012–2016)	Average annual cost per system (2012–2016)	Revenue test [1] (percent)
Ground Water Systems				
500 and under	76	1.1	$22.63	0.38
501 to 3,300	36	1.2	26.84	0.02
3,301 to 10,000	10	1.7	43.71	0.004
Surface Water (and GWUDI) Systems				
500 and under	1	1.8	38.06	0.11
501 to 3,300	3	1.9	41.99	0.02
3,301 to 10,000	6	2.0	51.02	0.005

[1] The "Revenue Test" was used to evaluate the economic impact of an information collection on small private entities (e.g., privately-owned systems); costs are presented as a percentage of median annual revenue in each size category.

The Agency continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Total annual costs of today's proposed rule (across the implementation period of 2012–2016), for State, local, and Tribal governments and the private sector, are estimated to be $14.9 million, of which EPA would pay $3.3 million, or approximately 22%. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency expects to pay for the reasonable costs of sample analysis for the small PWSs required to monitor for unregulated contaminants under this proposed rule, including those owned and operated by small governments. The only costs that small systems would incur are those attributed to collecting the UCMR samples and packing them for shipping to the laboratory (EPA would pay for shipping). These costs are minimal. They are not significant or unique. Thus, today's rule is not subject to the requirements of UMRA section 203.

E. Executive Order 13132: Federalism

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. The cost to State and local governments is minimal, and the rule does not preempt State law. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on the proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the

funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with Tribal officials early in the process of developing the proposed regulation and develops a Tribal summary impact statement.

EPA has concluded that this action will have Tribal implications. However, it will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law. As described previously, this proposed rule requires monitoring by all large systems (*i.e.,* those serving more than 10,000 people); 17 Tribal water systems have been identified as large systems based on information in the SDWIS/Fed water system inventory. EPA estimates the average annual cost to each of these large systems, over the five-year rule period, to be less than $2,381. This cost is based on a labor component (associated with the collection of samples) and a non-labor component (associated with shipping and laboratory fees) and represents less than 0.126% of average revenue/sales for large systems. UCMR also requires monitoring by a nationally representative sample of small systems (*i.e.,* those serving 10,000 or fewer people). EPA estimates that approximately one percent of small Tribal systems will be selected as a nationally representative sample for Assessment Monitoring. EPA estimates the average annual cost over the five-year rule period to be $34. Such cost is based on the labor associated with collecting a sample and preparing it for shipping and represents less than 0.4% of average revenue/sales for small systems. All other small-system expenses (associated with shipping and laboratory fees) are paid by EPA.

EPA consulted with Tribal officials early in the process of developing the UCMR program to permit them to have meaningful and timely input into its development. In developing the original UCMR rule, EPA held stakeholder meetings and prepared background information for stakeholder review. EPA sent requests for review of stakeholder documents to nearly 400 Tribes, Tribal organizations, and small systems organizations to obtain their input. Representatives from the Indian Health Service (IHS) Sanitary Deficiency System and Tribes were consulted regarding decisions on rule design, the design for the statistical selection of small systems, and potential costs. Tribes raised issues concerning the selection of the nationally representative sample of small systems, particularly the manner in which Tribal systems would be considered under the sample selection process. EPA developed the sample frame for Tribal systems and Alaska Native water systems in response to those concerns. EPA worked with the Tribes, Alaska Natives, the IHS, and the States to determine how to classify each Tribal system for consideration in the statistically-based selection of the nationally representative sample of small systems. As a result of those discussions, small PWSs located in Indian country in each of the EPA Regions containing Indian country were evaluated as part of a Tribal category that receives selection consideration comparable to that of small systems outside of Indian country. Thus, Tribal systems have the same probability of being selected as other water systems in the stratified selection process that weighs systems by water source and size class by population served. Today's proposed rule, addressing the third UCMR period, maintains the basic program design of UCMR 1 and 2, and continues to build upon the structure of this cyclical program. As part of the development of this proposed rule, EPA held a public stakeholder meeting on April 7, 2010. This meeting was announced to the public in a **Federal Register** notice dated February 23, 2010 (75 FR 8063 (USEPA, 2010a)). Prior to the meeting, background materials and rule development information were sent to specific stakeholders, including representatives from the Indian Health Service and the Native American Water Association.

EPA specifically solicits additional comment on this proposed action from tribal officials.

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

This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks and it is not an economically significant regulation pursuant to EO 12866.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. None of the proposed UCMR requirements involve actions that use a measurable amount of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. EPA proposes to use the methods developed by the Agency for the analysis of UCMR 3 contaminants. The Agency conducted a search of potentially applicable voluntary consensus standards and identified three major voluntary consensus method organizations whose methods might be acceptable for determinations under Unregulated Contaminant Monitoring. These organizations are Standard Methods, Association of Analytical Communities International, and American Society for Testing and Materials. For the majority of the parameters included in this proposed action, EPA was unable to identify methods from voluntary consensus method organizations that were applicable to the monitoring required. However, EPA identified acceptable consensus method organization standards for the analysis of vanadium, molybdenum, cobalt, strontium and chlorate. Therefore, EPA is proposing analytical methods published by EPA, Standard Methods, and American Society for Testing and Materials for these analytes.

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.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent

practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. By seeking to identify unregulated contaminants that may pose health risks via drinking water from all PWSs, UCMR furthers the protection of public health for all citizens, including minority and low-income populations using public water supplies. UCMR uses a statistically-derived set of systems for the nationally representative sample that is population-weighted within each system size and source water category so that any PWS within a category has an equivalent likelihood of selection. Additionally, EPA is proposing to require additional reporting elements that include U.S. Postal Service Zip Codes for both the finished water entry point(s) and the PWS's service area. EPA is soliciting comment on additional actions the Agency could take to further address environmental justice within the UCMR program. EPA requests stakeholder input on additional reporting elements to consider to support the Agency's assessment of the monitoring results. EPA also requests comments regarding sampling and/or modeling approaches, and the feasibility and utility of applying these approaches, to determine disproportionate impacts on drinking water quality at PWSs serving minority and low-income populations.

VI. Public Involvement in Regulation Development

EPA's Office of Ground Water and Drinking Water has developed a process for stakeholder involvement in its regulatory activities for the purpose of providing early input to regulation development. When designing and developing the UCMR program, in the late 1990s, EPA held meetings for developing the CCL, establishing the information requirements of the NCOD, and selecting priority contaminants for monitoring. During the initial development of the UCMR program, stakeholders, including PWSs, States, industry, and other organizations attended meetings to discuss the UCMR. Seventeen other meetings were held specifically concerning UCMR development. For a description of public involvement activities related to the first UCMR (UCMR 1), please see the discussion in the September 17, 1999 UCMR Final Rule **Federal Register** at 64 FR 50556 (USEPA, 1999).

Specific to the development of UCMR 3, a stakeholder meeting was held on April 7, 2010, in Washington, DC. There were 22 attendees, representing State agencies, laboratories, PWSs, environmental groups, and drinking water associations. The topics of presentations and discussions included: Status of UCMR 2; rationale for developing a new list of potential contaminants; analytical methods that could be used in measuring these contaminants; sampling design; procedure for determining LCMRLs; laboratory approval; and other potential revisions based on lessons learned during implementation of UCMR 1 and UCMR 2 (see USEPA, 2010f for presentation materials, and 2010g for meeting notes).

EPA has established a public docket for this rule, under Docket ID No. OW–2009–0090. EPA is soliciting comments on this proposed regulation. Please see the summary section at the beginning of this notice for instructions on submitting comments.

VII. References

Ando, T., S.S. Monroe, J.R. Gentsch, Q. Jin, D.C. Lewis, and R.I. Glass. 1995. Detection and differentiation of antigenically distinct small round-structured viruses (Norwalk-like viruses) by reverse transcription-PCR and southern hybridization. *Journal of Clinical Microbiology*. 33(1):64–71.

Association of State Drinking Water Administrators (ASDWA). 2003. *Public Health Protection Threatened by Inadequate Resources for State Drinking Water Programs—An Analysis of State Drinking Water Programs Resources, Needs, and Barriers*. April 2003.

ASTM D5673–10. 2010. *Standard Test Method for Elements in Water by Inductively Coupled Plasma-Mass Spectrometry*. Available for purchase on the Internet at *http://www.astm.org/Standards/D5673.htm*.

ASTM D6581–08. 2008. *Standard Test Methods for Bromate, Bromide, Chlorate, and Chlorite in Drinking Water by Suppressed Ion Chromatography*. Available for purchase on the Internet at *http://www.astm.org/Standards/D6581.htm*.

Borchardt, M.A. 2008. *Wisconsin Water And Health Trial for Enteric Risks (WAHTER Study)—Part 1: Risk of Illness from Municipal Groundwater Consumption*. EPA Office of Water Symposium on Groundwater-Borne Infectious Disease, Etiologic Agents and Indicators, Washington, DC, December 2–4, 2008.

De Leon, R., C. Shieh, R.S. Baric, and M.D. Sobsey. 1990. *Detection of enteroviruses and hepatitis A virus in environmental samples by gene probes and polymerase chain reaction*. P. 833–835. In Advances of Water Analysis and Treatment Proceedings 1989. Water Quality Technology Conference, American Water Works Association, Denver, CO. American Water Works Association, San Diego, CA.

Francy, D.S., R.N. Bushon, J. Stopar, E.J. Luzano, and G.S. Fout. 2004. *Environmental Factors and Chemical and Microbiological Water-Quality Constituents Related to the Presence of Enteric Viruses in Ground Water From Small Public Water Supplies in Southeastern Michigan*. US Geological Survey Science Investigations Report 2004–5219.

Gibbons, C.D., R.A. Rodriguez., L. Tallon, M.D. Sobsey. 2010. Evaluation of positively charged alumina nanofibre cartridge filters for the primary concentration of noroviruses, adenoviruses and male-specific coliphages from seawater. *Journal of Applied Microbiology*. 109(2):635–641.

Jothikumar, N., J.A. Lowther, K. Henshilwood, D.N. Lees, V.R. Hill, and J. Vinje´. 2005. Rapid and sensitive detection of noroviruses by using TaqMan-based one-step reverse transcription-PCR assays and application to naturally contaminated shellfish samples. *Applied and Environmental Microbiology*. 71(4):1870–1875.

Karim, M.R., E.R. Rhodes, N. Brinkman, L. Wymer, and G.S. Fout. 2009. New electropositive filter for concentrating enteroviruses and noroviruses from large volumes of water. *Applied and Environmental Microbiology*. 75(8):2393–2399.

Lambertini, E., S.K. Spencer, P.D. Bertz, F.J. Loge, B.A. Kieke, and M.A. Borchardt. 2008. Concentration of enteroviruses, adenoviruses, and noroviruses from drinking water by use of glass wool filters. *Applied and Environmental Microbiology*. 74(10):2990–2996.

Monpoeho, S., A. Dehée, B. Mignotte, L. Schwartzbrod, V. Marechal, J.C. Nicolas, S. Billaudel, and V. Ferré. 2000. Quantification of enterovirus RNA in sludge samples by single tube real-time RT–PCR. *BioTechniques*. 29:88–95.

SM 3125. 1997. *Metals by Inductively Coupled Plasma/Mass Spectrometry*. Available for purchase on the Internet at *http://www.standardmethods.org/store/ProductView.cfm?ProductID=211*.

SM 4110D. 2000. *Determination of Anions by Ion Chromatography, Part D, IC determination of oxyhalides and bromide*. Available for purchase on the Internet at *http://www.standardmethods.org/store/ProductView.cfm?ProductID=31*.

USEPA. 1994. *Method 200.8—Determination of Trace Elements in Waters and Wastes*

by Inductively Coupled Plasma-Mass Spectrometry. Revision 5.4. Available on the Internet at *https://www.nemi.gov/*.

USEPA. 1996. *Information Collection Rule Microbial Laboratory Manual.* Office of Research and Development. April 1996. EPA/600/R–95/178. Available on the Internet at *http://www.epa.gov/microbes/online.html#icr*.

USEPA. 1997. *Method 300.1—Determination of Inorganic Anions in Drinking Water by Ion Chromatography. Revision 1.0.* Available on the Internet at *http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods_ogwdw.cfm*.

USEPA. 1998a. 40 CFR Parts 141 and 142 National Primary Drinking Water Regulations: Consumer Confidence; Proposed Rule. **Federal Register**. Vol. 63, No. 30, p. 7606, February 13, 1998.

USEPA. 1998b. 40 CFR Parts 141 and 142 National Primary Drinking Water Regulation: Consumer Confidence Reports; Final Rule. **Federal Register**. Vol. 63, No. 160, p. 44512, August 19, 1998.

USEPA. 1999. Revisions to the Unregulated Contaminant Monitoring Regulation for Public Water Systems; Final Rule. **Federal Register**. Vol. 64, No. 180, p. 50556, September 17, 1999.

USEPA. 2001. *Statistical Design and Sample Selection for the Unregulated Contaminant Monitoring Regulation (1999).* EPA 815–R–01–004. August 2001.

USEPA. 2003. National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule; National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical Contaminants. **Federal Register**. Vol. 68, No. 159, p. 49547, August 18, 2003.

USEPA. 2004. *Statistical Protocol for the Determination of the Single-Laboratory Lowest Concentration Minimum Reporting Level (LCMRL) and Validation of Laboratory Performance at or Below the Minimum Reporting Level (MRL).* EPA 815–R–05–006. November 2004.

USEPA. 2007. Unregulated Contaminant Monitoring Regulation (UCMR) for Public Water Systems Revisions. **Federal Register**. Vol. 72, No. 2, p. 367, January 4, 2007.

USEPA. 2008. *Method 522—Determination of 1,4-Dioxane in Drinking Water by Solid Phase Extraction (SPE) and Gas Chromatography/Mass Spectrometry (GC/MS) with Selected Ion Monitoring (SIM).* EPA/600/R–08/101. Version 1.0, September 2008. Available on the Internet at *http://www.epa.gov/nerlcwww/ordmeth.htm*.

USEPA. 2009a. *Method 524.3—Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry.* EPA/815/B–09/009. Version 1.0, June 2009. Available on the Internet at *http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods_ogwdw.cfm*.

USEPA. 2009b. *Method 537—Determination of Selected Perfluorinated Alkyl Acids in Drinking Water by Solid Phase Extraction and Liquid Chromatography/Tandem Mass Spectrometry (LC/MS/MS).* EPA/600/R–08/092. Version 1.1, September 2009. Available on the Internet at *http://www.epa.gov/nerlcwww/ordmeth.htm*.

USEPA. 2009c. Drinking Water Contaminant Candidate List 3–Final. **Federal Register**. Vol. 74, No. 194, p. 51850, October 8, 2009.

USEPA. 2010a. Stakeholder Meeting Regarding Revisions to the Unregulated Contaminant Monitoring Regulation. **Federal Register**. Vol. 75, No. 35, p. 8063, February 23, 2010.

USEPA. 2010b. National Primary Drinking Water Regulations; Announcement of the Results of EPA's Review of Existing Drinking Water Standards and Request for Public Comment and/or Information on Related Issues; Notice. **Federal Register**. Vol. 75, No. 59, p. 15500, March 29, 2010.

USEPA. 2010c. *Method 539—Determination of Hormones in Drinking Water by Solid Phase Extraction (SPE) and Liquid Chromatography Electrospray Ionization Tandem Mass Spectrometry (LC–ESI–MS/MS).* Available on the Internet at *http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods_ogwdw.cfm*.

USEPA. 2010d. *Possible Contaminants for Inclusion on UCMR 3—Information Compendium.* EPA 815–B–10–002.

USEPA. 2010e. *UCMR 3 Laboratory Approval Requirements and Information Document.* Draft in process.

USEPA. 2010f. Stakeholder Meeting Regarding Revisions to the Unregulated Contaminant Monitoring Regulation—Presentation Materials. April 7, 2010.

USEPA. 2010g. *Stakeholder Meeting Regarding Revisions to the Unregulated Contaminant Monitoring Regulation—Meeting Notes.* April 2010.

List of Subjects

40 CFR Part 141

Environmental protection, Chemicals, Indians—lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Environmental protection, Administrative practices and procedures, Chemicals, Indian lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: February 17, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, Title 40, chapter 1 of the Code of Federal Regulations is proposed to be amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

Subpart C—Monitoring and Analytical Requirements

2. Section 141.23 is amended in the table to paragraph (k)(1) by revising entries 18, 19, and 20; and by removing footnote 23.

The revisions read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

* * * * *

(k) Inorganic analysis:

* * * * *

Contaminant	Methodology [13]	EPA Method	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	SM Online [22]	Other
*	*	*	*	*	*	*	
18. Nitrate	Ion Chromatography	[6] 300.0 [19] 300.1	D4327–97, 03	4110 B	4110 B	4110 B–00	[8] B–1011
	Automated Cadmium Reduction	[6] 353.2	D3867–90 A	4500–NO_3F	4500–NO_3^-F	4500–NO_3F–00	
	Ion Selective Electrode			4500–NO_3D	4500–NO_3^-D	4500–NO_3D–00	[7] 601
	Manual Cadmium Reduction		D3867–90 B	4500–NO_3E	4500–NO_3^-E	4500–NO_3E–00	
	Capillary Ion Electrophoresis		D6508–00.				
19. Nitrite	Ion Chromatography	[6] 300.0 [19] 300.1	D4327–97, 03	4110 B	4110 B	4110 B–00	[8] B–1011
	Automated Cadmium Reduction	[6] 353.2	D3867–90 A	4500–NO_3F	4500–NO_3^-F	4500–NO_3F–00	
	Manual Cadmium Reduction		D3867–90 B	4500–NO_3E	4500–NO_3^-E	4500–NO_3E–00	
	Spectrophotometric			4500–NO_2^-B	4500–NO_2^-B	4500–NO_2^-B–00	
	Capillary Ion Electrophoresis		D6508–00				
20. Ortho-phosphate.	Colorimetric, Automated, Ascorbic Acid.	[6] 365.1		4500–P F	4500–P F		

Contaminant	Methodology [13]	EPA Method	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	SM Online [22]	Other
	Colorimetric, ascorbic acid, single reagent.	.....	D515–88 A	4500–P E	4500–P E		
	Colorimetric Phosphomolybdate;						[5] I–1601–85
	Automated-segmented flow;						[5] I–2601–90
	Automated Discrete						[5] I–2598–85
	Ion Chromatography	[6] 300.0 [19] 300.1	D4327–97, 03	4110 B	4110 B	4110 B–00	
	Capillary Ion Electrophoresis	.....	D6508–00				
	* *	*	*	*	*	*	

* * * * *

[3] *Annual Book of ASTM Standards,* 1994, 1996, 1999, or 2003, Vols. 11.01 and 11.02, ASTM International; any year containing the cited version of the method may be used. The previous versions of D1688–95A, D1688–95C (copper), D3559–95D (lead), D1293–95 (pH), D1125–91A (conductivity) and D859–94 (silica) are also approved. These previous versions D1688–90A, C; D3559–90D, D1293–84, D1125–91A and D859–88, respectively are located in the *Annual Book of ASTM Standards,* 1994, Vol. 11.01. Copies may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[4] *Standard Methods for the Examination of Water and Wastewater,* 18th edition (1992), 19th edition (1995) or 20th edition (1998). American Public Health Association, 800 I Street, NW., Washington, DC 20001–3710. The cited methods published in any of these three editions may be used, except that the versions of 3111 B, 3111 D, 3113 B and 3114 B in the 20th edition may not be used.

[5] Method I–2601–90, Methods for Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediment, Open File Report 93–125, 1993; For Methods I–1030–85; I–1601–85; I–1700–85; I–2598–85; I–2700–85; and I–3300–85. See Techniques of Water Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A–1, 3rd edition, 1989; Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225–0425.

[6] "Methods for the Determination of Inorganic Substances in Environmental Samples," EPA/600/R–93/100, August 1993. Available at NTIS, PB94–120821.

[7] The procedure shall be done in accordance with the Technical Bulletin 601 "Standard Method of Test for Nitrate in Drinking Water," July 1994, PN 221890–001, Analytical Technology, Inc. Copies may be obtained from ATI Orion, 529 Main Street, Boston, MA 02129.

[8] Method B–1011. "Waters Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography," August, 1987. Copies may be obtained from Waters Corporation, Technical Services Division, 34 Maple Street, Milford, MA 01757, Telephone: 508/482–2963, Fax: 508/482–4056.

* * * * *

[13] Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2x preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis (*i.e.,* no sample digestion) will be higher. For direct analysis of cadmium and arsenic by Method 200.7, and arsenic by Method 3120 B, sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Preconcentration may also be required for direct analysis of antimony, lead, and thallium by Method 200.9; antimony and lead by Method 3113 B; and lead by Method D3559–90D, unless multiple in-furnace depositions are made.

* * * * *

[19] "Methods for the Determination of Organic and Inorganic Compounds in Drinking Water," Vol. 1, EPA 815–R–00–014, August 2000. Available at NTIS, PB2000–106981.

* * * * *

[22] Standard Methods Online are available at *http://www.standardmethods.org.* The year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only online versions that may be used.

3. Section 141.35 is amended as follows:

a. In paragraph (a) by revising the third sentence,

b. By revising paragraph (b) introductory text,

c. In paragraph (b)(1) by revising the third sentence,

d. In paragraph (b)(2) by revising the second sentence,

e. In paragraph (c)(1) by removing "April 4, 2007" and adding in its place, "[DATE 90 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE],"

f. In paragraph (c)(2) by removing "August 2, 2007" and adding in its place, "[DATE 240 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE],"

g. In paragraph (c)(2) by revising the last sentence,

h. In paragraph (c)(3)(i) by removing "May 4, 2007" and adding in its place, "[DATE 120 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE],"

i. In paragraph (c)(3)(ii) by adding a new second and third sentence,

j. In paragraph (c)(4) by removing "June 4, 2007" and adding in its place, "[DATE 150 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE],"

k. In paragraph (c)(5)(i) by removing the two instances of the date "August 2, 2007" and add in their place, "[DATE 240 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE],"

l. By revising paragraph (c)(6) introductory text,

m. By revising paragraph (c)(6)(ii),

n. By revising paragraph (d)(2), and

o. In the table to paragraph (e) by revising entries 4 and 6.

The revisions and additions read as follows:

§ 141.35 Reporting for unregulated contaminant monitoring results.

(a) * * * For the purposes of this section, PWS "population served" is the retail population served directly by the PWS as reported to the Federal Safe Drinking Water Information System (SDWIS/Fed).* * *

(b) *Reporting by all systems.* You must meet the reporting requirements of this paragraph if you meet the applicability criteria in § 141.40(a)(1) and (2).

* * * * *

(1) * * * Information that must be submitted using EPA's electronic data reporting system must be submitted through: *http://water.epa.gov/lawsregs/rulesregs/sdwa/ucmr/ucmr3/reporting.cfm.* * * *

(2) * * * If you have received a letter from EPA concerning your required monitoring and your system does not meet the applicability criteria for UCMR established in § 141.40(a)(1) or (2), or if a change occurs at your system that may affect your requirements under UCMR as defined in § 141.40(a)(3) through (5), you must fax, mail, or e-mail a letter to EPA, as specified in paragraph (b)(1) of this section. * * *

* * * * *

(c) * * *

(2) * * * If this information changes, you must report updates, including new sources and sampling locations which are put in use before or during the PWS' UCMR sampling period, to EPA's electronic data reporting system within 30 days of the change.

* * * * *

(3) * * *

(ii) * * * The proposed representative well must be one of the higher annual volume producing and more consistently active wells in the representative array. If that representative well is not in use at the scheduled sampling time, an alternative representative well must be sampled.

* * *

* * * * *

(6) Reporting monitoring results. For each sample, you must report all data elements specified in Table 1 of paragraph (e) of this section, using EPA's electronic data reporting system. You also must report any changes, relative to what is currently posted, made to data elements 1 through 6 to EPA, in writing, explaining the nature and purpose of the proposed change, as specified in paragraph (b)(1) of this section.

* * * * *

(ii) *Reporting schedule.* You must ensure that your laboratory posts the data to EPA's electronic data reporting system within 60 days from the sample collection date (sample collection must occur as specified in § 141.40(a)(4)). You have 30 days from when the laboratory posts the data in EPA's electronic data reporting system to review, approve, and submit the data to the State and EPA, at the Web address specified in paragraph (b)(1) of this section. If you do not electronically approve and submit the laboratory data to EPA within 30 days of the laboratory's posting to EPA's electronic reporting system, the data will be considered approved by you and available for State and EPA review.

* * * * *

(d) * * *

(2) *Reporting sampling information.* You must record all data elements listed in Table 1 of paragraph (e) of this section on each sample form and sample bottle provided to you by the UCMR Sampling Coordinator. You must send this information as specified in the instructions of your sampling kit, which will include the due date and return address. You must report any changes made in data elements 1 through 6 by mailing or e-mailing an explanation of the nature and purpose of the proposed change to EPA, as specified in paragraph (b)(1) of this section.

(e) * * *

TABLE 1—UNREGULATED CONTAMINANT MONITORING REPORTING REQUIREMENTS

Data element	Definition
* *	* * * * * *
4. (a) Sampling Point Identification Code, (b) Sampling Point Zip Code, (c) Optional Zip Code Extension, and (d) Zip Codes Served.	(a) An identification code established by the State, or at the State's discretion, by the PWS, that uniquely identifies each sampling point. Each sampling code must be unique within each applicable facility, for each applicable sampling location (*i.e.,* entry point to the distribution system or distribution system sample at maximum residence time). The same identification code must be used to represent the sampling location for all current and future UCMR monitoring. (b) The U.S. Postal Service (USPS) ZIP code in which the sampling point is located, with format: ZZZZZ. (c) The optional Zip Code Extension in which the sampling point is located, with format: EEEE. (d) Zip codes of all areas supplied with water from this sampling point, with format: ZZZZZ.
* *	* * * * * *
6. Disinfectant Type	The disinfectant in use at the time of UCMR monitoring. To be reported by systems for each sampling point, with possible values including: CLG = gaseous chlorine. CLS = Sodium hypochlorite solution. CLP = Potassium hypochlorite solution. CAG = chloramine (gaseous chlorine). CAS = chloramine (sodium hypochlorite solution). CAP = chloramine (potassium hypochlorite solution). CLD = chlorine dioxide. GOS = Hypochlorite generated off site. GIH = Hypochlorite generated at DW facility. OTH = all other types of disinfectant (e.g. ozone). NOD = no disinfectant used.
* *	* * * * * *

Subpart E—Special Regulations, Including Monitoring Regulations and Prohibition on Lead Use

4. Section 141.40 is amended as follows:

a. By revising paragraph (a) introductory text,

b. By revising paragraph (a)(1),

c. By revising paragraph (a)(2)(i) introductory text,

d. By revising paragraph (a)(2)(ii) introductory text,

e. By revising paragraph (a)(2)(ii)(C),

f. By revising paragraph (a)(3),

g. In paragraph (a)(4)(i) introductory text by removing "August 2, 2007" and adding in its place, "[DATE 240 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE],"

h. By revising paragraph (a)(4)(i)(B),

i. By revising paragraph (a)(4)(i)(C),

j. In paragraph (a)(4)(i)(D) by removing the last sentence,

k. By revising paragraph (a)(4)(ii)(G),

l. In paragraph (a)(5)(ii) by removing "April 4, 2007" and adding in its place, "[DATE 90 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE]" and by revising the last sentence,

m. By revising paragraph (a)(5)(iii) introductory text,

n. By revising paragraph (a)(5)(iii)(A)(*1*),

o. By revising paragraph (a)(5)(iv), and

p. By revising paragraph (a)(5)(vi).

The revisions read as follows:

§ 141.40 Monitoring requirements for unregulated contaminants.

(a) *General applicability.* This section specifies the monitoring and quality control requirements that must be followed if you own or operate a public water system (PWS) that is subject to the Unregulated Contaminant Monitoring

Regulation (UCMR), as specified in paragraphs (a)(1) and (2) of this section. In addition, this section specifies the UCMR requirements for State and Tribal participation. For the purposes of this section, PWS "population served," "State," " PWS Official," "PWS Technical Contact," and "finished water" apply as defined in § 141.35(a). The determination of whether a PWS is required to monitor under this rule is based on the type of system (*e.g.,* community water system, non-transient non-community water system, etc.), and its retail population, as indicated by SDWIS/Fed on December 31, 2010.

(1) *Applicability to transient non-community systems.* If you own or operate a transient non-community water system, you will have to monitor for the contaminants specified on List 3 of Table 1, in paragraph (a)(3) of this section if you are notified by your State or EPA.

(2) * * *

(i) *Large systems.* If you own or operate a retail PWS (other than a transient non-community system) that serves more than 10,000 people, you must monitor according to the specifications in this paragraph (a)(2)(i). If you believe that your applicability status is different than EPA has specified in the notification letter that you received, or if you are subject to UCMR requirements and you have not been notified by either EPA or your State, you must report to EPA, as specified in § 141.35(b)(2) or (c)(4).

* * * * *

(ii) *Small systems.* Small PWSs, as defined in this paragraph, will not be selected to monitor for any more than one of the three monitoring lists provided in Table 1, UCMR Contaminant List, in paragraph (a)(3) of this section. EPA will provide sample containers, provide pre-paid air bills for shipping the sampling materials, conduct the laboratory analysis, and report and review monitoring results for all small systems selected to conduct monitoring under paragraphs (a)(2)(ii)(A) through (C) of this section. If you own or operate a PWS that serves 10,000 or fewer people you must monitor as follows:

* * * * *

(C) Pre-Screen Testing. You must allow EPA or its representative to collect samples to support monitoring for the unregulated contaminants on List 3 of Table 1, in paragraph (a)(3) of this section, if you are notified by your State or EPA that you are part of the State Monitoring plan for Pre-Screen Testing. In addition, you must permit the collection of samples as necessary for EPA to perform analysis for total coliform, *E. coli,* bacteriophage, *Enterococci,* and aerobic spores.

(3) *Analytes to be monitored.* Lists 1, 2, and 3 of unregulated contaminants are provided in the following table:

TABLE 1—UCMR CONTAMINANT LIST

1—Contaminant	2—CAS Registry No.	3—Analytical methods [a]	4—Minimum reporting level [b]	5—Sampling location [c]	6—Period during which monitoring to be completed
List 1: Assessment Monitoring—Chemical Contaminants					
Hormones					
17-β-estradiol	50–28–2	EPA 539 [d]	0.0004 µg/L	EPTDS	1/1/2013–12/31/2015.
17-α-ethynylestradiol	57–63–6	EPA 539 [d]	0.0009 µg/L	EPTDS	1/1/2013–12/31/2015.
estriol	50–27–1	EPA 539 [d]	0.0008 µg/L	EPTDS	1/1/2013–12/31/2015.
equilin	474–86–2	EPA 539 [d]	0.004 µg/L	EPTDS	1/1/2013–12/31/2015.
estrone	53–16–7	EPA 539 [d]	0.002 µg/L	EPTDS	1/1/2013–12/31/2015.
testosterone	58–22–0	EPA 539 [d]	0.0001 µg/L	EPDTS	1/1/2013–12/31/2015.
4-androstene-3,17-dione	63–05–8	EPA 539 [d]	0.0003 µg/L	EPTDS	1/1/2013–12/31/2015.
Volatile Organic Compounds					
1,2,3-trichloropropane	96–18–4	EPA 524.3 [e]	0.03 µg/L	EPTDS	1/1/2013–12/31/2015.
1,3-butadiene	106–99–0	EPA 524.3 [e]	0.1 µg/L	EPTDS	1/1/2013–12/31/2015.
chloromethane	74–87–3	EPA 524.3 [e]	0.2 µg/L	EPTDS	1/1/2013–12/31/2015.
1,1-dichloroethane	75–34–3	EPA 524.3 [e]	0.03 µg/L	EPTDS	1/1/2013–12/31/2015.
n-propylbenzene	103–65–1	EPA 524.3 [e]	0.03 µg/L	EPTDS	1/1/2013–12/31/2015.
bromomethane	74–83–9	EPA 524.3 [e]	0.2 µg/L	EPTDS	1/1/2013–12/31/2015.
sec-butylbenzene	135–98–8	EPA 524.3 [e]	0.04 µg/L	EPTDS	1/1/2013–12/31/2015.
chlorodifluoromethane (HCFC–22)	75–45–6	EPA 524.3 [e]	0.08 µg/L	EPTDS	1/1/2013–12/31/2015.
bromochloromethane (halon 1011)	74–97–5	EPA 524.3 [e]	0.06 µg/L	EPTDS	1/1/2013–12/31/2015.
Synthetic Organic Compound					
1,4-dioxane	123–91–1	EPA 522 [f]	0.07 µg/L	EPTDS	1/1/2013–12/31/2015.
Metals					
vanadium	7440–62–2	EPA 200.8 ASTM D5673–10 SM 3125 [g]	0.2 µg/L	EPTDS and DSMRT.	1/1/2013–12/31/2015.
molybdenum	7439–98–7	EPA 200.8 ASTM D5673–10 SM 3125 [g]	1. µg/L	EPTDS and DSMRT.	1/1/2013–12/31/2015.
cobalt	7440–48–4	EPA 200.8 ASTM D5673–10 SM 3125 [g]	1. µg/L	EPTDS and DSMRT.	1/1/2013–12/31/2015.

TABLE 1—UCMR CONTAMINANT LIST—Continued

1—Contaminant	2—CAS Registry No.	3—Analytical methods [a]	4—Minimum reporting level [b]	5—Sampling location [c]	6—Period during which monitoring to be completed
strontium	7440–24–6	EPA 200.8 ASTM D5673–10 SM 3125 [g]	0.3 µg/L	EPTDS and DSMRT.	1/1/2013–12/31/2015.
Oxyhalide Anion					
Chlorate	14866–68–3	EPA 300.1 ASTM D 6581–08 SM 4110D [h]	20 µg/L	EPTDS and DSMRT.	1/1/2013–12/31/2015.
Perfluorinated Compounds					
perfluorooctane sulfonic acid (PFOS)	1763–23–1	EPA 537 [i]	0.04 µg/L	EPTDS	1/1/2013–12/31/2015.
perfluorooctanoic acid (PFOA)	335–67–1	EPA 537 [i]	0.02 µg/L	EPTDS	1/1/2013–12/31/2015.
perfluorononanoic acid (PFNA)	375–95–1	EPA 537 [i]	0.02 µg/L	EPTDS	1/1/2013–12/31/2015.
perfluorohexane sulfonic acid (PFHxS)	355–46–4	EPA 537 [i]	0.03 µg/L	EPTDS	1/1/2013–12/31/2015.
perfluoroheptanoic acid (PFHpA)	375–85–9	EPA 537 [i]	0.01 µg/L	EPTDS	1/1/2013–12/31/2015.
perfluorobutanesulfonic acid (PFBS)	375–73–5	EPA 537 [i]	0.09 µg/L	EPTDS	1/1/2013–12/31/2015.
List 2: Screening Survey					
Reserved	Reserved	Reserved	Reserved	Reserved	Reserved.
List 3: Pre-Screen Testing—Microbiological Contaminants					
enteroviruses	N/A	N/A	N/A	EPTDS	1/1/2013–12/31/2015.
noroviruses	N/A	N/A	N/A	EPTDS	1/1/2013–12/31/2015.

Column headings are:

1—Contaminant: the name of the contaminant to be analyzed.

2—CAS (Chemical Abstract Service) Registry Number or Identification Number: a unique number identifying the chemical contaminants.

3—Analytical Methods: method numbers identifying the methods that must be used to test the contaminants. For List 3, analysis will only be performed by laboratories under contract to EPA.

4—Minimum Reporting Level: the value and unit of measure at or above which the concentration of the contaminant must be measured using the approved analytical methods. For List 3, minimum reporting level is based on volume of water filtered and PCR amplification level.

5—Sampling Location: the locations within a PWS at which samples must be collected.

6—Period During Which Monitoring to be Completed: the time period during which the sampling and testing are to occur for the indicated contaminant.

[a] The analytical procedures shall be performed in accordance with the documents associated with each method (per the following footnotes). The incorporation by reference of the following documents listed in footnotes d–i was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Information on how to obtain these documents can be provided by the Safe Drinking Water Hotline at (800) 426–4791. Documents may be inspected at EPA's Drinking Water Docket, 1301 Constitution Avenue, NW., EPA West, Room 3334, Washington, DC 20460, Telephone: (202) 566–2426; or at the National Archives and Records Administration (NARA). For information on availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/Federal-register/cfr/index.html*. The version of the EPA methods which you must follow for this Regulation are listed in footnotes d through i as follows:

[b] The minimum reporting level (MRL) is the minimum concentration of each analyte that must be reported to EPA.

[c] Sampling must occur at entry points to the distribution system (EPTDSs) after treatment is applied that represent each non-emergency water source in routine use over the 12-month period of monitoring. Systems that purchase water with multiple connections from the same wholesaler may propose one representative connection from that wholesaler. This representative EPTDS sampling location must be one of the higher annual volume connections. If the connection selected as the representative EPTDS is not available for sampling, an alternate representative connection must be sampled. *See* 40 CFR 141.35(c)(3) for an explanation of the requirements related to use of representative ground water EPTDSs. Sampling for metals and chlorate at disinfection byproduct distribution system maximum residence time (DSMRT) sampling locations as defined in 40 CFR 141.132(b)(1)(i). If a treatment plant/water source is not subject to the sampling required in 40 CFR 141.132(b)(1), then the distribution system samples for metals must be collected at a location that the system determines represents the maximum residence time in the distribution system.

[d] EPA Method 539 "Determination of Hormones in Drinking Water Using Liquid Chromatography Tandem Mass Spectrometry," is available at *http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods_ogwdw.cfm*.

[e] EPA Method 524.3 "Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry," Version 1.0, June 2009 is available at *http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods_ogwdw.cfm*.

[f] EPA Method 522 "Determination of 1,4–Dioxane in Drinking Water by Solid Phase Extraction (SPE) and Gas Chromatography/Mass Spectrometry (GC/MS) with Selective Ion Monitoring (SIM)," Version 1.0, September 2008 is available at *http://www.epa.gov/nerlcwww/ordmeth.htm*.

[g] EPA Method 200.8 "Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma-Mass Spectrometry," Version 5.4, 1994 is available at *http://www.NEMI.gov*.

ASTM D5673–10. Standard Test Method for Elements in Water by Inductively Coupled Plasma-Mass Spectrometry. Available for purchase on the Internet at *http://www.astm.org/Standards/D5673.htm*.

SM 3125. Metals by Inductively Coupled Plasma/Mass Spectrometry (1997). Available

for purchase on the Internet at *http://www.standardmethods.org/store/ProductView.cfm?ProductID=211.*

[h] EPA Method 300.1 "Determination of Inorganic Anions in Drinking Water by Ion Chromatography," Revision 1.0, 1997 is available at *http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods_ogwdw.cfm.*

ASTM D6581–08. Standard Test Methods for Bromate, Bromide, Chlorate, and Chlorite in Drinking Water by Suppressed Ion Chromatography. Available for purchase on the Internet at *http://www.astm.org/Standards/D6581.htm.*

SM 4110D. Determination of Anions by Ion Chromatography, Part D, Ion Chromatography Determination of Oxyhalides and Bromide. Available for purchase on the Internet at *http://www.standardmethods.org/store/ProductView.cfm?ProductID=31.*

[i] EPA Method 537 "Determination of Selected Perfluorinated Alkyl Acids in Drinking Water by Solid Phase Extraction and Liquid Chromatography/Tandem Mass Spectrometry," Version 1.1, September 2009 is available at *http://www.epa.gov/nerlcwww/ordmeth.htm.*

* * * * *

(4) * * *

(i) * * *

(B) *Frequency.* You must collect the samples within the time frame and according to the frequency specified by contaminant type and water source type for each sampling location, as specified in Table 2, in this paragraph. For the second or subsequent round of sampling, if a sample location is non-operational for more than one month before and one month after the scheduled sampling month (*i.e.,* it is not possible for you to sample within the window specified in Table 2, in this paragraph), you must notify EPA as specified in § 141.35(c)(5) to reschedule your sampling.

TABLE 2—MONITORING FREQUENCY BY CONTAMINANT AND WATER SOURCE TYPES

Contaminant type	Water source type	Time frame	Frequency
Chemical	Surface water or ground water under the direct influence of surface water (GWUDI) (includes all sampling locations for which some or all of the water comes from a surface water or GWUDI source at any time during the 12 month monitoring period).	12 months	You must monitor for 4 consecutive quarters. Sample events must occur 3 months apart.
	Ground water	12 months	You must monitor twice in a consecutive 12-month period. Sample events must occur 5–7 months apart.
Microbiological	Ground water	12 months	You must monitor twice in a consecutive 12-month period. Sample events must occur 5–7 months apart.

(C) *Location.* You must collect samples for each List 1 Assessment Monitoring contaminant, and, if applicable, for each List 2 Screening Survey, or List 3 Pre-Screen Testing contaminant, as specified in Table 1, in paragraph (a)(3) of this section. Samples must be collected at each sample point that is specified in column 5 and footnote c of Table 1, in paragraph (a)(3) of this section. If you are a ground water system with multiple EPTDSs, and you request and receive approval from EPA or the State for sampling at representative EPTDS(s), as specified in § 141.35(c)(3), you must collect your samples from the approved representative sampling location(s). Systems conducting Assessment Monitoring must also sample for metals and chlorate at the disinfection byproduct distribution system maximum residence time (DSMRT) sampling location(s) if they are subject to sampling requirements in § 141.132(b)(1). If a treatment plant/water source is not subject to the sampling required in 40 CFR 141.132(b)(1), then the distribution system samples must be collected at a location that the system determines represents the maximum residence time in the distribution system.

(ii) * * *

* * * * *

(G) *Sampling forms.* You must completely fill out each of the sampling forms and bottles sent to you by the UCMR Sampling Coordinator, including data elements listed in § 141.35(e) for each sample, as specified in § 141.35(d)(2). You must sign and date the sampling forms.

* * * * *

(5) * * *

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(ii) * * * Correspondence must be addressed to: UCMR Laboratory Approval Coordinator, USEPA, Technical Support Center, 26 West Martin Luther King Drive, (MS 140), Cincinnati, OH 45268; or e-mailed to EPA at: *UCMR_Sampling_Coordinator@epa,gov.*

(iii) *Minimum Reporting Level.* The MRL is an estimate of the quantitation limit that, with 95% confidence, is achievable by a capable analyst/laboratory at least 75% of the time. Assuming good instrumentation and experienced analysts, with 95% confidence, an MRL is achievable by 75% of laboratories nationwide.

(A) * * *

(1) All laboratories performing analysis under UCMR must demonstrate that they are capable of meeting data quality objectives (DQOs) at or below the MRL listed in Table 1, column 4, in paragraph (a)(3) of this section.

* * * * *

(iv) *Laboratory fortified sample matrix and laboratory fortified sample matrix duplicate.* You must ensure that your laboratory prepares and analyzes the Laboratory Fortified Sample Matrix (LFSM) sample for accuracy and Laboratory Fortified Sample Matrix Duplicate (LFSMD) samples for precision to determine method accuracy and precision for all contaminants in Table 1, in paragraph (a)(3) of this section. LFSM/LFSMD samples must be prepared using a sample collected and analyzed in accordance with UCMR requirements and analyzed at a frequency of 5% (or 1 LFSM/LFSMD set per every 20 samples) or with each sample batch, whichever is more frequent. In addition, the LFSM/LFSMD fortification concentrations must be alternated between a low-level fortification and mid-level fortification approximately 50% of the time. (For example: a set of 40 samples will require preparation and analysis of 2 LFSM/LFSMD paired samples. The first LFSM/LFSMD paired sample set must be fortified at either the low-level or mid-level, and the second LFSM/LFSMD paired sample set must be fortified with the other standard, either the low-level or mid-level, whichever

was not used for the initial LFSM/LFSMD paired sample set.) The low-level LFSM/LFSMD fortification concentration must be within ±50% of the MRL for each contaminant (e.g., for an MRL of 1 µg/L the acceptable fortification levels must be between 0.5 µg/L and 1.5 µg/L). The mid-level LFSM/LFSMD fortification concentration must be within ±20% of the mid-level calibration standard for each contaminant, and should represent, where possible and where the laboratory has data from previously analyzed samples, an approximate average concentration observed in previous analyses of that analyte. There are no UCMR contaminant recovery acceptance criteria specified for LFSM/LFSMD analyses. All LFSM/LFSMD data are to be reported.

* * * * *

(vi) *Reporting.* You must require your laboratory to submit these data electronically to the State and EPA using EPA's electronic data reporting system, accessible at *(http://water.epa.gov/lawsregs/rulesregs/sdwa/ucmr/ucmr3/reporting.cfm),* within 60 days from the sample collection date. You then have 30 days from when the laboratory posts the data to review, approve and submit the data to the State and EPA, via EPA's electronic data reporting system. If you do not electronically approve and submit the laboratory data to EPA within 30 days of the laboratories posting to EPA's electronic reporting system, the data will be considered approved and available for State and EPA review.

* * * * *

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

5. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

Subpart B—Primary Enforcement Responsibility

6. Section 142.16 is amended as follows:

a. In paragraph (j) introductory text by removing "§ 141.40".

b. In paragraph (j)(1) by revising the first sentence.

§ 142.16 Special primacy requirements.

* * * * *

(j) * * *

(1) If a State chooses to issue waivers from the monitoring requirements in §§ 141.23 and 141.24, the State shall describe the procedures and criteria which it will use to review waiver applications and issue wavier determinations. * * *

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[FR Doc. 2011–4641 Filed 3–2–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 10–108; Report No. 2925]

Petition for Reconsideration of Action of Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: In this document, a Petition for Reconsideration (Petition) has been filed in the Commission's Rulemaking proceeding listed in this document (Table of Allotments, FM Broadcast Stations (Pacific Junction, Iowa)).

DATES: Oppositions to the Petition must be filed by March 18, 2011. Replies to an opposition must be filed March 28, 2011.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document, Report No. 2925, released February 7, 2011. The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

This document is published pursuant to 47 CFR 1.429(e). *See* 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)).

Subject: In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Pacific Junction, Iowa) (MB Docket No. 10–108).

Number of Petitions Filed: 1.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–4687 Filed 3–2–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090225241–0561–02]

RIN 0648–AX70

Fisheries of the Northeastern United States; Monkfish; Amendment 5

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

ACTION: Proposed rule; amendment; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Amendment 5 to the Monkfish Fishery Management Plan (Monkfish FMP). The New England and Mid-Atlantic Fishery Management Councils (Councils) developed Amendment 5 to bring the Monkfish FMP into compliance with the annual catch limit (ACL) and accountability measure (AM) requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS is considering disapproving proposed annual catch targets (ACT) that are not consistent with the most recent scientific advice. This proposed rule also proposes three management measures in Amendment 5 to promote efficiency and reduce waste: Automatic days-at-sea (DAS) adjustment for trip limit overages; authorization to land monkfish heads; and enable changes to the Monkfish Research Set-Aside (RSA) Program through framework adjustment, and to bring the biological and management reference points in the Monkfish FMP into compliance with recently revised National Standard 1 (NS1) Guidelines.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on April 4, 2011.

ADDRESSES: An environmental assessment (EA) was prepared for Amendment 5 that describes the proposed action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 5, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org.*

You may submit comments, identified by 0648–AX70, by any one of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*

• *Fax:* (978) 281–9135, Attn: Allison McHale.

• *Mail:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Monkfish Amendment 5 Proposed Rule."

Instructions: All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to the Office of Management and Budget (OMB) by e-mail at *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Allison McHale, Fishery Policy Analyst, (978) 281–9103; fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The monkfish fishery is jointly managed by the New England and Mid-Atlantic Fishery Management Councils (Councils), with the New England Fishery Management Council (NEFMC) having the administrative lead. The fishery extends from Maine to North Carolina, and is divided into two management units: The Northern Fishery Management Area (NFMA) and the Southern Fishery Management Area (SFMA).

The Councils developed Amendment 5 with the primary goal of bringing the Monkfish FMP into compliance with the requirements of the reauthorized Magnuson-Stevens Act. The 2006 reauthorization of the Magnuson-Stevens Act contains several new requirements, including the requirement that all fishery management plans contain ACLs to prevent overfishing, and measures to ensure accountability.

Amendment 5 was also developed to bring the Monkfish FMP into compliance with recently revised National Standard 1 (NS1) Guidelines (74 FR 3178; January 16, 2009), which not only established a process for setting ACLs and guidance for establishing AMs, but also provided updated guidelines for establishing reference points and control rules (*i.e.,* maximum sustainable yield (MSY), optimum yield (OY), overfishing limits (OFL), acceptable biological catch (ABC), ACLs, and annual catch targets (ACTs)), and clarifies the relationships among them. Amendment 5 would establish biological and management reference points to be consistent with NS1 guidelines utilizing recent scientific information from the 2007 Northeast Data Poor Stocks Working Group (DPWG) assessment.

New biological reference points were developed as part of the 2007 assessment, based on a revised yield-per-recruit analysis (using a revised value of the natural mortality rate) and results of a length-tuned model that incorporates multiple survey indices and catch data. However, the 2007 assessment results were accompanied by substantial uncertainty and are, therefore, viewed with caution. Reservations highlighted in the 2007 DPWG assessment report include: (1) Input uncertainties (under-reported landings and unknown discards of monkfish during the 1980s and incomplete understanding of key biological parameters such as age and growth, longevity, natural mortality, and stock structure); (2) the shorter assessment time frame of data used (1980–2006) than was used in previous assessments (1963–2006); and (3) the relatively recent development of the assessment model. More specifically, the assessment hinges on assumptions regarding growth, longevity, and natural mortality of monkfish, all of which are poorly known. In addition, commercial catches prior to 1993 are not well characterized. Framework Adjustment 5 (Framework 5), implemented on May 1, 2008 (73 FR 22831, April 28, 2008), adopted the revised reference points recommended by the DPWG. Based upon these revised biomass reference points, Framework 5 determined that both monkfish stocks were no longer overfished, and are considered rebuilt. The Monkfish Assessment Summary Report for 2007 can be found at *http://www.nefsc.noaa.gov/nefsc/publications/crd/crd0713/.*

A more recent assessment of the monkfish resource was conducted during the first half of 2010 by the 50th Stock Assessment Review Committee (SARC 50). The full report for this assessment was released in August 2010 and can be found at *http://www.nefsc.noaa.gov/publications/crd/crd1017/.* The SARC 50 assessment concluded that both stocks are above their respective current biomass thresholds, as well as new biomass thresholds recommended by the assessment, indicating that both stocks are not overfished. Furthermore, the current estimated fishing mortality rate for each stock is below their respective fishing mortality thresholds. Thus, overfishing is not occurring on either stock. Given the timing of SARC 50 and when the Councils took final action on Amendment 5 in June 2010, this action does not update the biomass reference points in the FMP. Because SARC 50 shows such significant changes in the fishery in the NFMA that revisions to management measures may be required, NMFS is considering disapproving the specification of the NFMA ACT on the ground that it is not consistent with the most recent scientific advice. The NEFMC has initiated a framework adjustment to the Monkfish FMP (Framework 7), to be implemented immediately following Amendment 5, for this purpose and to adjust the ACT for the NFMA to be consistent with the most recent scientific advice. Further information on how Framework 7 relates to this amendment is provided under proposed measure 3, "Proactive AM."

Similar to the 2007 assessment, the 2010 assessment panel expressed serious concerns regarding the high levels of uncertainty in the assessment. The Monkfish Assessment Summary Report for 2010 states, "The assessment results continue to be uncertain due to cumulative effects of under-reported landings, unknown discards during the 1980s, uncertainty in survey indices, and incomplete understanding of key biological parameters such as age and growth, longevity, natural mortality and stock structure contributing to retrospective patterns primarily in the northern management area." Unlike the 2007 assessment, the 2010 assessment was able to conduct projections to evaluate stock trends based on anticipated fishing levels. However, these projections are also considered highly uncertain, since they are based on the outputs of the assessment model. Despite this uncertainty, the projections indicate that the NFMA is more

vulnerable to overfishing or becoming overfished during 2011–2016 if total catches approach the proposed ABC, while the SFMA is less vulnerable.

Amendment 5 also proposes measures intended to promote efficiency and reduce waste in the monkfish fishery. First, a measure is being proposed that would minimize regulatory discards resulting from monkfish trip limit overages by allowing vessels to land an additional trip limit (1 day's worth) and have their DAS usage for that trip adjusted to account for the overage. Second, a measure is being proposed that would allow the landing of monkfish heads separate from the body by adding a new conversion factor and authorized landing form to the FMP. Lastly, a measure is being proposed in Amendment 5 that would enable changes to be made to the Monkfish RSA Program through a framework adjustment versus an FMP amendment.

Proposed Measures

1. Biological and Management Reference Points

The biological and management reference points currently in the Monkfish FMP are used to determine if overfishing is occurring on either stock ($F_{threshold}$), if either stock is overfished ($B_{threshold}$), or if either stock is rebuilt (B_{target}). However, these reference points alone are not sufficient to comply with the Magnuson-Stevens Act and the recently updated NS1 guidelines. As a result, Amendment 5 proposes to establish control rules to specify MSY, OY, OFL, and ABC for each monkfish stock, as described in the following paragraphs.

MSY is defined under the Magnuson-Stevens Act as "the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological, environmental conditions and fishery technological characteristics (*e.g.,* gear selectivity), and the distribution of catch among fleets." The overfishing threshold ($F_{threshold}$) for monkfish is defined under the Monkfish FMP as equivalent to F_{msy} or its proxy. Further, the target biomass reference point (B_{target}) is defined under the Monkfish FMP as B_{msy} or its proxy. Amendment 5 proposes that the MSY control rule be expressed as the product of these two reference points (MSY = $F_{threshold} \times B_{target}$). Based on the 2007 assessment, MSY is calculated to be 17,053 mt for the NFMA and 25,487 mt for the SFMA.

OY is defined under the Magnuson-Stevens Act as "the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities taking into account the protection of marine ecosystems; that is prescribed on the basis of MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and in the case of an overfished fishery, that provides for the rebuilding to a level consistent with producing the MSY in such a fishery." The NS1 guidelines further state that OY should be set at a level that prevents overfishing and rebuilds overfished stocks. Consistent with the NS1 guidelines, the Councils are proposing in Amendment 5 to set OY equivalent to the ACT, which is a proactive AM further described under measure 3 below. Setting OY equal to the ACT would provide the greatest benefit to the Nation since this value represents the maximum yield from the fishery while preventing overfishing, after taking into account scientific uncertainty in the OFL in setting ABC, and management uncertainty in setting measures that will not exceed the ABC.

OFL is defined under the Magnuson-Stevens Act as "the annual amount of catch that corresponds to the estimate of maximum fishing mortality threshold (MFMT) applied to a stock or stock complex's abundance and is expressed in terms of numbers or weight of fish. The OFL is an estimate of the catch level above which overfishing is occurring." Consistent with this definition, Amendment 5 proposes that OFL be expressed as the product of $F_{threshold}$ and current exploitable biomass ($B_{current}$) ($OFL = F_{threshold} \times B_{current}$).

ABC is defined under the Magnuson-Stevens Act National Standard 1 Guidelines as "a level of stock or stock complex's annual catch that accounts for the scientific uncertainty in the estimate of OFL and any other scientific uncertainty, and should be specified based on the ABC control rule." The revised NS1 guidelines further state that "ABC may not exceed OFL," and that "the determination of ABC should be based, when possible, on the probability that an actual catch equal to a stock's ABC would result in overfishing." These guidelines also require that the Council's ABC control rule be based on scientific advice provided by its Scientific and Statistical Committee (SSC), and that the SSC recommend the ABC to the Council.

The NEFMC's SSC, at its March 17, 2009, meeting, endorsed the proxy reference points for B_{msy} and F_{msy}, as well as the estimates of stock size from the 2007 DPWG. However, in its March 30, 2009, report to the NEFMC, the SSC noted "considerable uncertainties in the assessment model preclude its use to determine probability of exceeding the projected Overfishing Level of catch." As a result, the SSC recommended an interim ABC "based on the product of the average exploitation rate during the recent period of stable or increasing trend in biomass in both management units and the most recent estimate or index of exploitable biomass." The SSC recommended this data-poor default method for determining an interim ABC because it produces catch advice that is not directly based on OFL and its uncertainty. However, the SSC noted that "the method of determining ABC should be considered an interim proxy until Overfishing Level of Catch and its uncertainty can be projected." Thus, as required by the NS1 guidelines, the Councils are recommending in Amendment 5 an ABC that is consistent with the interim ABC approach recommended by the SSC.

The Monkfish Plan Development Team (PDT) reviewed the results of the statistical catch at length (SCALE) model from the 2007 assessment and determined that the periods for stable or increasing biomass were 1999–2006 for the NFMA, and 2000–2006 for the SFMA. Using the average exploitation rates for these time periods, and the most recent estimate of exploitable biomass (2006), the PDT calculated an ABC of 17,485 mt for the NFMA, and 13,326 mt for the SFMA. This would result in a buffer between the ABC and the OFL of 23 percent (5,234 mt) for the NFMA, and 53 percent (14,930 mt) for the SFMA.

2. ACLs

The Magnuson-Stevens Act, at section 303(a)(15), requires that any FMP establish a mechanism for specifying ACLs at a level that prevents overfishing, and also include measures that ensure accountability. Section 302(h)(6) of the Magnuson-Stevens Act and the NS1 guidelines further state that the ACL for a given stock or stock complex cannot exceed the ABC as recommended by the SSC. NS1 further notes that the ACL serves as the basis for invoking AMs, and that ACLs, in coordination with AMs, must prevent overfishing. Based on the requirements of the Magnuson-Stevens Act and the NS1 guidelines with respect to ACLs and AMs, Amendment 5 proposes to establish ACLs that are equal to the respective ABC for each management area, since scientific uncertainty has been accounted for in establishing these ABCs, and management uncertainty will be accounted for in the establishment of ACTs for each management area as a proactive AM. Thus, the Councils determined that there was no technical

basis for setting the ACLs for each management area below their respective ABC. In its March 30, 2009, report, the SSC supported the Councils' ACL recommendation and noted that "the magnitude of recent catch has low risk of exceeding the OFL or the proposed interim ABC" since in 2006, total catch was only 32 percent of the proposed OFL for the NFMA, and 34 percent of the proposed OFL for the SFMA; and total catch in 2007 was estimated by the PDT to be 24 percent of the proposed OFL for the NFMA, and 31 percent of the proposed OFL for the SFMA.

3. Proactive AM

The NS1 guidelines describe AMs as management controls aimed at preventing the ACL from being exceeded, and to correct or mitigate overages of the ACL. Amendment 5 proposes both forms of AMs for the monkfish fishery: A proactive AM in the form of ACTs for each management area, and a reactive AM in the form of an ACL overage provision. This section describes the proactive AM.

The proactive AM being proposed in Amendment 5 would establish ACTs for each management area. The purpose of ACTs is to account for management uncertainty, as noted in the NS1 guidelines. Rather than establishing ACTs based on a given formula or control rule, the Councils developed a range of ACT options for each management area that were based upon fixed increases from current total allowable landing (TAL) levels plus discards. This range was narrowed down to two ACT options for each management area, all of which would result in increases over current TALs. These options are presented in Table 1. The discard rates for each management area used in the calculation of these ACT options were 7.5 percent for the NFMA and 29 percent for the SFMA.

TABLE 1—ACT OPTIONS FOR THE NFMA AND SFMA

	TAL increase (percent)	TAL (mt)	Discards (mt)	ACT (mt)	Percent of ACL
NFMA ACT Option 1	50	7,500	563	8,063	46
NFMA ACT Option 2	100	10,000	750	10,750	62
SFMA ACT Option 1	40	7,140	2,071	9,211	69
SFMA ACT Option 2	75	8,925	2,588	11,513	86

The Councils selected Option 2 for each management area as their preferred alternatives. Thus, Amendment 5 proposes an ACT of 10,750 mt for the NFMA, and 11,513 mt for the SFMA. However, based on the results of SARC 50, the SSC recently revisited their previous ABC recommendation at an August 24, 2010, meeting. After much discussion concerning the uncertainty with the assessment and alternate methods for calculating ABC to account for this uncertainty, the SSC agreed to maintain the existing interim ABC approach it previously recommended. The recalculated ABCs that incorporate the results of SARC 50 would be 7,592 mt for the NFMA, and 12,316 mt for the SFMA. This results in a revised ABC for the NFMA that is 3,158 mt lower than the NFMA ACT being recommended by the Councils in Amendment 5, creating an inconsistency with the recalculated ABC. Conversely, the recalculated ABC for the SFMA is 803 mt higher than the Council's recommended ACT for that area. Although this reduces the buffer between the ACT and the ABC/ACL for the SFMA to only 6.5 percent, it does not create an inconsistency as is found in the NFMA. In response to the SSC's most recent advice, and the recalculated ABCs for both management areas based on the results of SARC 50, the NEFMC initiated Framework Adjustment 7 (Framework 7) at its September 28–30, 2010, meeting to revise the ACT for the NFMA to be consistent with the most recent scientific advice, and to incorporate the results of SARC 50 into the FMP. As a result, NMFS is considering approving the establishment of a proactive AM in the form of ACTs for both management areas, but disapproving the specification of the NFMA ACT in Amendment 5 on the grounds that it is not consistent with the most recent scientific advice. This would leave the current measures for the NFMA in place until they are superseded by a revised ACT and specification of DAS and trip limits under Framework 7, which is expected to be implemented during the summer of 2011.

The ACTs being considered in Framework 7 are equivalent or slightly higher than the current TAL for the NFMA. Additionally, NFMA landings have been well below the TAL for the past 2 years (29 percent in 2008, and 33 percent in 2009). Thus, NMFS does not expect delaying action on the establishment of an ACT for the NFMA would result in landings exceeding the ACTs being considered in Framework 7 during the 2011 fishing year, which begins May 1, 2011.

If this rule is implemented by the start of the 2011 fishing year, any monkfish landings that occur between May 1, 2011, and the time the final rule is effective would accrue against the ACT for that year and be used to trigger AMs.

4. Reactive AM

As noted above, Amendment 5 proposes both forms of AMs referenced in the NS1 guidelines for the monkfish fishery. With respect to AMs for when an ACL is exceeded, the NS1 guidelines state, "On an annual basis, the Council must determine as soon as possible after the fishing year if an ACL was exceeded." The guidelines go on to state that, "if an ACL was exceeded, AMs must be triggered and implemented as soon as possible to correct the operational issue that caused the ACL overage, as well as any biological consequences to the stock or stock complex resulting from the overage when it is known." In light of this requirement, the Councils are recommending in Amendment 5 a reactive AM that would require the Councils to assess annual catch in relation to the previous year's ACL once final landings and discard estimates become available during the following fishing year. If an ACL overage is determined to have occurred, it would be deducted pound-for-pound from the ACT. Adjustments to management measures (DAS and trip limits) would be then developed by the Councils over the course of the year in which the overage was identified, with the goal of ensuring the revised ACT is not exceeded. The revised ACT and adjusted management measures would then be implemented in the second fishing year following the one in which the overage occurred. For example, if an overage of the 2011 ACL for the NFMA is determined to have occurred upon review of final 2011 landings and discards sometime during the 2012 fishing year, the Councils would adjust the ACT and develop revised

management measures for the 2013 fishing year.

If the Councils do not take the required action to account for the ACL overage as outlined above, the NMFS Northeast Regional Administrator would take action to adjust the ACT and implement revised DAS and/or trip limits using a formulaic approach developed by the PDT. These adjustments would be implemented in accordance with the requirements of the Administrative Procedure Act and other applicable law. Notification of the proposed ACL revision and DAS and/or trip limit adjustments would be published in the **Federal Register** no later than January 1, if possible, for implementation on May 1 of the second fishing year following the fishing year in which the ACL overage occurred.

5. Specification of DAS and Trip Limits

The Councils considered a range of DAS and trip limit options to achieve the respective ACT options for each management area. The range of options consisted of three approaches: Maintain the current DAS allocation and adjust the trip limit; maintain the current trip limit and adjust the DAS; or adjust both DAS and trip limits. The DAS and trip limit options for each ACT option considered by the Councils in Amendment 5 is presented in Tables 2 and 3 for the NFMA and the SFMA, respectively. The proposed trip limit for the NFMA under the Category AC limited access permit group is the same across all three options (1,250 lb (567 kg)) because it represents the highest reported daily landing amount reported prior to the implementation of trip limits during fishing year 2007. Further, the first two DAS and trip limit options under SFMA ACT Option 1 (*i.e.,* maintaining current DAS (1A) and maintaining current trip limits (1B)) are identical because this ACT option, less discards, is equivalent to the current monkfish landings level for the SFMA. Thus, no change in DAS or trip limits would be necessary to achieve that ACT, unless one of these variables is modified (*e.g.,* a reduction in DAS under SFMA Option 1C). The first and third DAS and trip limit options under SFMA ACT Option 2 are also identical, since the Councils did not want to include an option with fewer than 23 DAS for the SFMA.

TABLE 2—NFMA DAS AND TRIP LIMIT OPTIONS

NFMA TAC option (mt)	NFMA option	AC trip limit (tail wt. per DAS)	BD trip limit (tail wt. per DAS)	DAS
8,063	1A	1,250 lb (567 kg)	700 lb (318 kg)	31
	1B	1,250 lb (567 kg)	470 lb (213 kg)	45
	1C	1,250 lb (567 kg)	600 lb (272 kg)	40
10,750	2A	1,250 lb (567 kg)	950 lb (431 kg)	31
	2B	1,250 lb (567 kg)	470 lb (213 kg)	51
	2C	1,250 lb (567 kg)	800 lb (363 kg)	40

TABLE 3—SFMA DAS AND TRIP LIMIT OPTIONS

SFMA TAC option (mt)	NFMA option	AC trip limit (tail wt. per DAS)	BD trip limit (tail wt. per DAS)	DAS
9,211	1A	550 lb (249 kg)	450 lb (204 kg)	23
	1B	550 lb (249 kg)	450 lb (204 kg)	23
	1C	700 lb (318 kg)	600 lb (272 kg)	15
11,513	2A	700 lb (318 kg)	600 lb (272 kg)	23
	2B	550 lb (249 kg)	450 lb (204 kg)	28
	2C	700 lb (318 kg)	600 lb (272 kg)	23

As stated previously, the Councils selected the highest ACT options for each management area as their preferred alternatives (10,750 mt and 11,513 mt for the NFMA and SFMA, respectively). In terms of DAS and trip limits, the Councils selected Option 2C for the NFMA, which would specify 40 DAS, and trip limits of 1,250 lb (567 kg) tail wt. per DAS for Category A and C vessels and 800 lb (363 kg) tail wt. per DAS for Category B and D vessels. For the SFMA, the Councils selected Option 2B as their preferred alternative, which would specify 28 DAS, and trip limits of 550 lb (249 kg) tail wt. per DAS for Category A and C vessels and 450 lb (204 kg) tail wt. per DAS for Category B, D, and H vessels. The Councils' preferred DAS and trip limit options are, therefore, those being proposed in Amendment 5.

6. Automatic DAS Adjustment for Trip Limit Overage

Amendment 5 proposes a measure that would allow a limited access monkfish vessel to land up to the equivalent of one additional day's worth of its trip limit more than would otherwise be authorized based on the vessel's actual monkfish DAS usage for that trip. In order to land the additional fish, this rule proposes to require the vessel to notify NMFS of the overage via vessel monitoring system (VMS) prior to crossing the VMS demarcation line, or via phone using the Agency's interactive voice response (IVR) system at least 1-hour prior to landing. To account for the day's worth of its trip limit overage, the monkfish DAS charged to the vessel would be increased to be equivalent to the next 24-hr period plus one minute. For example, if a limited access Category C vessel fishing in the SFMA has two monkfish trip limits worth of fish on board (*i.e.,* 1,100 lb tail wt. (499 kg) or 3,652 lb whole wt. (1,657 kg)), but has only been declared into the monkfish DAS program for 15 hr, the vessel may land the additional fish (*i.e.,* the amount of monkfish that exceed what is allowed for 15 hr of fishing) only if NMFS is properly notified as described above. The monkfish DAS charged to the vessel would then be adjusted from 15 hr to 24 hr and 1 minute.

In order to effectively implement this provision, NMFS is proposing that a form be added to the VMS system that a vessel operator would complete and send to NMFS prior to crossing the VMS demarcation line on the vessel's return to port. With respect to the call-in notification requirement recommended by the Councils, NMFS recognizes that

it may not be feasible for all vessels to provide a call-in notification via cell phone when outside the VMS demarcation line. As such, NMFS is proposing a revision to this requirement in this proposed rule that would require vessels that do not use the VMS notification requirement to notify NMFS of the trip limit overage by calling into the IVR system at least 1-hour prior to landing.

7. Authorization to Land Monkfish Heads

Amendment 5 proposes to authorize the landing of monkfish heads separately from the body in Amendment 5, provided the total weight of the heads does not exceed 2.32 times the total weight of monkfish tails on board. Currently, vessels are not allowed to land monkfish heads separate from the body, since monkfish heads are not an authorized product form under the regulations implementing the FMP, and there is no appropriate conversion factor. Recognizing that some individuals are taking advantage of emerging markets for the heads, the Councils are recommending that the landing of this new product form be authorized with an appropriate conversion factor to aid enforcement of the daily trip limit. The intent of this proposed measure is to clarify that a vessel cannot land monkfish heads without an appropriate weight of tails on board.

8. Allow Changes to Monkfish RSA Program via Framework Action

Currently, changes to the Monkfish RSA Program must be made through an amendment to the FMP. Amendment 5 proposes to allow changes to be made to this RSA program through a framework adjustment in order to make necessary improvements to this program in a more timely manner. This action would not preclude the Councils from conducting the necessary environmental analysis under the National Environmental Policy Act (NEPA), and complying with other applicable laws when developing a framework adjustment for this purpose.

9. Technical Amendments

This proposed rule also includes a technical amendment that would adjust the conversion factor for whole monkfish to reflect how monkfish are actually landed, *i.e.,* head on and gutted. The current tail-to-whole-weight conversion factor for monkfish is 3.32. However, this constitutes the live weight of monkfish, and does not reflect that monkfish are actually landed in head-on and gutted form. A more accurate tail-to-whole-weight (landed) conversion factor is 2.91, which reflects the conversion to a monkfish that still has its head attached, but its guts removed. This technical correction to the conversion factor would result in a reduction in the whole-weight equivalent trip limit, but not to the tail-weight trip limit, which is the value recommended by the Councils. Additionally, this would change the monkfish heads conversion factor proposed by the Council from 2.32 to 1.91 to be consistent with this corrected conversion factor.

In addition to the above technical amendment, this rule would also remove the letter of authorization (LOA) requirement for vessels fishing in the NFMA with a VMS unit found under § 648.92(b)(1)(iii), since this requirement was removed from the general area declaration requirements found at § 648.94(f) in the final rule implementing Framework Adjustment 5 to the Monkfish FMP (73 FR 22831; April 28, 2008).

This rule also would also clarify the meeting requirements for framework adjustments with respect to this joint FMP to reflect that one framework meeting must be held with each Council, versus one framework meeting overall.

Finally, this rule would update the specification and framework adjustment processes for the Monkfish FMP to include procedures for specifying ACLs and AMs.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Monkfish FMP, Amendment 5, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Pursuant to Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

A notice of availability (NOA) for Amendment 5 was published on February 1, 2011. Public comments are being solicited on the amendment through the end of the comment period on April 4, 2011. Public comments on the proposed rule must be received by the end of the comment period on the amendment, as published in the NOA, to be considered in the decision to approve or disapprove the amendment. All comments received by the end of the comment period on the amendment, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment, but may be considered in the development of the final rule. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

The NEFMC prepared an EA for Amendment 5 to the Monkfish FMP that discusses the impact on the environment as a result of this rule. A copy of the EA is available from the Council (*see* **ADDRESSES**).

An IRFA has been prepared, as required by section 603 of the Regulatory Flexibility Act (RFA), and consists of the draft IRFA in Amendment 5, this preamble, and the following summary. The IRFA describes the economic impacts this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from the NEFMC (*see* **ADDRESSES**).

All of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Administration size standards for small fishing businesses ($4.0 million in annual gross sales). Information on costs in the fishery is not readily available and individual vessel profitability cannot be determined directly; therefore, expected changes in gross revenues were used as a proxy for profitability.

This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The management measures proposed in Amendment 5 have the potential to affect all Federally permitted monkfish vessels that are actively participating in the fishery. As of September 2009, there were 758 limited access monkfish permit holders and 2,156 open access permit holders. Of these, 573 limited access permit holders (76 percent) actively participated in the monkfish fishery during the 2008 fishing year, while only 504 open access permit holders (23 percent) actively participated in the fishery during this time period. Thus, this action is

expected to impact at least 1,077 currently active monkfish permit holders.

Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives

1. Biological and Management Reference Point Alternatives

The proposed action to change the biological and management reference points in the Monkfish FMP (MSY, OY, OFL, and ABC) will have no immediate impact on vessels, since these changes do not directly change any management measures or modify vessel level aspects of the Monkfish FMP. However, the establishment of new reference points that are consistent with NS1 guidance would allow for better monitoring and management of the monkfish fishery, potentially resulting in positive effects on vessels in the future. The no action alternative would maintain the existing biological and management reference points in the Monkfish FMP. As a result, taking no action would result in no additional economic impacts beyond those identified in earlier actions affecting this fishery.

2. ACL and AM Alternatives

The Councils' preferred alternative to set the ACL equivalent to the ABC has no direct effect on vessels, since the level of fishing would be set by the establishment of an ACT as a proactive AM. Scientific uncertainty is accounted for in the ACL, while the ACT accounts for management uncertainty. Thus, if scientific uncertainty can be reduced in the future, it would lead to a higher ACL, and possibly a higher ACT as a consequence. A higher ACT would then result in greater revenue opportunities for vessels.

The no action alternative would not establish ACLs or AMs for the monkfish fishery, and would be inconsistent with the Magnuson-Stevens Act and NS1 Guidelines. Although there is likely no direct economic effect of taking no action, it could have a negative economic impact if the long-term sustainability of the monkfish fishery were affected by not establishing ACLs or AMs.

The purpose of establishing an ACT as a proactive AM is to account for management uncertainty in the ability of management measures in the Monkfish FMP (mainly DAS and trip limits) to limit catch to the prescribed level. The buffer between the ACL and the ACT represents this management uncertainty, and is intended to prevent overfishing from occurring in the event management measures to limit catch are not entirely successful. Since the ACT incorporates discards, actions that reduce discards or management uncertainty would allow for the establishment of an ACT that is closer to the ACL, resulting in higher monkfish revenues and benefits to vessels, but only if the allocation is actually landed versus discarded or left uncaught.

The preferred alternative for the SFMA (Option 2) would set the ACT at 11,513 mt, or 86 percent of the SFMA ACL. In fishing year 2008, monkfish landings exceeded the TAL by 32 percent, suggesting that some of the additional benefits from increased monkfish revenues under the preferred alternative area already being realized in the SFMA. Based on 2008 landings data, the proposed SFMA ACT would increase landings by 40 percent, while Option 1 would maintain landings at existing levels. Thus, the preferred alternative would increase monkfish revenues for vessels beyond those already being realized, while Option 1 would retain revenues at or marginally above current levels.

The preferred alternative for the NFMA (Option 2) would set the ACT at 10,750 mt, or 61 percent of the ACL. Although the proposed NFMA ACT could result in landings that are twice the current TAL for the NFMA (5,000 mt), it may not result in higher monkfish revenues since fishing year 2008 landings were 29 percent below the TAL. Thus, the preferred option may have a similar impact on monkfish revenues as the non-preferred Option 1 of 7,500 mt if the proposed increase in landings is not realized.

Actual quantification of the economic impacts of the proposed ACTs requires specification of management measures, in the form of DAS and trip limits, to achieve the proposed ACT levels. A modified trip limit model was utilized to assess the impact of the DAS and trip limit options, under each ACT option, on monkfish revenues. The model is different from models used for prior monkfish actions in that it accounts for potential impacts on monkfish trips (higher retention and additional trips) resulting from increases in DAS and trip limits, as is being proposed in Amendment 5. The previous model focused on the impacts to monkfish trips resulting from reduced DAS and trip limits, which was generally the case with prior monkfish management actions.

The trip limit model was used to assess the impacts on monkfish revenues of the proposed DAS and trip limit options on vessels fishing in only the NFMA, only in the SFMA, and in both management areas. For vessels fishing only in the NFMA (*see* Table 2), the trip limit model predicts that under the proposed DAS and trip limit options for the NFMA, per trip average vessel return would increase from 0.2 percent under NFMA Option 1A to 2.2 percent under NFMA Option 2B, while average crew payment would increase from 0.5 percent under NFMA Option 1A to 1.8 percent under NFMA Option 2B. The potential increase in total monkfish revenue ranges from 0.8 percent to 24.5 percent under the proposed options. The preferred alternative (Option 2C) would lead to a 0.8-percent increase in per trip average vessel return, a 1.2-percent increase in average crew payment, and an 11-percent increase in total monkfish revenue. This alternative represents a combination of increased trip limits and DAS. However, the maximum benefit (*i.e.,* greatest overall increase in average vessel return, average crew payment, and total monkfish revenue) would likely result from Option 2B, which would maintain the current NFMA trip limits, but increase the DAS.

For the SFMA, the trip limit model indicates that mixed impacts would occur on average vessel return, average crew payment, and total monkfish revenue. The SFMA DAS and trip limit options (*see* Table 3) that result in no changes from current measures (ACT Option 1 combined with DAS and trip limit options 1A or 1B) would result in no changes to any of these parameters. However, DAS and trip limit Option 1C under ACT Option 1 would result in a negative impact on vessels (−1 percent), crew (−1.4 percent), and monkfish revenue (−20 percent). Conversely, the preferred alternative (SFMA ACT Option 2 combined with DAS and trip limit Option 2B) would result in the maximum benefit, having a neutral impact on average vessel return, a 0.7-percent increase in average crew payment, and a 32-percent increase in total monkfish revenue. This option retains the current trip limits currently in effect for the SFMA, but increases the DAS. DAS and trip limit options 2A and 2B would have a similar positive impact on average vessel return and average crew payment (0.5-percent increase and a 0.7-percent increase, respectively), but a much smaller positive impact on total monkfish revenues (7.9 percent) in comparison to the preferred alternative. These identical alternatives would maintain the SFMA DAS allocation at the current level, but increase the trip limits. Thus, it is apparent that increasing DAS has a more favorable impact on all three

parameters, particularly total monkfish revenue, than increasing trip limits.

Vessels that fish in both management areas will be simultaneously affected by the DAS and trip limit options selected for each area. Although vessels that fish in both the NFMA and the SFMA may be more likely to change fishing locations than those that fish solely in one area, the trip limit model assumes that these vessels will continue to fish in the same locations. The results of the trip limit model indicate that there is no single combination of DAS and trip limit options for both management areas that would lead to a best outcome in terms of impact on all three parameters. The largest increase in monkfish revenue is realized under the preferred option for the SFMA combined with the DAS and trip limit Option 2C for the NFMA (same trip limits but increased DAS). However, this combination of options would result in a slight decrease in both average vessel return (1 percent) and average crew payment (0.9 percent). The combined preferred alternatives for each management area would result in a 17.9-percent increase to total monkfish revenue, but with a 1.3-percent decrease in average vessel return and average crew payment.

In terms of a reactive AM, the Councils' preferred alternative would reduce the ACT for a management area in the second year following the year in which an ACL overage occurred, and then adjust the DAS and trip limits to account for the reduced ACT. Harvesting additional monkfish in excess of the ACL would result in immediate short-term revenue increases for those vessels that harvested more than they would have if the ACL had not been exceeded (*i.e.,* those vessels that directly contributed to the ACL overage). However, this gain would be partly lost due to a reduction in the fishing opportunities 2 years later. If the resulting reduction in DAS and trip limits affected all vessels equally, the negative impact would be less severe on those vessels that benefited from the overage. It is also possible that exceeding the ACL would result in longer term impacts on the stock that could lead to further future economic losses to changes in stock size that require more restrictive management measures. Thus, the implementation of the proposed reactive AM, in comparison to the non-preferred alternative of taking no action, would help prevent such long-term losses that may potentially occur as a result of unforeseen ACL overages.

3. Automatic DAS Adjustment for Trip Limit Overage Alternatives

The Councils' preferred alternative is to allow the amount of DAS a vessel is charged to be adjusted to account for a 1-day overage of the trip limit, in comparison to taking no action. Additionally, they selected 24 hr and 1 minute as the preferred option (Option 3) for adjusting a vessel's DAS usage, which reflects the current practice of many vessels. From an economic perspective, any action that allows a vessel to retain more catch without staying out at sea or returning to sea results in an increase in revenues without an increase in costs. Thus, vessel profits are higher. As a result, the preferred alternative provides the greatest benefit to vessels in comparison to the non-preferred alternative of taking no action, and in comparison to the other DAS charging options, since it allows vessels to make fewer trips to retain the same amount of monkfish that they would under the current fishing practice, and utilize the same amount of DAS.

4. Alternatives To Allow Changes to the Monkfish RSA Program

The Councils' preferred alternative is to allow changes to the Monkfish RSA Program through a framework adjustment. This is an administrative change affecting only the procedures that may be used by the Councils to implement changes to the Monkfish RSA Program. As such, there are no direct costs to regulated entities associated with the preferred alternative and the non-preferred no action alternative. However, the preferred alternative would provide increased flexibility, in comparison to the non-preferred no action alternative, to the Councils in terms of modifying the Monkfish RSA Program to address needs and issues as they arise.

5. Alternatives To Allow the Landing of Monkfish Heads

The Councils' preferred alternative would allow fishermen to land unattached monkfish heads up to 2.32 times the weight of tails on board. In comparison to the non-preferred no action alternative, the proposed action would allow the conversion of "waste" that was previously discarded to be converted to a product that could either generate additional revenues or be used by fishermen to offset costs from purchasing bait. Both of these scenarios would provide an economic benefit to monkfish fishermen while allowing for better utilization of the resource. Conversely, the no action alternative would result in no economic effects since it would maintain the status quo.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. This action would add a new reporting element to the VMS and IVR reporting requirements authorized under OMB Control Number 0648–0202 at the end of a vessel's trip. The purpose of this new reporting requirement is to allow limited access monkfish vessels to land one additional monkfish trip limit and have their DAS allocation charged accordingly to account for the additional trip limit. Public reporting burden for the monkfish trip limit overage notification requirement is estimated to average 30 seconds per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. These 30 seconds are included within the total 2-minute estimated response time for the call-in notification requirement, but would be additional for vessels using the VMS procedure. Furthermore, the proposed action is expected to reduce the total number of monkfish trips for vessels that take advantage of this new measure since they would be using their monkfish DAS at a higher rate in exchange for being able to land more monkfish on a given trip. As such, although this action adds a new reporting requirement, it would not change the overall reporting burden associated with the existing VMS and call-in notification requirements authorized under OMB Control Number 0648–0202.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Regional Administrator at the **ADDRESSES** above and to OMB by e-mail at *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285. Notwithstanding any other provision of the law, no person is required to respond to, and no person

shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 25, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.4, paragraph (a)(9)(i)(N)(*3*) is revised and paragraph (a)(9)(ii) is added to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(9) * * *

(i) * * *

(N) * * *

(*3*) *Status of vessels pending appeal.* A vessel denied a limited access monkfish Category G or H permit may fish under the monkfish DAS program, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a valid letter from the Regional Administrator authorizing the vessel to fish under the monkfish DAS program. The letter of authorization must be carried on board the vessel. A vessel with such a letter of authorization shall not exceed the annual allocation of monkfish DAS as specified in § 648.92(b)(1) and must report the use of monkfish DAS according to the provisions of § 648.10. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the letter authorizing temporary participation in the monkfish fishery shall become invalid 5 days after receipt of the notice of denial, but no later than 10 days from the date of the denial letter. If the appeal is approved, any DAS used during pendency of the appeal shall be deducted from the vessel's annual allocation of monkfish DAS for that fishing year.

(ii) *Monkfish incidental catch vessels (Category E).* A vessel of the United States that is subject to these regulations and that has not been issued a limited access monkfish permit under paragraph (a)(9)(i)(A) of this section is eligible for and may be issued a monkfish incidental catch (Category E) permit to fish for, possess, or land monkfish subject to the restrictions in § 648.94(c).

* * * * *

3. In § 648.92, paragraphs (b)(1) and (b)(2)(i) are revised and paragraph (b)(10) is added to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(1) *Limited access monkfish permit holders*—(i) *General provision.* Limited access monkfish permit holders shall be allocated 40 monkfish DAS each fishing year to be used in accordance with the restrictions of this paragraph (b), unless otherwise restricted by paragraph (b)(1)(ii) of this section or modified by § 648.96(b)(3), or unless the vessel is enrolled in the Offshore Fishery Program in the SFMA, as specified in paragraph (b)(1)(iv) of this section. The annual allocation of monkfish DAS shall be reduced by the amount calculated in paragraph (b)(1)(v) of this section for the research DAS set-aside. Limited access NE multispecies and limited access sea scallop permit holders who also possess a limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with each monkfish DAS utilized, except as provided in paragraph (b)(2) of this section, unless otherwise specified under this subpart F.

(ii) *DAS restrictions for vessels fishing in the SFMA.* Limited access monkfish vessels may only use 28 of their 40 monkfish DAS allocation in the SFMA. All limited access monkfish vessels fishing in the SFMA must declare that they are fishing in this area through the vessel call-in system or VMS prior to the start of every trip. In addition, if a vessel does not possess a valid letter of authorization from the Regional Administrator to fish in the NFMA as described in § 648.94(f), NMFS shall presume that any monkfish DAS used were fished in the SFMA.

(iii) *DAS declaration provision for vessels fishing in the NFMA with a VMS unit.* Any limited access NE multispecies vessel fishing under a NE multispecies Category A DAS in the NFMA may change its DAS declaration to a monkfish DAS through the vessel's VMS unit during the course of the trip, but prior to crossing the VMS demarcation line upon its return to port or leaving the NFMA, if the vessel exceeds the incidental catch limit specified under § 648.94(c).

(A) Vessels that change their DAS declaration from a NE multispecies Category A DAS to a monkfish DAS during the course of a trip remain subject to the NE multispecies DAS usage requirements (*i.e.,* use a NE multispecies Category A DAS in conjunction with the monkfish DAS) described in paragraph (b)(2)(i) of this section.

(B) Gillnet vessels that change their DAS declaration in accordance with this paragraph (b)(1)(iii) are not subject to the gillnet minimum mesh size restrictions found at § 648.91(c)(1)(iii), but are subject to the smaller NE multispecies minimum mesh requirements for gillnet vessels found under § 648.80 based upon the NE Multispecies Regulated Mesh Area in which the vessel is fishing.

(iv) *Offshore Fishery Program DAS allocation.* A vessel issued a Category F permit, as described in § 648.95, shall be allocated a prorated number of monkfish DAS as specified in § 648.95(g)(2).

(v) *Research DAS set-aside.* A total of 500 DAS shall be set aside and made available for cooperative research programs as described in paragraph (c) of this section. These DAS shall be deducted from the total number of DAS allocated to all monkfish limited access permit holders, as specified under paragraph (b)(1)(i) of this section. A per vessel deduction shall be determined as follows: Allocated DAS minus the quotient of 500 DAS divided by the total number of limited access permits issued in the previous fishing year. For example, if the DAS allocation equals 40 DAS and there were 750 limited access monkfish permits issued during FY2010, the number of DAS allocated to each vessel during FY2011 would be 40 DAS minus 0.7 (500 DAS divided by 750 permits), or 39.3 DAS.

(2) *Category C, D, F, G, or H limited access monkfish permit holders.* (i) Unless otherwise specified in paragraph (b)(2)(ii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop DAS vessel holding a Category C, D, F, G, or H limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C, D, F, G, or H vessel with a limited access NE multispecies DAS permit has an allocation of NE multispecies Category A DAS, specified under § 648.82(d)(1), that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30. Under this circumstance, the vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that

equal the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies Category A DAS. For such vessels, when the total allocation of NE multispecies Category A DAS has been used, a monkfish DAS may be used without concurrent use of a NE multispecies DAS, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies. For example, if a monkfish Category D vessel's NE multispecies Category A DAS allocation is 10, and the vessel fished 10 of its 40 monkfish DAS, 10 NE multispecies Category A DAS would also be used. However, after all 10 NE multispecies Category A DAS are used, the vessel may utilize its remaining 30 monkfish DAS to fish for monkfish, without a NE multispecies DAS being used. A vessel holding a Category C, D, F, G, or H limited access monkfish permit may not use a NE multispecies Category B Regular DAS under the NE Multispecies Regular B DAS Program, as specified under § 648.85(b)(6), in order to satisfy the requirement of this paragraph (b)(2)(i) to use a NE multispecies DAS concurrently with a monkfish DAS.

* * * * *

(10) *DAS Adjustment for Trip Limit Overage.* Any limited access monkfish vessel fishing on a monkfish DAS may land up to the equivalent of one additional day's worth of its trip limit (*i.e.,* amount of monkfish authorized per DAS) than would otherwise be authorized, provided the vessel, vessel owner, or vessel operator notifies the Regional Administrator of the overage via VMS prior to crossing the VMS demarcation line. If the vessel is not equipped with an operable VMS, the vessel, vessel operator, or owner may notify the Regional Administrator via the call-in system at least 1-hour prior to landing. The monkfish DAS charged to the vessel will then be increased to equal a full 24-hr period plus one minute to account for the trip limit overage. For example, if a vessel has the equivalent of two monkfish DAS trip limits (based on its permit category) on board, but has only been declared into the monkfish DAS program for 15 hr, the vessel, vessel owner, or vessel operator may land fish equal to the two DAS trip limits only if he/she notifies the Regional Administrator of the overage via VMS or the call-in system as described above. In this case, the monkfish DAS charged to the vessel would be adjusted from 15 hr to 24 hr and 1 minute.

* * * * *

3. In § 648.94, paragraphs (a), (b)(1), (b)(2)(i) and (ii), (b)(3)(ii)(A), (b)(4), (c)(1) through (c)(8), and (d)(2) are revised to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

(a) *General.* Monkfish may be possessed or landed either as heads only, tails only, or in whole form (head on and gutted), or any combination of the three. When any combination of heads, tails, and whole fish are possessed or landed, the possession or landing limit for monkfish shall be based on the tail weight limit applicable to that vessel where all whole monkfish (head on and gutted) are converted to tail weight using the conversion factor of 2.91. For example, whole weight is converted to tail weight by dividing the whole weight by 2.91. Conversely, tail weight is converted to whole weight by multiplying the tail weight by 2.91. The possession or landing limit for monkfish heads shall not exceed 1.91 times the tail weight of fish on board, excluding any whole monkfish. The allowed amount of head weight is determined by multiplying the tail weight by 1.91. For example a vessel possessing 100 lb of tail weight may possess an additional 191 lb of monkfish heads ($100 \times 1.91 = 191$). A vessel may not possess heads only without possessing the amount of tails allowed by using the conversion factor.

(b) * * *

(1) *Vessels fishing under the monkfish DAS program in the NFMA*—(i) *Category A and C vessels.* Limited access monkfish Category A and C vessels that fish under a monkfish DAS exclusively in the NFMA may land up to 1,250 lb (567 kg) tail weight or 3,638 lb (1,650 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(ii) *Category B and D vessels.* Limited access monkfish Category B and D vessels that fish under a monkfish DAS exclusively in the NFMA may land up to 800 lb (363 kg) tail weight or 2,328 lb (1,056 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(2) *Vessels fishing under the monkfish DAS program in the SFMA*—(i) *Category A, C, and G vessels.* Limited access monkfish Category A, C, and G vessels that fish under a monkfish DAS in the SFMA may land up to 550 lb (249 kg) tail weight or 1,601 lb (726 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(ii) *Category B, D, and H vessels.* Limited access monkfish Category B, D, and H vessels that fish under a monkfish DAS in the SFMA may land up to 450 lb (204 kg) tail weight or 1,310 lb (594 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87) of monkfish heads, as described in paragraph (a) of this section.

* * * * *

(3) * * *

(ii) * * *

(A) *Category C, D, and F vessels.* Limited access monkfish Category C, D, or F vessels that fish any portion of a trip under a NE multispecies DAS in the SFMA, and not a monkfish DAS, may land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per DAS if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight per DAS if gear other than trawl gear is used at any time during the trip. Category C, D, and F vessels participating in the NE Multispecies Regular B DAS program, as specified under § 648.85(b)(6), are also subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

* * * * *

(4) *Category C, D, F, G, or H vessels fishing under the scallop DAS program.* A Category C, D, F, G, or H vessel fishing under a scallop DAS may land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based

on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

* * * * *

(c) * * *

(1) *Vessels fishing under a NE multispecies DAS*—(i) *NFMA.* Vessels issued a valid monkfish incidental catch (Category E) permit or a valid limited access Category C, D, F, G, or H permit, fishing under a NE multispecies DAS exclusively in the NFMA may land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per DAS, or 25 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, whichever is less. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(ii) *SFMA.* If any portion of the trip is fished by a vessel issued a monkfish incidental catch (Category E) permit, or issued a valid limited access Category G or H permit, under a NE multispecies DAS in the SFMA, the vessel may land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(2) *Scallop vessels fishing under a scallop DAS.* A scallop vessel issued a monkfish incidental catch (Category E) permit fishing under a scallop DAS, may land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(3) *Vessels fishing with large mesh and not fishing under a DAS*—(i) A vessel issued a valid monkfish incidental catch limit (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the GOM or GB RMAs with mesh no smaller than specified at § 648.80(a)(3)(i) and (a)(4)(i), respectively, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(ii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE RMA east of the MA Exemption Area boundary with mesh no smaller than specified at § 648.80(b)(2)(i), while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, not to exceed 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(iii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE RMA under a Skate Bait Letter of Authorization, as authorized under § 648.322(c), while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, not to exceed 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(iv) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE or MA RMAs west of the MA Exemption Area boundary with mesh no smaller than specified at § 648.104(a)(1) while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, but not to exceed 450 lb (204 kg) tail weight or 1,310 lb (594 kg) whole weight of monkfish, unless that vessel is fishing under a Skate Bait Letter of Authorization in the SNE RMA. Such a vessel is subject to the incidental catch limit specified under paragraph (c)(3)(iii) of this section. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(4) *Vessels fishing with small mesh and not fishing under a DAS.* A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing with mesh smaller than the mesh size specified by area in paragraph (c)(3) of this section, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land only up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(5) *Small vessels.* A vessel issued a limited access NE multispecies small vessel category permit and a valid monkfish incidental catch (Category E) permit that is less than 30 ft (9.1 m) in length and that elects not to fish under the NE multispecies DAS program, may possess, retain, and land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg)

of tail weight landed, the vessel may land up to 1.91 lb of monkfish heads, as described in paragraph (a) of this section.

(6) *Vessels fishing with handgear.* A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) and fishing exclusively with rod and reel or handlines with no other fishing gear on board, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(7) *Vessels fishing with surfclam or ocean quahog dredge gear.* A vessel issued a valid monkfish incidental catch (Category E) permit and a valid surfclam or ocean quahog permit, while fishing exclusively with a hydraulic clam dredge or mahogany quahog dredge, may possess, retain, and land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(8) *Scallop vessels not fishing under a scallop DAS with dredge gear*—(i) *General provisions.* A vessel issued a valid monkfish incidental catch (Category E) permit or a valid limited access Category C, D, F, G, or H permit, and also possessing a valid General Category sea scallop permit or a limited access sea scallop vessel not fishing under a scallop DAS, while fishing exclusively with scallop dredge gear as specified in § 648.51(b), may possess, retain, and land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip, unless otherwise specified in paragraph (c)(8)(ii) of this section. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(ii) *Limited access scallop vessels fishing in Sea Scallop Access Areas.* A vessel issued a valid monkfish incidental catch (Category E) permit or a valid limited access Category C, D, F, G, or H permit, and also possessing a limited access sea scallop permit while fishing exclusively with scallop dredge gear as specified in § 648.51(b), and fishing in one of the established Sea Scallop Access Areas specified under § 648.59, may possess, retain, and land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per day or partial day fished within the boundaries of the Sea Scallop Access Area. Time within the applicable access area, for purposes of determining the incidental catch limit, will be determined through the vessel's VMS unit. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads, as described in paragraph (a) of this section.

(d) * * *

(2) If a vessel possesses or lands both monkfish tails and whole monkfish, the vessel may land monkfish livers up to 10 percent of the whole weight of monkfish per trip using the following weight ratio:(0.10) × [(tail weight × 2.91) + (whole fish × 1)].

Note to paragraph (d)(2): The value 2.91 is the live weight conversion for tails and the value of 1 is the live weight conversion for fish landed in a whole condition.

* * * * *

4. Section 648.96 is revised to read as follows:

§ 648.96 FMP review, specification, and framework adjustment process.

(a) *Annual review and adjustment process.* The NEFMC and MAFMC, the Monkfish Plan Development Team (PDT), and the Monkfish Advisory Panel shall monitor the status of the monkfish fishery and resource.

(1) *Monkfish annual SAFE Report.* The PDT shall prepare an annual Stock Assessment and Fishery Evaluation (SAFE) Report for the monkfish fishery. The SAFE Report shall be the primary vehicle for the presentation of updated biological and socio-economic information regarding the monkfish fishery. The SAFE report shall provide source data for any adjustments to the management measures that may be needed for the Councils to meet the goals and objectives of the FMP.

(2) *Annual review.* The PDT shall meet at least annually to conduct a review of the monkfish fishery in relation to the goals and objectives specified in the Monkfish FMP, including a review of catch relative to the annual catch targets (ACTs) for each management area. They shall review available data pertaining to discards and landings; DAS and other measures of fishing effort; stock status and fishing mortality rate information, if available; enforcement of and compliance with management measures; and any other relevant information. Based on this review, the PDT shall provide guidance to the NEFMC and MAFMC regarding the need to adjust management measures to better achieve the FMP's goals and objectives. After considering the PDT's guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the annual framework adjustment process specified in paragraph (a)(3) of this section, the in-season framework adjustment process specified in paragraph (b) of this section, or through an amendment to the FMP.

(3) *Annual framework adjustment procedures.* (i) If necessary based on the annual review, the Councils may develop adjustments to management measures to achieve the annual catch target (ACT) for the upcoming fishing year, and may develop other management options to better achieve the goals and objectives of the Monkfish FMP, which may include a preferred option. The Councils must demonstrate through analysis and documentation that any options they develop are expected to meet the goals and objectives of the Monkfish FMP. Additionally, if necessary based on the recommendation of the NEFMC's Scientific and Statistical Committee (SSC), the Councils may recommend measures to revise the ABCs and ACLs for the upcoming fishing year(s) as described in paragraph (c) of this section.

(ii) The range of options developed by the Councils may include any of the management measures in the Monkfish FMP, including, but not limited to: ACTs; closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver-to-monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits; blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit

assignment; measures to minimize the impact of the monkfish fishery on protected species; gear requirements or restrictions that minimize bycatch or bycatch mortality; transferable DAS programs; changes to the Northeast Region SBRM (including the CV-based performance standard, fishery stratification, and/or reports) and/or industry-funded observers or observer set-aside programs; changes to the Monkfish Research Set-Aside Program; and other frameworkable measures included in §§ 648.55 and 648.90.

(iii) The Councils shall review the options analyzed by the PDT and other relevant information, consider public comment, and submit a recommendation to the Regional Administrator that meets the Monkfish FMP's objectives, consistent with other applicable law. The Councils' recommendation to the Regional Administrator shall include supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Councils. Management adjustments made to the Monkfish FMP require majority approval of each Council for submission to the Secretary.

(A) The Councils may delegate authority to the Joint Monkfish Oversight Committee to conduct an initial review of the options analyzed by the PDT and any other relevant information, consider public comment, and make a recommendation to the Councils.

(B) If the Councils submit a recommendation that is consistent with other applicable law but does not meet the Monkfish FMP's goals and objectives, the Regional Administrator may adopt any option developed by the Councils and analyzed by the PDT that has not been rejected by either Council, provided such option meets the Monkfish FMP's goals and objectives, and is consistent with other applicable law. If either the NEFMC or MAFMC has rejected all options, then the Regional Administrator may select any measure that has not been rejected by both Councils and that meets the Monkfish FMP's goals and objectives.

(iv) If the Councils submit, on or before December 1, a recommendation to the Regional Administrator after one meeting with each Council, and the Regional Administrator concurs with the recommendation, the recommendation shall be published in the **Federal Register** as a proposed rule, or as otherwise authorized under the Administrative Procedure Act. The Councils may instead submit their recommendation on or before February 1, if they choose to follow the framework process outlined in paragraph (b) of this section and request that the Regional Administrator publish the recommendation as a final rule. If the Regional Administrator concurs with the Councils' recommendation the recommended management measures may be published as a proposed rule or a final rule, in accordance with the APA. If the effective date of a final rule to implement the recommended measures falls after the start of the fishing year, fishing may continue under the existing regulations, but, any DAS used by a vessel on or after the start of a fishing year shall be counted against any DAS allocation the vessel ultimately receives for that fishing year.

(v) Following publication of a proposed rule and after receiving public comment, if the Regional Administrator concurs in the Councils' recommendation, a final rule, if possible, shall be published in the **Federal Register** prior to the start of the next fishing year. If the Councils fail to submit a recommendation to the Regional Administrator by February 1 that meets the goals and objectives of the Monkfish FMP, the Regional Administrator may implement through rulemaking in accordance with the APA one of the options reviewed and not rejected by either Council, provided the option meets the goals and objectives of the Monkfish FMP, and is consistent with other applicable law.

(b) *Within-season management action.* At any time, the Councils or the Joint Monkfish Oversight Committee (subject to the approval of the Councils' Chairmen) may initiate action to add or adjust management measures if it is determined that action is necessary to meet or be consistent with the goals and objectives of the Monkfish FMP.

(1) *In-season Framework adjustment procedures.* (i) Framework adjustments shall require at least one initial meeting of the Joint Monkfish Oversight Committee or one of the Councils (the agenda must include notification of the framework adjustment proposal) and at least two final Council meetings, one at each Council. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to the first of the two final Council meetings. Framework adjustments and amendments to the Monkfish FMP require majority approval of each Council for submission to the Secretary.

(ii) Recommended adjustments to management measures must come from the categories specified under paragraph (a)(3)(i) of this section, including specification of ABC and ACLs, if necessary.

(2) *Councils' recommendation.* After developing management actions and receiving public testimony, the Councils shall make a recommendation to the Regional Administrator. The Councils' recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Councils recommend that the management measures should be issued as a final rule, the Councils must consider at least the following four factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Councils' recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Adjustments for gear conflicts.* The Councils may develop a recommendation on measures to address gear conflict as defined under § 600.10 of this chapter, in accordance with the procedure specified in § 648.55(g) and (h).

(4) *Action by NMFS.* (i) If the Regional Administrator approves the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (c)(3)(i) of this section, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in so doing, shall publish only the final rule. Submission of the recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the **Federal Register**.

(ii) If the Regional Administrator concurs with the Councils' recommendation and determines that the recommended management

measures should be published first as a proposed rule, then the measures shall be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures shall be issued as a final rule in the **Federal Register**.

(iii) If the Regional Administrator does not concur, then the Councils shall be notified in writing of the reasons for the non-concurrence.

(c) *Process for setting ABCs and ACLs.* (1) The Councils or the PDT may develop options for setting ABC, ACL, and OFL for each monkfish stock, as necessary, as part of the annual review and adjustment process specified in paragraph (a) of this section, or as otherwise deemed necessary following the in-season adjustment process specified in paragraph (b) of this section. These options shall be submitted to the SSC for consideration. The Councils or the PDT may recommend to the SSC that ABC, ACL, and OFL are specified for each monkfish stock for multiple years as determined necessary to best align management with the stock assessment process for this fishery.

(i) *ABC recommendation.* The Councils or the PDT shall calculate ABC values for each monkfish stock based on the ABC control rule established in the FMP. These calculations shall be reviewed by the SSC, guided by terms of reference developed by the Councils. The SSC shall either concur with these ABC calculations, or provide alternative recommendations for each stock and describe the elements of scientific uncertainty used to develop its recommendations. The SSC may also consider other related issues specified in the terms of reference developed by the Councils, including, but not limited to, OFLs, ACLs, and management uncertainty.

(ii) *ACL recommendations.* The Councils shall develop ACL recommendations based upon the ABCs recommended by the SSC. The ACL recommendations shall be specified based upon total catch for each stock (*i.e.,* including landings and discards), if that information is available. The Councils shall describe the steps involved with calculating their recommended ACLs, including whether ACLs have been exceeded in recent years. The Councils shall adopt ACLs that are equal to or lower than the ABCs recommended by the SSC.

(iii) *Timing.* The Councils shall develop and approve any recommendations for ABCs and ACLs prior to December 31, to the extent possible. Once the Councils have approved the recommended ABCs and ACLs, they shall be submitted to NMFS as part of an annual framework adjustment or in-season framework adjustment, as described in paragraphs (a) and (b) of this section, along with any necessary analysis required by applicable law. After receipt of the Councils' recommendation for ACLs, NMFS shall review the Councils' decision and, if consistent with applicable law, implement the ACLs in accordance with the Administrative Procedure Act.

(d) *Accountability Measures (AMs)*—(1) *Specification of ACTs.* Through the annual review process described in paragraph (a) of this section, or as otherwise determined necessary, the Councils shall specify ACTs for each management area that are set sufficiently below the ACL to account for management uncertainty and prevent the ACL from being exceeded. The ACTs established for each management area shall be the basis for setting management measures (DAS and trip limits), after accounting for incidental catch in non-directed fisheries and discards in all fisheries.

(2) *ACL overages and adjustments*—(i) *Council action.* The Councils shall revise the ACT for a monkfish stock if it is determined that the ACL was exceeded in any given year, based upon, but not limited to, available landings and discard information. The ACL overage shall be deducted from the ACT for the corresponding monkfish stock on a pound-for-pound basis. The revised ACT and corresponding management measures (DAS and trip limits) shall be implemented through either the annual or in-season framework adjustment process, specified in paragraphs (a) and (b) of this section, in the second fishing year following the fishing year in which the ACL overage occurred.

(ii) *NMFS action.* If the Councils fail to take appropriate action to correct an ACL overage consistent with paragraph (d)(1)(i) of this section, the Regional Administrator shall implement the required adjustment, as described in paragraph (d)(2)(i) of this section, including the specification of DAS and trip limits using a formulaic approach developed by the PDT, in accordance with the Administrative Procedure Act and other applicable law. Notification of the proposed ACL revision and DAS and/or trip limit adjustments shall be published in the **Federal Register** no later than January 1, if possible, for implementation on May 1 of the second fishing year following the fishing year in which the ACL overage occurred.

(d) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

[FR Doc. 2011–4795 Filed 3–2–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 42
Thursday, March 3, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0118]

Notice of Request for Extension of Approval of an Information Collection; Environmental Monitoring Form

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with environmental monitoring.

DATES: We will consider all comments that we receive on or before May 2, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2010–0118* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0118, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0118.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: For information on environmental monitoring, contact Dr. Robert Baca, Team Leader, Environmental Compliance, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 150, Riverdale, MD 20737–1236; (301) 734–7592. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Environmental Monitoring Form.

OMB Number: 0579–0117.

Type of Request: Extension of approval of an information collection.

Abstract: The mission of the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is to provide leadership in ensuring the health and care of animals and plants, to improve agricultural productivity and competitiveness, and to contribute to the national economy and the public health.

APHIS is committed to accomplishing its mission in a manner that promotes and protects the integrity of the environment. This includes APHIS' compliance with all applicable environmental statutes.

Primary among these statutes is the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), USDA regulations implementing NEPA (7 CFR part 1b), and APHIS' NEPA Implementing Procedures (7 CFR part 372). APHIS engages in environmental monitoring for certain activities that we conduct to control or eradicate certain pests and diseases. We monitor those activities that have the greatest potential for harm to the human environment to ensure that the mitigation measures developed to avoid that harm are enforced and effective. In many cases, monitoring is required where APHIS programs are conducted close to habitats of endangered and threatened species. This monitoring is developed in coordination with the U.S. Department of the Interior, Fish and Wildlife Service, in compliance with the Endangered Species Act (50 U.S.C. 17.11 and 17.12).

APHIS field personnel and State cooperators jointly use APHIS Form 2060, Environmental Monitoring Form, to collect information concerning the effects of pesticide use in these sensitive areas. The goal of environmental monitoring is to track the potential impact that APHIS activities may have on the environment and to use this knowledge in making any necessary adjustments in future program actions.

We are asking the Office of Management and Budget (OMB) to approve our use of APHIS Form 2060 for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Growers, appliers of pesticides, State department of agriculture personnel.

Estimated annual number of respondents: 150.

Estimated annual number of responses per respondent: 20.

Estimated annual number of responses: 3,000.

Estimated total annual burden on respondents: 1,500 hours. (Due to

averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 25th day of February 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–4767 Filed 3–2–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2009–0020]

Australia's Meat Safety Enhancement Program; Notice of Affirmation of Equivalence Decision

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of affirmation of equivalence decision.

SUMMARY: The Food Safety and Inspection Service (FSIS) is affirming its 1999 decision that Australia's Meat Safety Enhancement Program (MSEP), an alternative to the conventional meat inspection system also maintained by the Australian Government food regulatory authority [Australia Quarantine and Inspection Service (AQIS)], is equivalent to the FSIS domestic meat inspection system. MSEP has been renamed the Australian Export Meat Inspection System (AEMIS), but the system itself will remain the same as that determined to be equivalent by FSIS in 1999 when FSIS announced that slaughter inspection in MSEP establishments meets all requirements of U.S. law for the import of product to the United States, and provides the same level of public health protection as U.S. domestic slaughter inspection. In this notice, MSEP is used for events that occurred under that name, MSEP/AEMIS for unchanging features of the program, and AEMIS for current and projected activities. In January 2011, Australia informed FSIS that AEMIS will be progressively implemented in all Australian beef, sheep, and goat establishments eligible to export to the United States.

DATES: The Agency must receive comments by April 4, 2011.

ADDRESSES: FSIS invites comments on this notice. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.
- *Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, USDA, FSIS, Room 2–2127 George Washington Carver Center, 5601 Sunnyside Avenue, Mailstop 5272, Beltsville, MD 20705–5272.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2009–0020. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For further information contact Dr. Ronald K. Jones, Assistant Administrator, Office of International Affairs, Food Safety and Inspection Service, USDA, Room 3143–S, 14th and Independence Avenue, SW., Washington, DC 20250–0070; telephone (202) 720–3473, fax (202) 690–3856, e-mail *Ronald.Jones@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA) stipulates that no carcasses, parts of carcasses, meat, or meat food products shall be imported into the United States unless the livestock from which they were produced was slaughtered and processed in accordance with all provisions and regulations applicable to such articles in commerce within the United States (21 U.S.C. 620). These provisions and regulations include standards for safety, wholesomeness, and labeling accuracy.

Foreign countries wanting to export meat to the United States must apply to FSIS, following procedures set out in § 327.2 of Title 9 of the Code of Federal Regulations (CFR). To be found eligible, a foreign country's national government must operate an inspection system with legal authority for the inspection system. Its implementing regulations and other implementing documentation must be equivalent to those of the United States. Specifically, the national meat inspection system must impose equivalent requirements with respect to: (1) Ante-mortem and post-mortem inspection; (2) official controls by the national government over plant construction, facilities, and equipment; (3) direct and continuous supervision of slaughter activities and product preparation; (4) separation of establishments certified to export from those not certified; (5) maintenance of a single standard of inspection and sanitation throughout certified establishments; (6) requirements for sanitation at establishments certified to export and for sanitary handling of product; and (7) official controls over condemned product.

In order to achieve equivalence recognition, a foreign country must submit its inspection system to an evaluation by FSIS consisting of a document review and an on-site review. The document review is an evaluation of the laws, regulations, and other implementing documentation used by the country to enact its inspection program. The foreign country provides a self-assessment of its national meat or poultry inspection system, organized by six components: Government oversight, statutory authority and food safety regulations, sanitation, Hazard Analysis and Critical Control Point (HACCP) systems, chemical residue testing programs, and microbiological testing programs. FSIS evaluates the information submitted in these self-assessment documents and conducts an on-site review to verify all aspects of the country's inspection program, including laboratories and the foreign government's oversight of the individual establishments within the country. This comprehensive process is described fully on the FSIS Web site at *http://www.fsis.usda.gov/Regulations_&_Policies/equivalence_process/index.asp.*

If FSIS determines that a foreign country's inspection system is equivalent, the Agency is required to conduct a rulemaking to list the country in the meat inspection regulations, at 9 CFR 327.2, as eligible to export meat and meat products to the United States. Once the rulemaking is final, the foreign country certifies appropriate establishments as having met required standards for export. This certification ensures that both establishments producing meat for export to the United States and the products of those establishments comply with requirements that are equivalent to those of the FMIA and the regulations that are promulgated under this statutory authority. To verify that

products imported into the United States are safe, wholesome, and properly labeled and packaged, FSIS re-inspects those products at ports-of-entry (POEs) before they enter the United States. FSIS re-inspects all shipments for overall condition, foreign government certification, and labeling and then selects random lots of product and assigns appropriate types of inspections such as product examination and microbiological and residue testing for a more in-depth examination.

Under the World Trade Organization (WTO) Agreement on Sanitary and Phytosanitary Measures (SPS), the United States has international obligations to respond to requests from other nations to establish the equivalence of meat and poultry processing measures that differ from those of the United States. In 1996, Australia, which has long been eligible to export meat to the United States under its conventional meat inspection system, approached FSIS with an alternative meat slaughter inspection program called "Project 2." FSIS announced in the **Federal Register** (62 FR 29326, May 30, 1997) that it was making available an AQIS submission on Project 2 and seeking public comment in order to help in determining whether the United States should accept meat produced by Australian establishments participating in Project 2 trials.

After extensive review, FSIS determined that Project 2 was not equivalent because it did not provide adequate government oversight. AQIS modified the proposed program, and FSIS announced the availability of a new AQIS paper on the program, renamed MSEP, in a **Federal Register** Notice (64 FR 2621, January 15, 1999; the MSEP paper is available on the FSIS Web site with this notice at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp*). The 1999 notice also announced a public meeting on MSEP for February 3, 1999, to seek input from U.S. industry, U.S. consumer groups, and other FSIS stakeholders.

FSIS evaluated comments on the AQIS paper and the public meeting and determined that MSEP is equivalent to the U.S. meat slaughter inspection program. FSIS announced this decision in a **Federal Register** Notice (64 FR 30299, June 7, 1999; MSEP equivalence). The Agency added that it would review its equivalence decision once AQIS had conducted field trials and submitted the results to FSIS and would then publish its conclusions in a **Federal Register** Notice. In the interim, establishments participating in MSEP field trials could export product to the United States. At the time, AQIS expected a beef establishment to participate in MSEP field trials in the near future. For various reasons, however, it was not until 2006 that a different beef slaughter establishment volunteered for MSEP field trials. That establishment is the one referenced in this notice.

MSEP/AEMIS

MSEP/AEMIS is an alternative meat slaughter inspection program in which establishment employees perform certain duties traditionally performed by government inspectors. Under MSEP/AEMIS, establishment employees instead of government inspectors are responsible for post-mortem examination of the heads and viscera of livestock. AQIS veterinarians are responsible for performing ante-mortem inspection, verifying post-mortem inspection, verifying establishment examination activities, providing final disposition on animals and carcasses/heads/viscera where there is evidence of disease, verifying HACCP and SSOP programs, and performing other food safety activities. AQIS inspectors are responsible for final inspection of each carcass for food safety defects. It should be noted that the establishment employees who are responsible for the initial examination of the heads and viscera for referral to AQIS veterinarians have completed the same training and have the same qualifications as established by AQIS for its government inspectors.

An establishment wishing to participate in MSEP/AEMIS must meet entry conditions detailed in an Approved Arrangement with AQIS. An applicant establishment must be able to demonstrate consistent performance under the Meat Hygiene Assessment (MHA) national plant performance rating system administered by AQIS. For the purposes of the beef establishment trials, the current MSEP/AEMIS beef standards are detailed in an AQIS MSEP paper of March 2007, *Meat Safety Enhancement Program: Establishing Performance Standards for Beef Slaughter.* This paper is available on the FSIS Web site with this notice at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

MSEP/AEMIS Performance Standards

The MSEP/AEMIS performance standards for beef slaughter are based on those used in the FSIS HACCP–Based Inspection Models Project (HIMP) for swine, which were first published in July 1998 (*HIMP inspection models*) and later detailed in the **Federal Register** in November 2000 (65 FR 65828–65829; *performance standards for HIMP plants*). Several HIMP market hog establishments have been operating since 2000. MSEP/AEMIS incorporates the same food safety performance standards as established by FSIS for HIMP, which included a zero tolerance for post-mortem infectious conditions, fecal material, ingesta, milk, and ante-mortem conditions found in cattle, such as neurological conditions, and moribund, febrile, and non-ambulatory cattle. The MSEP/AEMIS performance standards also include the HIMP performance attributes for wholesomeness, i.e., non-infectious conditions, such as post-mortem carcass and offal pathology and general carcass and offal contamination. In addition, MSEP/AEMIS performance standards include a performance standard for Aerobic Plate Counts of 100 colony forming units per square centimeter (100 cfu/cm^2).

In applying the MSEP/AEMIS performance standards for the field trials, AQIS compared MSEP results against MHA data from eight Australian beef slaughter establishments certified to export to the United States under conventional inspection. MHA records establishment performance against food safety standards established by AQIS for all Australian establishments exporting meat products to the United States and other countries. AQIS selected these eight establishments as the best performers based on AQIS inspection and compliance data and results of FSIS audits of these establishments that had occurred within the previous five years. These establishments also represent one-third of Australia's annual total beef production. For a close comparison, data from these eight establishments certified under conventional inspection were gathered at the same time as at the MSEP establishment. In addition, cattle slaughtered at these eight establishments were the same type of cattle as slaughtered at the MSEP establishment.

Microbiological Performance Standards

As part of the MSEP/AEMIS performance standards, AQIS established microbiological performance standards for generic *Escherichia coli* (*E. coli*) and *Salmonella,* which remain the same under the new program name of AEMIS. These MSEP/AEMIS performance standards are equal to or more stringent than the FSIS performance standards for the same organisms. For Australian

establishments producing under MSEP/AEMIS, no positives are allowed for either *Salmonella* or generic *E. coli.* In comparison, FSIS microbiological performance standards allow for one positive for *Salmonella* and one positive for generic *E. coli* for steers and heifers and two positives for generic *E. coli* for cows and bulls. The MSEP test results are discussed below.

MSEP Field Trial Proceedings

In January 2006, AQIS notified FSIS that one Australian establishment was interested in producing beef products for export to the United States under MSEP. This was Australia's first interest in exporting beef under MSEP since the 1999 equivalence determination. Because of the extensive time between the FSIS 1999 equivalence decision and the request by Australia to export under MSEP, AQIS submitted a revised MSEP program for consideration by FSIS. The revisions were minor and consisted of clarification of the separation of duties and responsibilities for AQIS and the establishment and an increase in the frequency of testing beef carcasses for *Salmonella.*

The MSEP field trials for the establishment consisted of two phases, Phase 1 and Phase 2. As part of the 1999 equivalence decision, an Australian MSEP establishment was required to complete a 6-week field trial and would be allowed to export beef products to the United States while undergoing the trial. This agreement was based, however, on the MSEP establishment already being certified by AQIS for export to the United States. The establishment that actually participated in the field trial was not a certified establishment. Therefore, AQIS added an additional 6-week field trial study as Phase 1.

MSEP Field Trial Results and Discussion

Phase 1

The 6-week MSEP field trial at the establishment under Phase 1 began on November 13, 2006, and ended on December 22, 2006. A total of 9,227 cattle were slaughtered and processed during this period. Twenty-one percent, or 1,903 carcasses of the 9,227, were sampled with regard to meeting the MSEP performance standards. The establishment did not export to the United States during Phase 1.

Ante-Mortem and Post-Mortem Inspection

The Phase 1 results showed that the establishment had exceeded the MSEP standards although early non-compliance was detected with regard to controlling fecal, ingesta, or milk contamination. As required by the establishment's HACCP plan, establishment management took corrective action, reassessed its processes, and applied and maintained adequate preventive measures to address problems controlling fecal, ingesta, or milk contamination. The data also demonstrated that establishment achieved results that were better than the average results for the eight certified Australian establishments used by AQIS as a basis for comparison for MSEP performance results. AQIS submitted 24 weeks of additional data (December 27, 2006–June 8, 2007), which showed that the establishment exceeded the MSEP performance standards. Overall, the establishment demonstrated a high level of compliance during Phase 1 and the subsequent 24 weeks.

Microbiological Sampling

AQIS collected a total of 300 generic *E. coli* samples and 300 *Salmonella* samples during the six-week Phase 1 trial study. Test results indicated zero (CFU/cm^2) for generic *E. coli* and zero percent positive for *Salmonella.*

Phase 2 of the MSEP Establishment Field Trials

Phase 2 of the field trials at the establishment began on April 28, 2008, and ended on June 2, 2008. A total of 8,620 cattle were slaughtered and processed during this six-week period. Thirteen percent, or 1,122 carcasses of the 8,620, were sampled with regards to meeting the MSEP performance standards. AQIS continued to collect performance data from the establishment between June 10 and October 17, 2008, which is referred to as post Phase 2. The establishment was certified for export and exported raw beef components for grinding to the United States during Phase 2 and post Phase 2.

Ante-Mortem and Post-Mortem

No non-compliance was detected during ante-mortem inspection or post-mortem inspection. There were two occasions of non-compliance with regard to zero tolerance for fecal, ingesta, or milk contamination. As required by the establishment HACCP plan, establishment management took corrective action, reassessed its processes, and applied and maintained adequate preventive measures. AQIS verified the effectiveness of these actions and stated that the primary cause for zero tolerance detection was dirty incoming cattle because of inclement weather.

Microbiological Sampling

AQIS collected a total of 280 generic *E. coli* samples and 280 *Salmonella* samples during Phase 2. During this six-week period, no samples were positive for *Salmonella,* and one sample was positive for generic *E. coli.*

Post Phase 2, an additional 479 *Salmonella* samples and 522 generic *E. coli* samples were taken during this 19-week period. There were two instances each of *Salmonella* and generic *E. coli* detected during post phase 2. As required by the establishment HACCP plan, establishment management took corrective action, reassessed its processes, and applied and maintained adequate preventive measures. While the two positives for *Salmonella* exceeded the MSEP microbiological performance standard of zero percent positive, the prevalence rate of 0.01 percent was within the Australian export and U.S. performance standards (1.0 percent for steers and heifers) and below the prevalence rate of 0.12 percent for the eight conventional inspection establishments tested over the same period.

AQIS also took 280 samples for Aerobic Plate Counts during Phase 2 and 532 samples during post Phase 2. From a total of 812 samples, two counts numbered above the performance standard of 100 cfu/cm^2. Therefore, data showed 99.8 percent compliance with the performance standard.

In December 2007, AQIS implemented an *E. coli* O157:H7 control program for Australian establishments exporting raw beef components for grinding to the United States. The MSEP field trial establishment became part of this program during Phase 2 and post Phase 2. The establishment was subject to *E. coli* O157:H7 testing during this same period. A total of 65 samples were taken for *E. coli* O157:H7 during Phase 2 and post Phase 2, with no positives detected.

Complete MSEP field trial reports for Phases 1 and 2 are available in the FSIS docket room.

FSIS Audit Results

FSIS conducted three audits of this establishment while it was operating under the MSEP program. These audits occurred August 29, 2007, May 14, 2008, and August 15, 2008. FSIS results from the 2007 audit, before the establishment was certified for export to the United States, identified shortcomings in process control and HACCP procedures. The later audits found that the establishment had corrected these problems. The audits indicated full compliance with the

MSEP requirements and no food safety concerns.

FSIS Port-of-Entry Data

From June 25, 2008 through December 31, 2009, FSIS re-inspected 39 lots of boneless beef from the establishment with a total weight of approximately 588,000 pounds. FSIS re-inspection activities for boneless beef included boneless meat examination, chemical residue testing, or testing for *E. coli* O157:H7. Thirty-two of 39 lots received re-inspection consisting of a boneless meat examination, with all lots passing. Two of 39 lots were tested for pesticides or herbicides, with both tests negative. Twelve of 39 lots were tested for *E. coli* O157:H7, with all tests negative.

FSIS Conclusions

Australia's meat inspection system is equivalent to that of the U.S. Australia has demonstrated that it provides an appropriate level of oversight to AQIS employees in establishments operating under the conventional meat inspection system and to AQIS employees in the MSEP/AEMIS establishment. In addition, in the establishment operating under MSEP/AEMIS, FSIS has concluded that Australia verifies that establishment employees perform necessary examination of heads and viscera. Based on its review of the field trial data and the establishment's performance, discussed above, FSIS is affirming its 1999 equivalence decision for MSEP/AEMIS.

AEMIS will be progressively implemented in all Australian beef, sheep and goat establishments eligible to export to the United States. While the Australian beef establishment discussed above was undergoing the MSEP field trials and exporting to the U.S., FSIS did conduct enhanced port-of-entry re-inspection of product from this Australian establishment in addition to conducting on-site audits of the establishment. FSIS will initially conduct similar enhanced procedures for additional Australian establishments operating under MSEP and exporting to the U.S. FSIS will also conduct continuing system audits, which include data analyses and document reviews, and port-of-entry re-inspection to verify that Australia continues to operate a meat inspection system equivalent to the United States. Additionally, FSIS will verify that Australia continues to apply appropriate performance measures and ensure that establishment employees perform necessary examination of heads and viscera. This information, including FSIS audit reports, will be made available on the FSIS Web site.

USDA Nondiscrimination Statement

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Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS ***Federal Register*** *Publications & Related Documents* Web page. View Notices by year for 2010.

The *Regulations.gov* Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in *Regulations.gov* and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service allows FSIS customers to sign up for subscription options across eight categories. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to protect their accounts with passwords.

Done at Washington, DC on March 1, 2011.

Alfred V. Almanza,

Administrator.

[FR Doc. 2011–4902 Filed 3–1–11; 4:15 pm]

BILLING CODE 3410–DM–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, March 11, 2011; 9:30 a.m. EST.

PLACE: 624 Ninth Street, NW., Room 540, Washington, DC 20425.

Meeting Agenda

This meeting is open to the public.

Portions of This Meeting May Be Held in Closed Session

I. Approval of Agenda.
II. White House Nominees for Chair, Vice Chair and Staff Director.
III. Management and Operations:
- Staff Director's report.

IV. Program Planning: Update and discussion of projects.
- Consideration of new statutory report topic for FY 2011.
- Consideration of briefing/hearing topic(s) for FY 2011.
- Title IX—Sex Discrimination in Liberal Arts College Admissions.
- English Only in the Workplace Report.
- Healthcare Disparities Report.

V. State Advisory Committee Issues:
- Re-chartering the North Dakota SAC.
- Re-chartering the Montana SAC.

VI. Approval of Feb. 11, 2011 Meeting Minutes.
VII. Announcements.

VIII. Adjourn.

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. *TDD:* (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. *TDD:* (202) 376–8116.

Dated: March 1, 2011.

Kimberly Tolhurst,

Senior Attorney-Advisor.

[FR Doc. 2011–4919 Filed 3–1–11; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Ali Amirnazmi; Order Denying Export Privileges

In the Matter of: Ali Amirnazmi, Register #63302–066, FCI Allenwood Low, Federal Correctional Institution, P.O. Box 1000, White Deer, PA 17887 and 547 Green Hill Lane, Berwyn, PA 19312.

On January 11, 2010, in the U.S. District Court for the Eastern District of Pennsylvania, Ali Amirnazmi ("Amirnazmi") was found guilty on three counts of violating the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* (2000)) ("IEEPA"); one count of conspiracy to violate the IEEPA (18 U.S.C. 371 (2000)); three counts of making false statements to Federal officials (18 U.S.C. 1001 (2000)), and three counts of bank fraud (18 U.S.C. 1344 (2000)). Amirnazmi, a citizen of both the United States and Iran, engaged in financial and business transactions with companies in Iran between November 1996 and June 2008 without obtaining the proper licenses from the U.S. Department of Treasury's Office of Foreign Assets Control. Amirnazmi was sentenced to a prison term of 48 months and ordered to pay restitution in the amount of $17,277.37. He will also serve five years of supervised release and forfeit $81,277.37.

Section 766.25 of the Export Administration Regulations ("EAR" or "Regulations") [1] provides, in pertinent part, that "[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the [Export Administration Act ("EAA")], the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778)." 15 CFR 766.25(a); see also Section 11(h) of the EAA, 50 U.S.C. app. section 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); see also 50 U.S.C. app. section 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security ("BIS") licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Amirnazmi's conviction for violating IEEPA, and have provided notice and an opportunity for Amirnazmi to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from Amirnazmi. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Amirnazmi's export privileges under the Regulations for a period of ten years from the date of Amirnazmi's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Amirnazmi had an interest at the time of his conviction.

Accordingly, *It is hereby ordered*

I. Until January 11, 2020, Ali Amirnazmi, with the last known addresses at: Register #63302–066, FCI Allenwood Low, Federal Correctional Institution, P.O. Box 1000, White Deer, PA 17887, and 547 Green Hill Lane, Berwyn, PA 19312, and when acting for or on behalf of Amirnazmi, his representatives, assigns, agents, or employees (collectively referred to hereinafter as the "Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2010). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. sections 2401–2420 (2000)) ("EAA"). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2010 (75 FR 50,681, August 16, 2010), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* (2000)).

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Amirnazmi by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until January 11, 2020.

VI. In accordance with Part 756 of the Regulations, Amirnazmi may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to the Amirnazmi. This Order shall be published in the **Federal Register**.

Issued this 7th day February, 2011.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2011–4820 Filed 3–2–11; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–965]

Drill Pipe From the People's Republic of China: Antidumping Duty Order

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the "Department") and the International Trade Commission (the "ITC"), the Department is issuing an antidumping duty order on drill pipe from the People's Republic of China ("PRC"). On February 24, 2011, the ITC notified the Department of its affirmative determination of threat of material injury to a U.S. industry, and its negative determination of critical circumstances. *See Drill Pipe and Drill Collars from China* (Investigation Nos. 701–TA–474 and 731–TA–1176 (Final), USITC Publication 4213, February 2011).

DATES: *Effective Date:* March 3, 2011.

FOR FURTHER INFORMATION CONTACT: Toni Dach or Susan Pulongbarit, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1655 or (202) 482–4031, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 2011, the Department published its affirmative final determination of sales at less than fair value in the antidumping duty investigation of drill pipe from the PRC. *See Drill Pipe From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances,* 76 FR 1966 (January 11, 2011) ("*Final Determination*"). On February 8, 2011, the Department published its amended final determination of sales at less than fair value in antidumping duty investigation of drill pipe from the PRC. *See Drill Pipe From the People's Republic of China: Amended Final Determination of Critical Circumstances,* 76 FR 6762 (February 8, 2011).

On February 24, 2011, the ITC notified the Department of its final determination pursuant to section 735(b)(1)(A)(ii) of the Tariff Act of 1930, as amended (the "Act"), that an industry in the United States is threatened with material injury by reason of less than fair value imports of subject merchandise from the PRC. *See* letter from the ITC to the Deputy Assistant Secretary of Commerce for Antidumping and Countervailing Duty Operations, dated February 24, 2011. In addition, the ITC notified the Department of its final determination that critical circumstances do not exist with respect to imports of subject merchandise from the PRC that are subject to the Department's affirmative critical circumstances finding. Pursuant to section 736(a) of the Act, the Department is publishing an antidumping duty order on drill pipe from the PRC.

Scope of the Order

The products covered by the order are steel drill pipe, and steel drill collars, whether or not conforming to American Petroleum Institute ("API") or non-API specifications. Included are finished drill pipe and drill collars without regard to the specific chemistry of the steel (*i.e.,* carbon, stainless steel, or other alloy steel), and without regard to length or outer diameter. Also included are unfinished drill collars (including all drill collar green tubes) and unfinished drill pipe (including drill pipe green tubes, which are tubes meeting the following description: seamless tubes with an outer diameter of less than or equal to 6⅝ inches (168.28 millimeters), containing between 0.16 and 0.75 percent molybdenum, and containing between 0.75 and 1.45 percent chromium). The scope does not include tool joints not attached to the drill pipe, nor does it include unfinished tubes for casing or tubing covered by any other antidumping or countervailing duty order.

The subject products are currently classified in the following Harmonized Tariff Schedule of the United States ("HTSUS") categories: 7304.22.0030, 7304.22.0045, 7304.22.0060, 7304.23.3000, 7304.23.6030, 7304.23.6045, 7304.23.6060, 8431.43.8040 and may also enter under 8431.43.8060, 8431.43.4000, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.49.0015, 7304.49.0060, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, and 7304.59.8055.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Antidumping Duty Order

On February 24, 2011, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination that an industry in the United States is threatened with material injury within the meaning of section 735(b)(1)(A)(ii) of the Act by reason of less-than-fair-value imports of drill pipe from the PRC.

Because the ITC's final determination is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's preliminary determination, section 736(b)(2) of the Act is applicable. Therefore, the Department will instruct U.S. Customs and Border Protection ("CBP") to terminate the suspension of liquidation, and to liquidate without regard to antidumping duties, unliquidated entries of drill pipe from the PRC entered, or withdrawn from warehouse, for consumption prior to the publication

of the ITC's final determination and release any bond or other security posted and refund any cash deposit of estimated antidumping duties made between the publication of the Department's preliminary determination on August 18, 2010, and the publication of the ITC's final determination. Suspension of liquidation will continue starting on or after the date of publication of the ITC's notice of final determination of threat of material injury in the **Federal Register**, except for the imports of subject merchandise from those combinations of producers and exporters identified below:

Exporter	Producer
Baoshan Iron & Steel Co., Ltd	Baoshan Iron & Steel Co., Ltd.
Shanxi Yida Special Steel Imp. & Exp. Co., Ltd	Shanxi Yida Special Steel Group Co., Ltd.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, for all other manufacturers/exporters we will instruct CBP to suspend liquidation on all entries of subject merchandise from the PRC effective on the date of publication of the ITC's notice of final determination in the **Federal Register**. We will also instruct CBP to require, at the same time as importers would normally deposit estimated customs duties on this merchandise, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping margins listed below. *See* section 736(a)(3) of the Act. The estimated dumping margins for imports of subject merchandise from the PRC will be adjusted for export subsidies found in the final determination of the companion countervailing duty investigation of this merchandise imported from the PRC. *See Drill Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 76 FR 1971 (January 11, 2011). Specifically, for cash deposit purposes, we are subtracting from the antidumping cash deposit rate applicable to DP–Master Manufacturing Co., Ltd. and Jiangyin Liangda Drill Pipe Co., Ltd. ("collectively "the DP–Master Group") and for the separate-rate companies, the rate attributable to the export subsidies calculated in the affirmative countervailing duty determination on drill pipe from the PRC for the DP–Master Group, the sole respondent in that investigation. *See Final Determination.* The all others rate or PRC-wide rate, as applicable, apply to all producers or exporters not specifically listed.

In accordance with section 736 of the Act, the Department will also direct CBP to assess antidumping duties on all unliquidated entries of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the date on which the ITC publishes its notice of final determination of threat of material injury in the **Federal Register**.

Exporter	Producer	Weighted-average margin
The DP–Master Group	The DP–Master Group	69.32
Shanxi Fenglei Drilling Tools Co., Ltd	Shanxi Fenglei Drilling Tools Co., Ltd	69.32
Jiangsu Shuguang Huayang Drilling Tool, Co. Ltd	Jiangsu Shuguang Huayang Drilling Tool, Co. Ltd	69.32
Jiangyin Long-Bright Drill Pipe Manufacturing Co., Ltd	Jiangyin Long-Bright Drill Pipe Manufacturing Co., Ltd	69.32
PRC-wide Entity		429.95

With regard to the ITC's negative critical circumstances determination on imports of the subject merchandise from the PRC, we will instruct CBP to lift suspension and to release any bond or other security, and refund any cash deposit made, to secure the payment of estimated antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after May 20, 2010 (*i.e.,* 90 days prior to the date of publication of the *Preliminary Determination*), but before August 18, 2010.

This notice constitutes the antidumping duty order with respect to drill pipe from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 7046 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: February 25, 2011.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–4792 Filed 3–2–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–966]

Drill Pipe From the People's Republic of China: Countervailing Duty Order

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC), the Department is issuing a countervailing duty order on drill pipe from the People's Republic of China (PRC).

DATES: *Effective Date:* March 3, 2011.

Contact Information: Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 2011, the Department published its final determination that countervailable subsidies are being provided to producers and exporters of drill pipe from the PRC. *See Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 76 FR 1971 (January 11, 2011).

On February 24, 2011, the ITC notified the Department of its final determination pursuant to sections 705(b)(1)(A)(ii) and 705(d) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is threatened with material injury by reason of subsidized imports of subject merchandise from the PRC. The ITC also determined that critical circumstances do not exist. *See Drill Pipe and Drill Collars from China,* Investigation Nos. 701–TA–474 and 731–TA–1176 (Final), USITC Publication 4213 (February 2011). Pursuant to section 706(a) of the Act, the Department is publishing a countervailing duty order on the subject merchandise.

Scope of the Order

The products covered by this order are steel drill pipe and steel drill collars, whether or not conforming to American Petroleum Institute (API) or non-API specifications. Included are finished drill pipe and drill collars without regard to the specific chemistry of the steel (*i.e.*, carbon, stainless steel, or other alloy steel), and without regard to length or outer diameter. Also included are unfinished drill collars (including all drill collar green tubes) and unfinished drill pipe (including drill pipe green tubes, which are tubes meeting the following description: seamless tubes with an outer diameter of less than or equal to 6 5/8 inches (168.28 millimeters), containing between 0.16 and 0.75 percent molybdenum, and containing between 0.75 and 1.45 percent chromium). The scope does not include tool joints not attached to the drill pipe, nor does it include unfinished tubes for casing or tubing covered by any other antidumping or countervailing duty order.

The subject products are currently classified in the following Harmonized Tariff Schedule of the United States (HTSUS) categories: 7304.22.0030, 7304.22.0045, 7304.22.0060, 7304.23.3000, 7304.23.6030, 7304.23.6045, 7304.23.6060, 8431.43.8040 and may also enter under 8431.43.8060, 8431.43.4000, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.49.0015, 7304.49.0060, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, and 7304.59.8055.

The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of this order is dispositive.

Countervailing Duty Order

According to section 706(b)(2) of the Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is based upon the threat of material injury. Section 706(b)(1) of the Act states, "{i}f the Commission, in its final determination under section 705(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 703(d)(2), would have led to a finding of material injury, then entries of the merchandise subject to the countervailing duty order, the liquidation of which has been suspended under section 703(d)(2), shall be subject to the imposition of countervailing duties under section 701(a)." In addition, section 706(b)(2) of the Act requires U.S. Customs and Border Protection (CBP) to refund any cash deposits or bonds of estimated countervailing duties posted before the date of publication of the ITC's final affirmative determination, if the ITC's final determination is based on threat other than the threat described in section 706(b)(1) of the Act. Because the ITC's final determination in this case is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's *Preliminary Determination* [1] was published in the **Federal Register**, section 706(b)(2) of the Act is applicable.

As a result of the ITC's determination and in accordance with section 706(a)(1) of the Act, the Department will direct CBP to assess, upon further instruction by the Department, countervailing duties equal to the amount of the net countervailable subsidy for all relevant entries of drill pipe from the PRC. In accordance with section 706 of the Act, the Department will direct CBP to reinstitute suspension of liquidation,[2] effective on the date of publication of the ITC's notice of final determination in the **Federal Register**, and to require a cash deposit for each entry of subject merchandise in an amount equal to the net countervailable subsidy rates listed below. *See* section 706(a)(3) of the Act. The all others rate applies to all producers and exporters of subject merchandise not specifically listed.

Producer/Exporter	Net subsidy *ad valorem* rate (percent)
DP Master Manufacturing Co., Ltd. (DP Master), Jiangyin Sanliang Petroleum Machinery Co., Ltd. (SPM); Jiangyin Liangda Drill Pipe Co., Ltd. (Liangda); Jiangyin Sanliang Steel Pipe Trading Co., Ltd. (SSP), and Jiangyin Chuangxin Oil Pipe Fittings Co., Ltd. (Chuangxin) (collectively, DP Master Group)	18.18
All Others	18.18

Termination of the Suspension of Liquidation

As a result of our affirmative critical circumstances finding on the DP Master Group and all other companies, CBP suspended liquidation and collected cash deposits or bonds on all entries by these companies made 90 days prior to our affirmative *Preliminary Determination.*

The Department will instruct CBP to terminate the suspension of liquidation for entries of drill pipe from the PRC, entered or withdrawn from warehouse, for consumption prior to the publication of the ITC's notice of final determination. The Department will also instruct CBP to refund any cash deposits made and release any bonds with respect to entries of drill pipe entered, or withdrawn from warehouse,

[1] See Drill Pipe From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, 75 FR 33245 (June 11, 2010) (Preliminary Determination).

[2] The Department instructed CBP to discontinue the suspension of liquidation on October 9, 2010, in accordance with section 703(d) of the Act. Section 703(d) states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of drill pipe from the PRC made on or after October 9, 2010, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of countervailing duties because of the Department's discontinuation, effective October 9, 2010, of the suspension of liquidation.

for consumption on or after March 13, 2010 (*i.e.*, 90 days prior to the date of publication of the *Preliminary Determination*), but before the date of publication of the ITC's final determination in the **Federal Register**.

This notice constitutes the countervailing duty order with respect to drill pipe from the PRC, pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 7046 of the main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

This order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: February 25, 2011.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–4796 Filed 3–2–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Request for Public Comments Concerning Regulatory Cooperation Activities That Would Help Eliminate or Reduce Unnecessary Regulatory Divergences in North America That Disrupt U.S. Exports

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The U.S. Government recognizes that economic recovery and job creation will depend significantly on its ability to work collaboratively with key trading partners to promote free and open trade and investment. In our trade and investment relationships with Mexico and Canada, and within North America as a whole, the main impediments to greater trade and investment—and more open foreign markets for U.S. exporters and investors—are not tariffs or quotas, but rather unnecessary differences in product regulations that increase costs for producers and consumers in the United States, Canada, and Mexico. With this Notice, the Commerce Department, on behalf of the Administration, is seeking public input to help identify such divergences in North America, so that the U.S. Government can work cooperatively with Mexico and Canada to address them.

President Obama explicitly linked trade to job creation when he announced the National Export Initiative in his 2010 State of the Union address, and set the ambitious goal of doubling U.S. exports in the next five years to support millions of jobs here at home. The President has focused particularly on efforts to remove unnecessary divergences in regulations with Canada and Mexico, our first and second largest export markets, respectively, and officials from the three countries have discussed strengthening regulatory cooperation to promote better regulation and facilitate trade, both bilaterally and trilaterally. President Obama met with President Felipe Calderón of Mexico and Prime Minister Stephen Harper of Canada at the the North American Leaders' Summit on August 10, 2009, in Guadalajara, Mexico. In the joint statement they issued at the end of that meeting they noted the progress that each of their governments had made in reducing unnecessary regulatory differences and they instructed their respective governments, "* * * to continue this work by building on the previous efforts, developing focused priorities and a specific timeline." The United States Government is working with both Mexico and Canada to reduce unnecessary regulatory differences and to explore further regulatory cooperation activities aimed at reducing or eliminating such differences where they hinder trade and reduce competitiveness. In order to do so, the United States has established a High-Level Regulatory Cooperation Council with Mexico and a Regulatory Cooperation Council with Canada. While these councils are bilateral, regulatory divergences exist that have consequences for firms in all three countries. Therefore, with this Notice, the Department of Commerce's International Trade Administration (ITA), in support of the National Export Initiative (NEI) and pursuant to the Secretary of Commerce's role as the chair of Trade Promotion Coordinating Committee, is requesting stakeholders to assist the Administration to identify opportunities for cooperation between or among the United States, Canada, and Mexico to reduce or eliminate regulatory divergences that disrupt trade in goods in the region, as well as any existing or emerging sectors that may benefit from regulatory coordination between these countries. Canada has already solicited similar input from its stakeholders, and Mexico has committed to do the same.

DATES: The agency must receive comments on or before April 4, 2011.

ADDRESSES: Submissions should be made via the Internet at *http://www.regulations.gov* under docket ITA–2011–0003–0001. Please direct written submissions to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230. *The public is strongly encouraged to file submissions electronically rather than by mail.*

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice should be directed to *regcoop@trade.gov.*

SUPPLEMENTARY INFORMATION: In his January 2010 State of the Union address, President Obama announced the NEI to double U.S. exports over five years and support the creation of new jobs. As the President's Export Promotion Cabinet has undertaken to implement the NEI, regional and sectoral plans are being developed to tailor the U.S. Government's NEI efforts based on the realities of trade in certain regions. For example, the North American Free Trade Agreement (NAFTA) created the world's largest free trade area, linking 444 million people and producing $17 trillion in goods and services. Trilateral trade among Canada, Mexico, and the United States was $944.6 billion in 2010. Despite this extensive trade among NAFTA partners, U.S. exporters indicate that they continue to encounter unnecessary divergences in regulatory measures in North America that disrupt trade.

ITA has developed a Mature Markets Initiative (MMI) to evaluate how best to grow exports, create jobs, and support U.S. business growth in areas where trade is robust. Regulatory cooperation is a key component of the MMI. Accordingly, ITA has identified Canada and Mexico as mature markets and will seek ways to ease or eliminate regulatory differences that hinder competitiveness and negatively impact trade for U.S. firms, including new-to-market and new-to-export businesses, particularly small- and medium-sized enterprises (SMEs).

Trade may be impeded, for example, because countries apply different standards or technical requirements to address common environmental, health, safety, or other concerns with respect to certain products or product categories. In some instances, such divergences may be arbitrary and can lead to delays, additional costs, and burdens on U.S. suppliers, particularly SMEs, and, in some cases, can make it difficult or impossible for U.S. suppliers to penetrate foreign markets. These divergences can also increase regulatory burdens for governments and costs for consumers. In other cases, regulatory

measures, despite the burdens they impose, may be necessary in order to achieve legitimate objectives such as the protection of the environment, health, or safety.

Regulatory cooperation with respect to regulatory measures can help reduce unjustified divergences and lower costs and burdens for businesses, especially SMEs, as well as for governments and consumers. For example, when regulators in different countries share data, studies, and other information on specific regulatory issues, they are more likely to reach similar conclusions, such as on the risks associated with a particular product, appropriate measures to mitigate those risks, and the costs and benefits associated with alternative regulatory approaches. This can lead regulators in these countries to adopt regulatory measures that are more aligned with each other, allow producers to develop economies of scale, reduce costs associated with complying with divergent regulatory measures, and pass on costs savings to consumers. It is critical for any alignment in regulatory approaches that results from cross-border cooperation between regulators in the United States and other countries, however, to be transparent and non-discriminatory, reduce unnecessary costs and burdens on producers and consumers, and continue to fulfill each country's health, safety, environmental, and other legitimate policy objectives.

Although cooperation on regulatory measures can lead to regulatory alignment, it can also result in other outcomes that help facilitate trade. For example, governments may elect to conclude mutual recognition agreements under which regulators in each country agree to allow products from the other country to be placed on the market based on tests or certifications carried out in that country, or equivalency agreements under which a regulator in one country agrees to recognize another country's standards as equivalent to its own, allowing products to be placed on its market that meet the other country's standards. The outcome of any such regulatory cooperation must ensure that each country can continue to meet its legitimate policy objectives.

In addition, when regulators cooperate with regard to regulatory measures, their cooperation may serve not only to facilitate trade, but may also help to realize common public policy objectives. For example, when regulators in different countries coordinate their efforts in carrying out product recalls, it can help ensure that defective or unsafe products are promptly removed from the market, thereby increasing consumers' confidence in the products they buy and in the global trading system.

Request for information. ITA invites public comment on the following possible types of cooperative regulatory activities between or among the United States, Mexico, and Canada: information-sharing agreements; technical assistance; memoranda of understanding, mutual recognition agreements; collaboration between regulators before initiating rulemaking proceedings; agreements to align particular regulatory measures; equivalency arrangements; and accreditation of testing laboratories or other conformity assessment bodies. ITA acknowledges that these types of cooperative agreements and activities are not appropriate in all cases, so interested parties are asked to provide a rationale for the proposed use of a particular cooperative approach or specific activity. ITA is also seeking recommendations for existing or emerging industry or product sectors that may benefit from regulatory coordination across North America.

Submitters should be as specific as possible in describing the relevant product or product sector, and the country or countries in which they believe there is an opportunity to facilitate trade. In addition, each proposal should include, where appropriate: (a) A description of the specific measure or measures that the proposal would address (*e.g.,* laws or regulations setting out safety or testing requirements for the relevant product or product sector); (b) an Internet link to or a copy of the measure in English and documentation that may assist ITA in understanding the measure; (c) identification of the key markets in North America for the product or product sector; (d) a description of how and to what degree the regulatory measures are affecting trade and its related costs; (e) information that may affect the proposal's feasibility (*e.g.,* U.S. legal, regulatory, or policy constraints, or any response from stakeholders or U.S. trading partners the proposal may elicit); (f) estimates of the potential benefits that would result from more closely aligning the regulatory measure, as well as a description of the method by which the submitter has calculated the benefits; (g) contact information, if known, for key government and non-government stakeholders in the country or countries to which the proposal applies; and (h) any other information that may assist ITA in considering the proposal.

ITA is interested in receiving proposals concerning any product sector that, due to the volume of trade in North America, is a justifiable focus of enhanced regulatory cooperation. Submitters are encouraged to work with counterparts and other interested stakeholders in Canada and/or Mexico to submit comments jointly. ITA will give positive consideration to proposals that demonstrate strong support from stakeholders across North America.

Requirements for Submissions: In order to ensure the timely receipt and consideration of comments, ITA strongly encourages commenters to make on-line submissions, using the *http://www.regulations.gov* Web site. Comments should be submitted under docket number ITA–2011–0003–0001. To find this docket, enter the docket number in the "Enter Keyword or ID" window at the *http://www.regulations.gov* home page and click "Search." The site will provide a search-results page listing all documents associated with that docket number. Find a reference to this notice by selecting "Notice" under "Document Type" on the search-results page, and click on the link entitled "Submit a Comment." The *www.regulations.gov* Web site provides the option of making submissions by filling in a comments field, or by attaching a document. ITA prefers submissions to be provided in an attached document. (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the website by clicking on the "Help" tab.)

All comments and recommendations submitted in response to this notice will be made available to the public. For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters "BC". The top of any page containing business confidential information must be clearly marked "BUSINESS CONFIDENTIAL". Any person filing comments that contain business confidential information must also file in a separate submission a public version of the comments. The file name of the public version of the comments should begin with the character "P". The "BC" and "P" should be followed by the name of the person or entity submitting the comments. If a comment contains no business confidential information, the file name should begin with the character "P", followed by the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments

themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

Dated: February 28, 2011.

Michelle O'Neill,

Deputy Under Secretary of Commerce for International Trade.

[FR Doc. 2011–4862 Filed 3–2–11; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA160

Marine Mammals; File No. 15330; Correction

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

ACTION: Notice; receipt of application; correction.

SUMMARY: Notice is hereby given that Robin Baird, PhD, Cascadia Research, 218½ W. 4th Avenue, Olympia, WA 98501, has applied in due form for a permit to take marine mammals in the Pacific Ocean for the purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before March 28, 2011.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 15530 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s): See **SUPPLEMENTARY INFORMATION.**

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed below. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment. Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov.* Include in the subject line of the e-mail comment the following document identifier: File No. 15330.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Carrie Hubard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On February 25, 2011, notice was published in the **Federal Register** (76 FR 10560) that a request for a scientific research permit had been submitted by the above-named applicant. The file number for the application in the title and e-mail comment address is corrected in this document. All other information to the notice has been unchanged. Please refer to the February 25, 2011 notice for a summary of the application.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

Dated: February 25, 2011.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–4811 Filed 3–2–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA213

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: Free Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops will be held in April, May, and June of 2011. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Protected Species Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted during 2011.

DATES: The Atlantic Shark Identification Workshops will be held April 7, April 14, May 5, June 2, and June 16, 2011.

The Protected Species Safe Handling, Release, and Identification Workshops will be held on April 20, April 27, May 18, May 25, June 15, and June 29, 2011.

See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Kenner, LA; Port Orange, FL (2); Foxborough, MA: and Manahawkin, NJ.

The Protected Species Safe Handling, Release, and Identification Workshops will be held in Kitty Hawk, NC; Kenner, LA; Charleston, SC; Boston, MA; Corpus Christi, TX; and Port St. Lucie, FL.

See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson by phone: (727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the Internet at: *http://www.nmfs.noaa.gov/sfa/hms/workshops/.*

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit which first receives Atlantic sharks (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for 3 years. Approximately 55 free Atlantic Shark Identification Workshops have been conducted since January 2007.

Currently permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a

dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit which first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location which first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, trucks or other conveyances which are extensions of a dealer's place of business must possess a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate.

Workshop Dates, Times, and Locations

1. April 7, 2011, 12 p.m.–4 p.m., La Quinta Inn, 2610 Williams Boulevard, Kenner, LA 70062.
2. April 14, 2011, 12 p.m.–4 p.m., La Quinta Inn, 1791 Dunlawton Avenue, Port Orange, FL 32127.
3. May 5, 2011, 12 p.m.–4 p.m., Comfort Inn, 4 Fisher Street, Foxborough, MA 02035.
4. June 2, 2011, 12 p.m.–4 p.m., Holiday Inn, 151 Route 72 East, Manahawkin, NJ 08050.
5. June 16, 2011, 12 p.m.–4 p.m., La Quinta Inn, 1791 Dunlawton Avenue, Port Orange, FL 32127.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at *esander@peoplepc.com* or at (386) 852–8588.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring specific items to the workshop:

- Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.
- Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate valid permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Protected Species Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited-access and swordfish limited-access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). These certificate(s) are valid for 3 years. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited-access permits. Additionally, new shark and swordfish limited-access permit applicants who intend to fish with longline or gillnet gear must attend a Protected Species Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued. Approximately 106 free Protected Species Safe Handling, Release, and Identification Workshops have been conducted since 2006.

In addition to certifying vessel owners, at least one operator on board vessels issued a limited-access swordfish or shark permit that uses longline or gillnet gear is required to attend a Protected Species Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited-access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates onboard at all times. The certificate(s) are valid for 3 years. As such, vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited-access permits that uses with longline or gillnet gear.

Workshop Dates, Times, and Locations

1. April 20, 2011, 9 a.m.–5 p.m., Hilton Garden Inn, 5353 North Virginia Dare Trail, Kitty Hawk, NC 27949.
2. April 27, 2011, 9 a.m.–5 p.m., Hilton Hotel, 901 Airline Drive, Kenner, LA 70062.
3. May 18, 2011, 9 a.m.–5 p.m., Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407.
4. May 25, 2011, 9 a.m.–5 p.m., Hilton Hotel, 1 Hotel Drive, Boston, MA 02128.
5. June 15, 2011, 9 a.m.–5 p.m., Holiday Inn, 5549 Leopard Street, Corpus Christi, TX 78408.
6. June 29, 2011, 9 a.m.–5 p.m., Holiday Inn, 10120 South Federal Highway, Port St. Lucie, FL 34952.

Registration

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at (386) 682–0158.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring specific items with them to the workshop:

- Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification.
- Representatives of a business owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification.
- Vessel operators must bring proof of identification.

Workshop Objectives

The Protected Species Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. In an effort to improve reporting, the proper identification of protected species will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants

with the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

Dated: February 25, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–4798 Filed 3–2–11; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, March 9, 2011; 10 a.m.–11 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters. For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: March 1, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–4991 Filed 3–1–11; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy. U.S. Patent No. 7,048,854: Apparatus for the removal of heavy metals from acidic wastewater and chemical solutions, Navy Case No. 97424//U.S. Patent No. 7,105,094: Method for the removal of heavy metals from acidic wastewater and chemical solutions, Navy Case No. 97617.

ADDRESSES: Requests for copies of the inventions cited should be directed to Andrew Drucker, Naval Facilities Engineering Service Center, Code EV12, 1100 23rd Ave., Port Hueneme, CA 93043–4370 and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Andrew Drucker supporting the Head of Technology Transfer Office, Naval Facilities Engineering Service Center, Code EV12, 1100 23rd Ave., Port Hueneme, CA 93043–4370, telephone 805–982–1108, Fax 805–982–4832, E-mail: *andrew.drucker@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR 404.7.

Dated: February 24, 2011.

D.J. Werner,

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

[FR Doc. 2011–4834 Filed 3–2–11; 8:45 am]

BILLING CODE 3810–FF–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Notice

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b, and as authorized by 42 U.S.C. 2286b, notice is hereby given of the Defense Nuclear Facilities Safety Board's public hearing and meeting described below. Interested persons or groups may present comments, technical information, or data concerning safety issues related to the matters to be considered.

TIME AND DATE OF MEETING: 9 a.m., March 31, 2011.

PLACE: Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW., Suite 300, Washington, DC 20004–2901. Additionally, as a part of the Board's E-Government initiative, the meeting will be presented live through Internet video streaming. A link to the presentation will be available on the Board's Web site (*http://www.dnfsb.gov*).

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: This is the third in a series of public meetings to examine the Department of Energy's (DOE) implementation of Recommendation 2004–1, *Oversight of Complex, High-Hazard Nuclear Operations.* The Board is reviewing DOE's and the National Nuclear Security Administration's (NNSA) safety management and oversight of the contracts and contractors they rely upon to accomplish the mission assigned to DOE and NNSA under the Atomic Energy Act of 1954, as amended, at defense nuclear facilities. We will focus on what impact DOE's and NNSA's new initiatives, including changes to DOE directives, contractor oversight, and governance, may have upon assuring adequate protection of the health and safety of the public and workers at DOE's and NNSA's defense nuclear facilities. We are conducting this series of public meetings to collect information needed to understand and address any health or safety concerns that may require Board action.

In the March 31, 2011, meeting the Board will explore in more depth Federal safety management and oversight policies being developed and administered by DOE and NNSA for defense nuclear facilities. DOE and NNSA senior leaders will articulate their views on the role of line and independent oversight to safely accomplish their work at defense nuclear facilities. The Board will examine DOE's and NNSA's evolving approach to federal oversight and its relationship to contractor assurance systems as well as the effect of changes to DOE directives. The public hearing portion of this proceeding is authorized by 42 U.S.C. 2286b.

CONTACT PERSON FOR MORE INFORMATION: Brian Grosner, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: Public participation in the hearing is invited. Requests to speak may be submitted in writing or by telephone. The Board asks that commentators describe the nature and scope of their oral presentations. Those who contact the Board prior to close of business on March 30, 2011, will be scheduled for time slots, beginning at approximately 12 p.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing at the entrance to the Public Hearing Room. Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. Documents will be accepted at the

meeting or may be sent to the Board's Washington office.

The Board will hold the record open until May 2, 2011, for the receipt of additional materials. A transcript of the meeting will be made available by the Board for inspection by the public at the Board's Washington office and at DOE's public reading room at the DOE Federal Building, 1000 Independence Avenue, SW., Washington, DC 20585. The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn the meeting and hearing, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: February 28, 2011.

Peter S. Winokur,

Chairman.

[FR Doc. 2011–4899 Filed 3–1–11; 4:15 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 2, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. 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 Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 28, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Revision.

Title of Collection: College Access Challenge Grant Program (CACG) Program—Annual Performance Report.

OMB Control Number: 1840–0802.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 57.

Total Estimated Number of Annual Burden Hours: 2,280.

Abstract: The College Access Challenge Grant statute requires grantees to submit an annual performance report that contains activities and services that have been implemented, the cost of providing such activities and services, the number of participating students, and contributions from private organizations. The U.S. Department of Education is collecting this information to ensure that states are complying with statutory requirements, grantees are making significant progress in meeting goals and objectives and that funds are being spent in an allowable, allocable, and reasonable manner.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4506. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–4806 Filed 3–2–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Education Research and Special Education Research Grant Programs; Institute of Education Sciences; Overview Information; Education Research and Special Education Research Grant Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2012

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.305A, 84.305B, 84.305D, 84.305E, 84.324A, 84.324B, and 84.324C.

SUMMARY: The Director of the Institute of Education Sciences (Institute) announces the Institute's FY 2012 competitions for grants to support education research and special education research. The Director takes this action under the Education Sciences Reform Act of 2002, title I of Public Law 107–279. The intent of these grants is to provide national leadership in expanding fundamental knowledge and understanding of education from early childhood education through postsecondary and adult education.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The central purpose of the Institute's research grant programs is to provide parents, educators, students, researchers, policymakers, and the general public with reliable and valid information about education practices that support learning and improve academic achievement and access to education

opportunities for all students. In carrying out its grant programs, the Institute provides support for programs of research in areas of demonstrated national need.

Competitions in this Notice: The Institute will conduct nine research competitions in FY 2012 through two of its National Education Centers.

The Institute's National Center for Education Research (NCER) will hold five competitions: two competitions for education research; one competition for education research training; one competition for research on statistical and research methodology in education; and one competition for evaluation of State and local education programs and policies.

The Institute's National Center for Special Education Research (NCSER) will hold four competitions: two competitions for special education research, one competition for special education research training, and one competition for special education research and development centers.

NCER Competitions

Education Research. Under the two education research competitions, NCER will consider only applications that address one of the following education research topics:

- Reading and Writing
- Mathematics and Science Education
- Cognition and Student Learning
- Effective Teachers and Effective Teaching
- Social and Behavioral Context for Academic Learning
- Improving Education Systems: Policies, Organization, Management, and Leadership
- Early Learning Programs and Policies
- English Learners
- Postsecondary and Adult Education
- Education Technology

Education Research Training. Under the education research training competition, NCER will consider only applications for the Postdoctoral Research Training Program in the Education Sciences.

Research on Statistical and Research Methodology in Education. Under the research on statistical and research methodology in education competition, NCER will consider only applications that address research on statistical and research methodology in education.

Evaluation of State and Local Education Programs and Policies. Under the Evaluation of State and Local Education Programs and Policies competition, NCER will consider only applications that address the evaluation of State and local education programs and policies.

NCSER Competitions

Special Education Research. Under the two special education research competitions, NCSER will consider only applications that address one of the following special education research topics:

- Early Intervention and Early Learning in Special Education
- Reading, Writing, and Language Development
- Mathematics and Science Education
- Social and Behavioral Outcomes to Support Learning
- Transition Outcomes for Special Education Secondary Students
- Cognition and Student Learning in Special Education
- Professional Development for Teachers and Related Services Providers
- Special Education Policy, Finance, and Systems
- Autism Spectrum Disorders
- Technology for Special Education
- Families of Children with Disabilities

Special Education Research Training. Under the special education research training competition, NCSER will consider only applications for the Postdoctoral Research Training Program in Special Education.

Special Education Research and Development Centers. Under the special education research and development centers competition, NCSER will consider only applications that address the following research topics:

- Interventions for Families of Students with Autism Spectrum Disorders
- Interventions for Families of Students with Emotional and Behavioral Disorders

Program Authority: 20 U.S.C. 9501 *et seq.*

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99. In addition, 34 CFR part 75 is applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217(a)–(c), 75.219, 75.220, 75.221, 75.222, and 75.230.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants and cooperative agreements.

Fiscal Information: Although Congress has not yet enacted an appropriation for fiscal year 2012, the Institute is inviting applications for these competitions now so that it may give applicants adequate time to prepare their applications before the first round of competitions takes place this spring. The Department may announce additional topics later in 2011. The actual award of grants will depend on the availability of funds. The number of awards made under each competition will depend on the quality of the applications received for that competition and the availability of funds. The size of the awards will depend on the scope of the projects proposed.

III. Eligibility Information

1. *Eligible Applicants:* Applicants that have the ability and capacity to conduct scientifically valid research are eligible to apply. Eligible applicants include, but are not limited to, non-profit and for-profit organizations and public and private agencies and institutions, such as colleges and universities.

2. *Cost Sharing or Matching:* These programs do not require cost sharing or matching.

IV. Application and Submission Information

1. *Request for Applications and Other Information:* Information regarding program and application requirements for the competitions will be contained in the NCER and NCSER Request for Applications (RFAs), which will be available at the following Web site: *http://ies.ed.gov/funding/.*

RFAs Available: The RFAs for the education research, special education research, education research training, special education research training, research on statistical and research methodology in education, and evaluation of State and local education programs and policies competitions will be available at the Web site listed above on or before February 28, 2011. The RFA for the special education research and development centers competition will be available at the Web site listed above on or before March 28, 2011. The dates on which the application packages for these competitions will be available are indicated in the chart at the end of this notice.

Information regarding selection criteria, requirements concerning the content of an application, and review procedures for the competitions are in the RFAs.

2. *Deadline for Transmittal of Applications:* The deadline dates for transmittal of applications invited under this notice are indicated in the chart at the end of this notice and in the RFAs for the competitions.

3. *Submission Requirements:* Applications for grants under these competitions must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section V. 1. *Electronic Submission of Applications* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VIII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, because you are required to submit your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3–Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

V. Submission of Applications

Applications for grants under these competitions must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

1. Electronic Submission of Applications

Applications for grants under the Education Research, Education Research Training, Research on Statistical and Research Methodology in Education, and Evaluation of State and Local Education Programs and Policies competitions, CFDA Numbers 84.305A, 84.305B, 84.305D, and 84.305E, and for grants under the Special Education Research, Special Education Research Training, and Special Education Research and Development Centers competitions, CFDA Numbers 84.324A, 84.324B, and 84.324C must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant applications for the Education Research, Education Research Training, Research on Statistical and Research Methodology in Education, Evaluation of State and Local Education Programs and Policies, Special Education Research, Special Education Research Training, and Special Education Research and Development Centers competitions at *http://www.Grants.gov.* You must search for the downloadable application package for each competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.324, not 84.324A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for the competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424 Research & Related (R&R)) and the other R&R forms including, Project Performance Site Locations, Other Project Information, Senior/Key Person Profile (Expanded), Research and Related Budget (Total Federal and Non-Federal), and all necessary assurances and certifications.

• If you submit your application electronically, you must attach any narrative sections of your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VIII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Elizabeth Payer, U.S. Department of Education, 555 New Jersey Avenue, NW., room 602C, Washington, DC 20208. FAX: (202) 219–1466.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

2. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number: *[Identify the CFDA number, including suffix letter, if any, for the competition under which you are submitting an application.]*), LBJ Basement Level 1,
400 Maryland Avenue, SW.,
Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

3. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number: *[Identify the CFDA number, including suffix letter, if any, for the competition under which you are submitting an application.]*), 550 12th Street, SW.,
Room 7041, Potomac Center Plaza,
Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 10 of the SF 424 (R&R) the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

VI. Application Review Information

1. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

2. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VII. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Grant Administration:* Applicants should budget for a three-day meeting for project directors to be held in Washington, DC.

4. *Reporting:* (a) If you apply for a grant under one of the competitions announced in this notice, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* To evaluate the overall success of its education research grant program, the Institute annually assesses the number of IES-supported interventions with evidence of efficacy in improving student outcomes in reading or writing and mathematics or science and in enhancing teacher characteristics that have been shown to have a positive effect on student outcomes. For the special education research grant program, the Institute annually assesses the number of IES-supported interventions with evidence of efficacy in improving student outcomes in reading, writing, or language, school readiness, and behavior. The data for these annual measures are based on What Works Clearinghouse (WWC) reviews of initial findings on interventions from IES research grants, such as findings that will have been presented as papers at a convention or working papers provided to IES by its grantees. The WWC reviews these reports and rates them using the WWC published standards to determine whether the evidence from these research grants meets evidence standards of the WWC and demonstrates a statistically significant positive effect in improving the relevant outcome. The Institute also annually assesses the performance of its research training and special education research training programs by measuring the number of individuals who have been or are being trained in IES-funded research training programs.

6. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VIII. Agency Contact

FOR FURTHER INFORMATION CONTACT: The contact person associated with a particular research competition is listed in the chart at the end of this notice and in the RFA package. The date on which applications will be available, the deadline for transmittal of applications, the estimated range of awards, and the project period are also listed in the chart and in the RFAs that are posted at the following Web sites:

http://ies.ed.gov/funding/.

http://www.ed.gov/about/offices/list/ies/programs.html.

Accessible Format: Individuals with disabilities can obtain this document and a copy of the RFA package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the appropriate program contact person listed in the chart at the end of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document

Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

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 25, 2011.

John Q. Easton,

Director, Institute of Education Sciences.

INSTITUTE OF EDUCATION SCIENCES: FY 2012 GRANT COMPETITIONS TO SUPPORT EDUCATION RESEARCH AND SPECIAL EDUCATION RESEARCH

CFDA number and name	Application package available	Deadline for transmittal of applications	Estimated range of awards*	Project period	For further information contact
National Center for Education Research (NCER)					
84.305A–1 Education Research: • Reading and Writing ..... • Mathematics and Science Education. • Cognition and Student Learning. • Effective Teachers and Effective Teaching. • Social and Behavioral Context for Academic Learning. • Improving Education Systems: Policies, Organization, Management, and Leadership. • Early Learning Programs and Policies. • English Learners ..... • Postsecondary and Adult Education. • Education Technology	April 21, 2011	June 23, 2011	$100,000 to $1,000,000.	Up to 5 years	Emily Doolittle *Emily.Doolittle@ed.gov.*
84.305A–2 Education Research: • Reading and Writing ..... • Mathematics and Science Education. • Cognition and Student Learning. • Effective Teachers and Effective Teaching. • Social and Behavioral Context for Academic Learning. • Improving Education Systems: Policies, Organization, Management, and Leadership. • Early Learning Programs and Policies. • English Learners ..... • Postsecondary and Adult Education. • Education Technology.	July 21, 2011	September 22, 2011.	$100,000 to $1,000,000.	Up to 5 years	Emily Doolittle *Emily.Doolittle@ed.gov.*
84.305B Education Research Training: • Postdoctoral Research Training Program in the Education Sciences.	July 21, 2011	September 22, 2011.	$91,500 to $137,400.	Up to 5 years	Meredith Larson *Meredith.Larson@ed.gov.*
84.305D Research on Statistical and Research Methodology in Education:	July 21, 2011	September 22, 2011.	$40,000 to $330,000.	Up to 3 years	Allen Ruby *Allen.Ruby@ed.gov.*
84.305E Evaluation of State and Local Education Programs and Policies:	July 21, 2011	September 22, 2011.	$500,000 to $1,000,000.	Up to 5 years	Allen Ruby *Allen.Ruby@ed.gov.*
National Center for Special Education Research (NCSER)					
84.324A–1 Special Education Research:					

INSTITUTE OF EDUCATION SCIENCES: FY 2012 GRANT COMPETITIONS TO SUPPORT EDUCATION RESEARCH AND SPECIAL EDUCATION RESEARCH—Continued

CFDA number and name	Application package available	Deadline for transmittal of applications	Estimated range of awards*	Project period	For further information contact
• Early Intervention and Early Learning in Special Education. • Reading, Writing, and Language Development. • Mathematics and Science Education. • Social and Behavioral Outcomes to Support Learning. • Transition Outcomes for Special Education Secondary Students. • Cognition and Student Learning in Special Education. • Professional Development for Teachers and Related Services Providers. • Special Education Policy, Finance, and Systems. • Autism Spectrum Disorders • Technology for Special Education. • Families of Children with Disabilities.	April 21, 2011	June 23, 2011	$100,000 to $1,000,000.	Up to 5 years	Amy Sussman *Amy.Sussman@ed.gov.*
84.324A–2 Special Education Research: • Early Intervention and Early Learning in Special Education. • Reading, Writing, and Language Development. • Mathematics and Science Education. • Social and Behavioral Outcomes to Support Learning. • Transition Outcomes for Special Education Secondary Students. • Cognition and Student Learning in Special Education. • Professional Development for Teachers and Related Services Providers. • Special Education Policy, Finance, and Systems. • Autism Spectrum Disorders • Technology for Special Education. • Families of Children with Disabilities.	July 21, 2011	September 22, 2011.	$100,000 to $1,000,000.	Up to 5 years	Amy Sussman *Amy.Sussman@ed.gov.*
84.324B Special Education Research Training: • Postdoctoral Research Training Program in Special Education.	April 21, 2011	June 23, 2011	$91,500 to $137,400.	Up to 5 years	Amy Sussman *Amy.Sussman@ed.gov.*
84.324C Special Education Research and Development Centers: • Interventions for Families of Students with Autism Spectrum Disorders. • Interventions for Families of Students with Emotional and Behavioral Disorders.	July 21, 2011	September 22, 2011.	$1,000,000 to $2,000,000.	Up to 5 years	Amy Sussman *Amy.Sussman@ed.gov.*

* These estimates are annual amounts.

Note: The Department is not bound by any estimates in this notice.

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

[FR Doc. 2011–4821 Filed 3–2–11; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, March 28, 2011, 1 p.m.–5 p.m. Tuesday, March 29, 2011, 8:30 a.m.–4:30 p.m.

ADDRESSES: The Partridge Inn, 2110 Walton Way, Augusta, GA 30904.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Monday, March 28, 2011

1 p.m. Combined Committee Session.
5 p.m. Adjourn.

Tuesday, March 29, 2011

8:30 a.m. Approval of Minutes, Chair Update.
Public Comment Session.
Agency Updates.
Facility Disposition and Site Remediation Committee Report.
Nuclear Materials Committee Report.
Public Comment Session.
12 p.m. Lunch Break.
1 p.m. Strategic and Legacy Management Committee Report.
Waste Management Committee Report.
Administrative Committee Report.
Public Comment Session.
4:30 p.m. Adjourn.

If needed, time will be allotted after public comments for items added to the agenda.

Public Participation: The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gerri Flemming at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.srs.gov/general/outreach/srs-cab/meeting_summaries_2011.html.*

Issued at Washington, DC on February 25, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–4763 Filed 3–2–11; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a combined meeting of the Environmental Monitoring, Surveillance and Remediation Committee and Waste Management Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico (known locally as the Northern New Mexico Citizens' Advisory Board (NNMCAB)). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, March 23, 2011; 2 p.m.–4 p.m.

ADDRESSES: Los Alamos National Laboratory Foundation, Conference Room, 1112 Plaza del Norte, Espanola, New Mexico 87532.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or E-mail: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Purpose of the Environmental Monitoring, Surveillance and Remediation Committee (EMS&R): The EMS&R Committee provides a citizens' perspective to NNMCAB on current and future environmental remediation activities resulting from historical Los Alamos National Laboratory operations and, in particular, issues pertaining to groundwater, surface water and work required under the New Mexico Environment Department Order on Consent. The EMS&R Committee will keep abreast of DOE–EM and site programs and plans. The committee will work with the NNMCAB to provide assistance in determining priorities and the best use of limited funds and time. Formal recommendations will be proposed when needed and, after consideration and approval by the full NNMCAB, may be sent to DOE–EM for action.

Purpose of the Waste Management Committee: The Waste Management Committee reviews policies, practices and procedures, existing and proposed, so as to provide recommendations, advice, suggestions and opinions to the NNMCAB regarding waste management operations at the Los Alamos site.

Tentative Agenda:

- Welcome and Introductions, Ralph Phelps.
- Presentation on the Chemical and Metallurgy Research Replacement Project, Ivan Trujillo.
- Wrap-up Discussion and Adjournment.

Public Participation: The NNMCAB's EMS&R and Waste Management Committees welcome the attendance of the public at their combined committee meeting and will make every effort to accommodate persons with physical

disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Committees either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org/.*

Issued at Washington, DC, on February 25, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–4764 Filed 3–2–11; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, March 30, 2011; 1 p.m.–7 p.m.

ADDRESSES: Santa Fe Courtyard by Marriott, 3347 Cerrillos Road, Santa Fe, New Mexico 87507.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or E-mail: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1 p.m. Call to Order by Co-Deputy Designated Federal Officers, Ed Worth and Lee Bishop.
Establishment of a Quorum: Roll Call and Excused Absences, Lorelei Novak.
Welcome and Introductions, Ralph Phelps.
Approval of Agenda and January 26, 2011 Meeting Minutes.
1:30 p.m. Public Comment Period.
1:45 p.m. Old Business.
- Written Reports.
- Other Items.

2 p.m. New Business.
- Other items.

2:45 p.m. Items from DOE, Ed Worth and Lee Bishop.
3:15 p.m. Break.
3:30 p.m. Presentation on Fiscal Year 2011 Budget.
4:15 p.m. Presentation on the Testing and Handling of a Water Sample.
5 p.m. Dinner Break.
6 p.m. Public Comment Period.
6:15 p.m. Consideration and Action on Draft Recommendation(s), Ralph Phelps.
6:45 p.m. Open Forum for Board Members.
7 p.m. Adjourn, Ed Worth and Lee Bishop.

Public Participation: The EM SSAB, Northern New Mexico, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org/.*

Issued at Washington, DC, on February 25, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–4765 Filed 3–2–11; 8:45 am]

BILLING CODE 6405–01–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: ER11–1831–001.

Applicants: Columbus Southern Power Company.

Description: Columbus Southern Power Company submits tariff filing per 35: CSP MBR Concurrence Compliance to be effective 10/8/2010.

Filed Date: 02/23/2011.

Accession Number: 20110223–5140.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 16, 2011.

Docket Numbers: ER11–1833–001.

Applicants: Indiana Michigan Power Company.

Description: Indiana Michigan Power Company submits tariff filing per 35: 20110223 MBR Concurrence Compliance to be effective 10/8/2010.

Filed Date: 02/23/2011.

Accession Number: 20110223–5148.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 16, 2011.

Docket Numbers: ER11–2860–001.

Applicants: Coyote Canyon Energy LLC.

Description: Coyote Canyon Energy LLC submits tariff filing per 35.17(b): FERC Electric Tariff Volume No.1 to be effective 4/11/2011.

Filed Date: 02/23/2011.

Accession Number: 20110223–5126.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 16, 2011.

Docket Numbers: ER11–2922–000.

Applicants: El Segundo Power II LLC.

Description: El Segundo Power II LLC submits tariff filing per 35.1: El Segundo Power II LLC—Baseline Tariff to be effective 8/17/2010.

Filed Date: 02/16/2011.

Accession Number: 20110216–5136.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 09, 2011.

Docket Numbers: ER11–2937–000.
Applicants: Champion Energy, LLC.
Description: Champion Energy, LLC submits tariff filing per 35.13(a)(2)(iii): Seller Category change to be effective 2/24/2011.
Filed Date: 02/23/2011.
Accession Number: 20110223–5040.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 16, 2011.

Docket Numbers: ER11–2938–000.
Applicants: Champion Energy Services, LLC.
Description: Champion Energy Services, LLC submits tariff filing per 35.13(a)(2)(iii): Seller Category change to be effective 2/24/2011.
Filed Date: 02/23/2011.
Accession Number: 20110223–5048.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 16, 2011.

Docket Numbers: ER11–2939–000.
Applicants: Champion Energy Marketing, LLC.
Description: Champion Energy Marketing, LLC submits tariff filing per 35.13(a)(2)(iii): Ancillary Services and Seller Category change to be effective 2/24/2011.
Filed Date: 02/23/2011.
Accession Number: 20110223–5051.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 16, 2011.

Docket Numbers: ER11–2940–000.
Applicants: ConocoPhillips Company.
Description: ConocoPhillips Company submits tariff filing per 35.13(a)(2)(iii): Seller Category change to be effective 2/24/2011.
Filed Date: 02/23/2011.
Accession Number: 20110223–5062.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 16, 2011.

Docket Numbers: ER11–2941–000.
Applicants: HL Power Company, LP.
Description: HL Power Company, LP submits tariff filing per 35.1: Amendment to Rate Schedule FERC No. 2 to be effective 2/23/2011.
Filed Date: 02/23/2011.
Accession Number: 20110223–5109.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 16, 2011.

Docket Numbers: ER11–2943–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): G527 FCA Termination to be effective 4/25/2011.
Filed Date: 02/23/2011.
Accession Number: 20110223–5138.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 16, 2011.

Take notice that the Commission received the following electric reliability filings

Docket Numbers: RD10–4–001.
Applicants: North American Electric Reliability Corporation.
Description: Compliance Filing of the North American Electric Reliability Corporation in Response to January 6, 2011 Order Approving NERC's November 20, 2009 Petition for Approval of Revisions to Withdraw MISO Waivers.
Filed Date: 02/22/2011.
Accession Number: 20110222–5222.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 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 dockets(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 23, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4711 Filed 3–2–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2935–000]

Paulding Wind Farm II LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Paulding Wind Farm II LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 15, 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 dockets(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 23, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4712 Filed 3–2–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2924–000]

Denver Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Denver Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 15, 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 23, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4710 Filed 3–2–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–UST–2010–0625, FRL–9275–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Underground Storage Tanks: Technical and Financial Requirements and State Program Approval Procedures (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 4, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–UST–2010–0625, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Underground Storage Tank (UST) Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Hal White, Office of Underground Storage Tanks, Mail Code 5403P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 603–7177; fax number: (703) 603–0175; e-mail address: *white.hal@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 10, 2010 (75 FR 48325), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–UST–2010–0625, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the UST 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 UST Docket is 202–566–0270.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further

information about the electronic docket, go to *http://www.regulations.gov.*

Title: Underground Storage Tanks: Technical and Financial Requirements and State Program Approval Procedures (Renewal).

ICR numbers: EPA ICR No. 1360.12, OMB Control No. 2050–0068.

ICR Status: This ICR is scheduled to expire on March 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, requires that EPA develop standards for UST systems, as may be necessary, to protect human health and the environment, and procedures for approving state programs in lieu of the federal program. EPA promulgated technical and financial requirements for owners and operators of USTs at 40 CFR part 280, and state program approval procedures at 40 CFR part 281. This ICR is a comprehensive presentation of all information collection requirements contained at 40 CFR parts 280 and 281.

The data collected for new and existing UST system operations and financial requirements are used by owners and operators and/or EPA or the implementing agency to monitor results of testing, inspections, and operation of UST systems, as well as to demonstrate compliance with regulations. EPA believes strongly that if the minimum requirements specified under the regulations are not met, neither the facilities nor EPA can ensure that UST systems are being managed in a manner protective of human health and the environment.

EPA uses state program applications to determine whether to approve a state program. Before granting approval, EPA must determine that programs will be no less stringent than the federal program and contain adequate enforcement mechanisms.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 14 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: UST facilities and states.

Estimated Number of Respondents: 211,040.

Frequency of Response: Once, on occasion, monthly, and annually.

Estimated Total Annual Hour Burden: 6,751,058.

Estimated Total Annual Cost: $479,490,266 ($199,841,753 in labor costs; $60,337,980 in annualized capital/startup costs; and $219,310,531 in operation and maintenance costs).

Changes in the Estimates: There is an increase of 781,841 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This is due to updated respondent universe and burden estimates.

Dated: February 25, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–4789 Filed 3–2–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–AO–2010–0739, FRL–9275–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Regulatory Pilot Projects (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 4, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–AO–2010–0739 to (1) EPA online using www.regulations.gov (our preferred method), by email to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, OA Docket, EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gerald Filbin, Office of Policy, (1807T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–2182; fax number: 202–566–2220; e-mail address: *filbin.gerald@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 5, 2010 (75 FR 61484), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment during the comment period, which is addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–AO–2010–0739, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Office of the Administrator Docket in the EPA Docket Center (EPA/DC) 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 Office of the Administrator Docket is 202–566–0219.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index

listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Regulatory Pilot Projects (Renewal).

ICR numbers: EPA ICR No. 1755.09, OMB Control No. 2010–0026.

ICR Status: This ICR is scheduled to expire on March 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This is an information collection request renewal that will allow for the continued solicitation of proposals for innovative pilot projects and to allow EPA to continue its commitments to monitor the results of ongoing pilot tests of regulatory innovation. The renewal of this ICR is important as it will allow the Agency to continue to measure performance outcomes of regulatory innovation piloting and to assess the broader applicability of those pilot projects. The ICR is also necessary to allow EPA to identify State and Tribal co-regulators as well as other stakeholders who are interested in partnering with EPA in innovative pilot projects, allowing the Agency to continue its commitment to innovation and regulatory flexibility with facilities, communities, and states in achieving environmental results. The renewal of this ICR will allow the Office of Policy to continue to work with potential stakeholders on innovative approaches to achieve improved environmental results.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Respondents/Affected Entities: States and regulated entities participating in EPA regulatory pilot projects.

Estimated Number of Respondents: 832.

Frequency of Response: Quarterly, annually, on occasion.

Estimated Total Annual Hour Burden: 4,680 hours.

Estimated Total Annual Cost: $258,694. This is exclusively for labor as there are no capital investment or maintenance and operational costs.

Changes in the Estimates: There is a decrease of 3,068 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This reflects the reduced number of Project XL and State Innovation Grant projects reporting as those programs come to a close.

Dated: February 25, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–4779 Filed 3–2–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0033; FRL–9275–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; EPA's ENERGY STAR® Product Labeling (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 4, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0033 to (1) EPA online using www.regulations.gov (our preferred method), by email to a-and-r-*docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Christopher Kent, Climate Protection Partnership Division, Office of Air and Radiation, Mailcode 6202J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9046; fax number: 202–343–2200; email address; *kent.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 5, 2010 (75 FR 61481), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2003–0033, which is available for online viewing at *http://www.regulations.gov*, or in person

viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: EPA's ENERGY STAR® Product Labeling (Renewal)

ICR numbers: EPA ICR No. 2078.05, OMB Control No. 2060–0528.

ICR Status: This ICR is scheduled to expire on March 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and 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: ENERGY STAR is a voluntary program developed in collaboration with industry to create a self-sustaining market for energy efficient products. The center piece of the program is the ENERGY STAR label, a registered certification label that helps consumers identify products that save energy, save money, and help protect the environment without sacrificing quality or performance. In order to protect the integrity of the label and enhance its effectiveness in the marketplace, EPA must ensure that products carrying the label meet appropriate program requirements.

The ENERGY STAR program has determined it necessary to shift from a self-certification program to one in which we have an enhanced qualification and verification process with all testing being done in EPA recognized, accredited labs and partners participating in product specific certification programs. These changes are an effort to preserve the consumer confidence in the ENERGY STAR label and to protect the significant value it offers program partners. EPA believes that the new requirements will mean that leadership companies' participation and the ENERGY STAR label will become even more meaningful in the market. Maintaining the value of this brand requires ensuring products labeled with the ENERGY STAR deliver on their promise to the consumer. Beginning in January 2011, manufacturers must obtain third party certification for new products labeled with the ENERGY STAR mark. As with previous program requirements, program participants submit signed Partnership Agreements indicating that they will adhere to logo-use guidelines and that participating products meet specified energy performance criteria based on a standard test method.

As part of our contribution to the overall success of the program, EPA has agreed to facilitate the sale of qualifying products by providing consumers with easy-to-use information about the products. To be effective, EPA and its relevant recognized certification body must receive qualifying product information from participating manufacturers. Partners need to provide qualifying information prior to labeling so as to ensure that EPA information is recent and accurate. The information will be compiled by the certification body which will then provide EPA with the appropriate data so the product may be incorporated into a complete qualifying products list per product category, posted on the ENERGY STAR Web site, and supplied to those purchasers who request it via phone, fax, or e-mail.

In order to monitor progress and support the best allocation of resources, EPA also asks manufacturers to submit annual shipment data for their ENERGY STAR qualifying products. EPA is flexible as to the methods by which manufacturers may submit unit shipment data. For example, if manufacturers already submit this type of information to a third party, such as a trade association, they are given the option of arranging for shipment data to be sent to EPA via this third party to avoid duplication of efforts and to ensure confidentiality. In using any shipment data received directly from a partner, EPA will mask the source of the data so as to protect confidentiality.

Finally, Partners that wish to receive recognition for their efforts in ENERGY STAR may submit an application for the Partner of the Year Award.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 28 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Respondents for this information collection request include Partners in ENERGY STAR. Partners are product manufacturers.

Estimated Number of Respondents: 2050.

Frequency of Response: Initially/one-time and annually.

Estimated Total Annual Hour Burden: 65,338 hours.

Estimated Total Annual Cost: $4,344,125, that includes $32,543 in Operations and Maintenance Costs.

Changes in the Estimates: There is a decrease of 31,750 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. There are several reasons for the change in reporting burden. EPA has changed the ENERGY STAR program from a self-certification program to an enhanced qualification process with all partners participating in product specific certification programs. Partners no longer report directly to EPA to qualify their models but instead work with third party certification bodies who will provide EPA, on a regular basis, with a list of certified models that EPA will post on our web site EPA increased the estimated number of

respondents for Partnership Agreements, Unit Shipment data, and Award applications based on improved and updated data and analysis.

Dated: February 25, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–4776 Filed 3–2–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2011–0149, FRL–9274–9]

Puckett Smelter Superfund Site; Mountainboro, Etowah County, AL; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Puckett Smelter Superfund Site located in Mountainboro, Etowah county, Alabama for publication.

DATES: The Agency will consider public comments on the settlement until April 4, 2011. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2011–0149 or Site name Puckett Smelter Superfund Site by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *http://www.epa.gov/region4/waste/sf/enforce.htm.*
- *E-mail: Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: February 10, 2011.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 2011–4771 Filed 3–2–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

February 24, 2011.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, 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 control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 2, 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 contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via e-mail to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0717.

Title: Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92–77, 47 CFR Sections 64.703(a), 64.709, 64.710.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,418 respondents and 11,250,150 responses.

Estimated Time per Response: 1 minute (.017 hours)–50 hours.

Frequency of Response: Annual and on occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is found at 47 U.S.C. 226, Telephone Operator Services, Pub. L. 101–435, 104 Stat. 986, codified at 47 CFR 64.703(a) Consumer Information, 64.709 Informational Tariffs, and 64.710 Operator Services for Prison Inmate Phones.

Total Annual Burden: 205,023 hours.

Total Annual Cost: $116,250.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impacts(s).

Needs and Uses: Pursuant to 47 CFR 64.703(a), Operator Service Providers (OSPs) are required to disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate call, how to obtain rate quotations, including any applicable surcharges. 47 CFR 64.710 imposes similar requirements on OSPs to inmates at correctional institutions. 47 CFR 64.709 codifies the requirements for OSPs to file informational tariffs with the Commission. These rules help to ensure that consumers receive information necessary to determine what the charges associated with an OSP-assisted call will be, thereby enhancing informed consumer choice in the operator services marketplace.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–4699 Filed 3–2–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Approved by the Office of Management and Budget

February 23, 2011.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB)

approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Cathy Williams on (202) 418–2918 or via e-mail to: *cathy.williams@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1144.

OMB Approval Date: February 18, 2011.

Expiration Date: February 28, 2014.

Title: Consumer Survey.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents/Responses: 5,000 respondents, 5,000 responses.

Estimated Time per Response: .25 hours (15 minutes).

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 1,250 hours.

Nature of Response: Voluntary. The statutory authority for this collection of information is contained in Section 202(h) of the Telecommunications Act of 1996.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No personally identifying information will be transmitted to the Commission from the survey contractor as a matter of vendor policy.

Needs and Uses: The information contained under OMB control number 3060–1144 is necessary to prepare one of the Commission's media ownership studies, Consumer Valuation of Media as a Function of Local Market Structure. This information collection is critical to the development and completion of the media ownership rules proceeding required pursuant to Section 202(h) of the Telecommunications Act of 1996. Specifically, the Commission is required to review its media ownership rules quadrennially to determine whether its rules "are necessary in the public interest as the result of competition." The Commission is then required to repeal or modify any regulation it determines no longer to serve the public interest. With the Notice of Inquiry (NOI) released on May 25, 2010, the Commission launched its fifth proceeding pursuant to the statutory mandate requiring that the media ownership rules be reviewed. Subsequently, in June 2010, the Commission's Media Bureau sought Requests for Quotation (RFQ) for nine studies to be incorporated as part of the 2010 Quadrennial Review. The survey that is the subject of this review, the Consumer Survey, was included in the RFQ and a bid was selected on September 30, 2010. The Consumer Survey will be used in a determination to define a performance metric related to the public interest goals the Commission seeks to promote through its media ownership rules. The Consumer Survey will also be used to examine the impact of local media market structure on consumer satisfaction with available broadcast radio and television service. The Consumer Survey will collect information regarding how much time people spend with various media and how people get news and information. The Survey will ask respondents to rate, on a numerical scale, their current satisfaction with the overall local media environment and with components such as broadcast television, broadcast radio, and newspapers. The Survey will also include questions asking respondents to rate their current satisfaction with the local news, local public affairs, and other locally oriented media content. This Survey will be distributed via the Internet to a nationwide sample of consumers, and the Commission anticipates approximately 5,000 responses to the survey. Based on the results of the Survey, the contractor will conduct a study to examine the impact of local media market structure on consumer satisfaction with available broadcast radio and television service. This collection of data and resulting study will enable the Commission to adequately review the media ownership rules and determine whether the rules are necessary in the public interest as a result of competition, as required by Congress. The Office of Management and Budget approved this collection on February 18, 2011.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–4700 Filed 3–2–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 11–329]

Emergency Access Advisory Committee; Announcement of Date of Next Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the date of the Emergency Access Advisory Committee's ("Committee or EAAC") next meeting. The Committee meeting will continue discussions on questions and target populations for the national survey of persons with disabilities and will have a briefing on non-voice emergency services.

DATES: The Committee's next meeting will take place on Friday, March 11, 2011, 10:30 a.m. to 4:30 p.m. (EST), at Commission Headquarters.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Cheryl King, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 202–418–2284 (voice) or 202–418–0416 (TTY), *Cheryl.King@fcc.gov* (e-mail) or Patrick Donovan, Public Safety and Homeland Security Bureau, Federal Communications Commission, 202–418–2413, *Patrick.Donovan@fcc.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On December 7, 2010, in document DA 10–2318, Chairman Julius Genachowski announced the establishment, and appointment of members and Co-Chairpersons, of the EAAC, an advisory committee required by the Twenty-first Century Communications and Video Accessibility Act of 2010, Public Law 111–260 (CVAA), which directs that an advisory committee be established, for the purpose of achieving equal access to emergency services by individuals with disabilities as part of our nation's migration to a national Internet protocol-enabled emergency network, also known as the next generation 9–1–1 system ("NG9–1–1").

The purpose of the EAAC is to determine the most effective and efficient technologies and methods by which to enable access to NG9–1–1 emergency services by individuals with disabilities. In order to fulfill this mission, the CVAA directs that within one year after the EAAC's members are appointed, the Committee shall conduct a national survey, with the input of groups represented by the Committee's

membership, after which the Committee shall develop and submit to the Commission recommendations to implement such technologies and methods.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

Karen Peltz Strauss,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2011–4786 Filed 3–2–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 11–35; DA 11–353]

Wireless Telecommunications Bureau Seeks Comment on Petition for Declaratory Ruling Asking To Clarify the Scope of Section 332(c)(3)(A)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Wireless Telecommunications Bureau seeks comment on a December 3, 2010 petition for declaratory ruling (Petition) filed by CTIA-The Wireless Association (Petitioners). The Petitioners ask the Federal Communications Commission (Commission) to clarify "the scope of Section 332(c)(3)(A)'s ban on state and local entry regulation."

DATES: Interested parties may file comments on or before April 11, 2011, and reply comments on or before May 11, 2011.

ADDRESSES: You may submit comments, identified by WT Docket No. 11–35, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the supplementary information section of this document.

FOR FURTHER INFORMATION CONTACT: Jennifer Salhus, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice released on February 25, 2011. The full text of the public notice is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or e-mail *FCC@BCPIWEB.com.* Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

The Petitioners state that the Connecticut Department of Public Utility Control (Connecticut PUC) "ordered that wireless providers must apply for and obtain a Certificate of Public Convenience and Necessity (CPCN) from the [Connecticut PUC] before they can request permission to access public rights-of-way." The Petitioners ask the Commission to declare that Connecticut's CPCN requirement is a form of entry regulation that is prohibited by section 332(c)(A)(3).

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated above. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Federal Communications Commission.

Ruth Milkman,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 2011–4790 Filed 3–2–11; 8:45 am]

BILLING CODE 6712–01–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 March 17, 2011.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. *William Russell Carothers II, Robert Leroy Carothers, Christian Hill Carothers, all of Winfield, Alabama, and William R. Carothers, III,* Birmingham, Alabama; to retain voting shares of Citizens Bancorp of Winfield, Inc., and thereby indirectly retain voting shares of The Citizens Bank of Winfield, both in Winfield, Alabama.

2. *Charles E. Gleghorn,* and Hue G. Counts, both of Fayetteville, Tennessee; Hardy B. Ferrell, Mulberry, Tennessee; Roger Everett Jones, New Market, Alabama; and Joe Lee Lasater, Hazel Green, Alabama; to collectively acquire voting shares of North Alabama Bancshares, Inc. and thereby indirectly acquire voting shares of North Alabama Bank, both of Hazel Green, Alabama.

3. *P. Byron DeFoor,* Ooltewah, Tennessee, and Winston A. Porter, Atlanta, Georgia; to collectively acquire voting shares of Northside Bancshares, Inc., and thereby indirectly acquire voting shares of Northside Bank, both of Adairsville, Georgia.

4. *Michael Hull Erdman,* Merritt Island, Florida; to retain voting shares of Sunrise Bank, Cocoa Beach, Florida.

Board of Governors of the Federal Reserve System, February 25, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–4693 Filed 3–2–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7020–N]

Medicare, Medicaid, and Children's Health Insurance Programs; Renewal, Expansion, and Renaming of the Advisory Panel on Outreach and Education (APOE) and Request for Nominations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces that the charter of the Advisory Panel on Medicare Education (APME), as renamed the Advisory Panel on Outreach and Education (APOE), has been renewed and the scope of the charter has been expanded. It also requests nominations for individuals to serve on the APOE.

DATES: Nominations will be considered if we receive them at the appropriate address, provided in the **ADDRESSES** section of this notice, no later than 5 p.m., e.d.t. on April 4, 2011.

ADDRESSES: Mail or deliver nominations to the following address: Jennifer B. Kordonski, Designated Federal Official, Office of External Affairs and Beneficiary Services, CMS, 7500 Security Boulevard, Mail Stop S1–13–05, Baltimore, MD 21244–1850 or e-mail to *Jennifer.kordonski@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer B. Kordonski, Designated Federal Official, Office of External Affairs and Beneficiary Services, CMS, 7500 Security Boulevard, Mail Stop S1–13–05, Baltimore, MD 21244, 410–786–1840, e-mail *Jennifer.kordonski@cms.hhs.gov* or visit the Web site at *http://www.cms.gov/FACA/04_APOE.asp.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Advisory Panel on Medicare Education (APME) was established in January 1999 in accordance with section 9(a)(2) of the Federal Advisory Committee Act (FACA), which authorizes the Secretary of Health and Human Services (the Secretary) to establish an advisory panel if the Secretary determines that the panel is "in the public interest in connection with the performance of duties imposed * * * by law." Such duties are specifically imposed by section 1804 of the Social Security Act (the Act), requiring the Secretary to provide informational materials to Medicare beneficiaries about the Medicare program, and section 1851(d) of the Act, requiring the Secretary to provide for "activities * * * to broadly disseminate information to [M]edicare beneficiaries * * * on the coverage options provided under [Medicare Advantage] in order to promote an active, informed selection among such options."

The APME was also authorized by section 1114(f) of the Act (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (PHSA) (42 U.S.C. 217a). The Secretary signed the charter establishing the APME on January 21, 1999 (64 FR 7899, February 17, 1999).

II. Provisions of This Notice

A. Renewal, Renaming, and Amendment of the APOE

Over the last decade, the role of the APME in advising the Secretary and CMS on Medicare education activities has contributed to the overall improved understanding by beneficiaries of original Medicare, Medicare Advantage (MA), and Medicare Prescription Drug plans. With enactment of the health care reform provisions of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (these two public laws are collectively referred to as the Affordable Care Act), we realized that the usefulness of this FACA group could be expanded to assist the Secretary and CMS with responsibilities under the Medicaid and CHIP programs. Pursuant to the charter approved on January 21, 2011, the APME was renewed, expanded, and renamed to reflect this broader scope of responsibilities. The renamed Advisory Panel on Outreach and Education (APOE)) will advise the Department of Health and Human Services and CMS on developing and implementing education programs that support individuals with or who are eligible for Medicare, Medicaid and the Children's Health Insurance Program (CHIP) about options for selecting health care coverage under these and other programs envisioned under health care reform to ensure improved access to quality care, including prevention services. The expansion of this FACA group will also include advising on education of providers and stakeholders with respect to health care reform and certain provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act enacted as part of the American

Recovery and Reinvestment Act of 2009 (ARRA). For ease of reference, the APOE will be exclusively referred to by its new name in the remainder of this notice, even if it is referring to past activities.

The charter will terminate on January 21, 2013, unless renewed by appropriate action. The APOE was chartered under 42 U.S.C. 222 of the PHSA, as amended. The APOE 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.

Pursuant to the amended charter, the APOE will advise the Secretary of Health and Human Services and the CMS Administrator concerning optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in or eligible for Medicare, Medicaid, and CHIP.
- Enhancing the Federal government's effectiveness in informing the Medicare, Medicaid and CHIP consumers, providers and stakeholders pursuant to education and outreach programs of issues regarding these and other health coverage programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers and stakeholders.
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of Medicare, Medicaid, and CHIP education programs.
- Assembling and sharing an information base of "best practices" for helping consumers evaluate health plan options.
- Building and leveraging existing community infrastructures for information, counseling and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under health care reform.

B. Requests for Nominations

The APOE shall consist of no more than 20 members. The Chair shall either be appointed from among the 20 members, or a Federal official will be designated to serve as the Chair. The charter requires that meetings shall be held approximately four times per year. Members will be expected to attend all meetings. The members and the Chair shall be selected from authorities knowledgeable in one or more of the following fields:

- Senior citizen advocacy.
- Outreach to minority communities.
- Health communications.
- Disease-related advocacy.
- Disability policy and access.
- Health economics research.
- Health insurers and plans.
- Health IT.
- Direct patient care.
- Matters of labor and retirement.

Representatives of the general public may also serve on the APOE.

This notice also announces that as of January 2011, there are 12 expired terms of membership. This notice is an invitation to interested organizations or individuals to submit their nominations for membership on the APOE. The CMS Administrator will appoint new members to the APOE from among those candidates determined to have the expertise required to meet specific agency needs, and in a manner to ensure an appropriate balance of membership. We have an interest in ensuring that the interests of both women and men, members of all racial and ethnic groups, and physically challenged individuals are adequately represented on the APOE. Therefore, we encourage nominations of qualified candidates who can represent these interests. Any interested person may nominate one or more qualified persons.

Current members whose terms expired in 2010 or 2011 may be considered for reappointment, subject to committee service guidelines.

Each nomination must state that the nominee has expressed a willingness to serve as a Panel member and must be accompanied by a curricula vitae and a brief biographical summary of the nominee's experience.

While we are looking for experts in a number of fields, our most critical needs are for experts in health disparities, State Health Insurance Assistance Programs (SHIPs), health insurance plans, aging, Web health education, e-prescribing, retirement/financial planning, health research, public health and prevention, caregiving, CHIP, health insurance exchanges, and minority health education.

We are requesting that all curricula vitae include the following:

- Date of birth.
- Place of birth.
- Title and current position.
- Professional affiliation.
- Home and business address.
- Telephone and fax numbers.
- E-mail address.
- List of areas of expertise.

Phone interviews of nominees may also be requested after review of the nominations.

In order to permit an evaluation of possible sources of conflict of interest, potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts.

Members are invited to serve for 2-year terms, contingent upon the renewal of the APOE by appropriate action prior to its termination. A member may serve after the expiration of that member's term until a successor takes office. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of that term.

III. Copies of the Charter

The Secretary's Charter for the APOE is available on the CMS Web site at: *http://www.cms.gov/FACA/04_APOE.asp,* or you may obtain a copy of the charter by submitting a request to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 25, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–4754 Filed 2–28–11; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–N–0265] (formerly Docket 2007N–0026)

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by April 4, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0037. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers—(OMB Control Number 0910–0037)—Revision

Under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), FDA is authorized to prevent the interstate distribution of food products that may be injurious to health or that are otherwise adulterated, as defined in section 402 of the FD&C Act (21 U.S.C. 342). Under the authority granted to FDA by section 404 of the FD&C Act (21 U.S.C. 344), FDA regulations require registration of food processing establishments, filing of process or other data, and maintenance of processing and production records for acidified foods and thermally processed low-acid foods in hermetically sealed containers. These requirements are intended to ensure safe manufacturing, processing, and packing procedures and to permit FDA to verify that these procedures are being followed. Improperly processed low-acid foods present life-threatening hazards if contaminated with foodborne microorganisms, especially *Clostridium botulinum.* The spores of *C. botulinum* must be destroyed or inhibited to avoid production of the deadly toxin that causes botulism. This is accomplished with good manufacturing procedures, which must include the use of adequate heat processes or other means of preservation.

To protect the public health, FDA regulations require that each firm that manufactures, processes, or packs acidified foods or thermally processed low-acid foods in hermetically sealed containers for introduction into interstate commerce register the establishment with FDA using Form FDA 2541 (§§ 108.25(c)(1) and 108.35(c)(1) (21 CFR 108.25(c)(1) and 108.35(c)(1))). In addition to registering the plant, each firm is required to provide data on the processes used to produce these foods, using Form FDA 2541a for all methods except aseptic processing, or Form FDA 2541c for aseptic processing of low-acid foods in hermetically sealed containers (§§ 108.25(c)(2) and 108.35(c)(2)). Plant registration and process filing may be accomplished simultaneously. Process data must be filed prior to packing any new product (§§ 108.25(c)(2) and 108.35(c)(2)). For processors of thermally processed low-acid foods in hermetically sealed containers, operating processes and procedures must be posted near the processing equipment or made available to the operator (§ 113.87(a) (21 CFR 113.87(a))).

Regulations in parts 108, 113, and 114 (21 CFR parts 108, 113, and 114) require firms to maintain records showing adherence to the substantive requirements of the regulations. These records must be made available to FDA on request. Firms are also required to document corrective actions when process controls and procedures do not fall within specified limits (§§ 113.89, 114.89, and 114.100(c)); to report any instance of potential health-endangering spoilage, process deviation, or contamination with microorganisms where any lot of the food has entered distribution in commerce (§ 108.25(d) and § 108.35(d) and (e)); and to develop and keep on file plans for recalling products that may endanger the public health (§§ 108.25(e) and 108.35(f)). To permit lots to be traced after distribution, acidified foods and thermally processed low-acid foods in hermetically sealed containers must be marked with an identifying code (§§ 113.60(c) (thermally processed foods) and 114.80(b) (acidified foods)).

These collection of information provisions are currently approved under OMB control number 0910–0037 (expires August 31, 2011). In the **Federal Register** of March 14, 2007 (72 FR 11990), FDA published a proposed rule entitled "Temperature-Indicating Devices; Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers" (the proposed rule). This document proposed to revise FDA's regulations for thermally processed low-acid foods in part 113 to, among other things, provide for the use of temperature-indicating devices other than mercury-in-glass thermometers during processing, require that temperature-indicating devices be tested for accuracy against a calibrated reference device, and to establish recordkeeping requirements for temperature-indicating devices and reference devices maintained by the processor. In compliance with the PRA (44 U.S.C. 3506(c)(2)(B)), the Agency requested public comment on the information collection provisions of the proposed rule (72 FR 11990 at 12004).

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule entitled "Temperature-Indicating Devices; Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers" (the final rule). The final rule revises the information collection currently approved under OMB control number 0910–0037 by adding recordkeeping requirements in new § 113.100(c) and (d). The information to be recorded under these regulations is related to accuracy tests of temperature-indicating devices and reference devices maintained by processors of low-acid canned foods. These tests must be performed to ensure the accuracy of the devices during the processing of these foods. If these devices are not accurate, the processor cannot ensure that the low-acid canned foods it produces are safe to eat, and consumers may be harmed. The recordkeeping requirements of the final rule are necessary to document that appropriate accuracy tests have been performed with the appropriate frequencies for each temperature-indicating device and each reference device maintained by the processor. Records of accuracy tests for these devices also help processors determine how frequently the devices should be tested for accuracy. Much of the information is currently generated for accuracy tests performed under current regulations. However, the information may not be recorded as required under the final rule.

Current low-acid canned food regulations recommend, but do not require, that processors keep records of accuracy tests for mercury-in-glass thermometers, including test date, standard used, method used, and person performing the test. The final rule requires processors to keep records documenting the accuracy of temperature-indicating devices (including but not limited to mercury-in-glass thermometers) and of reference devices that are maintained by the processor. These records include the

identifier of the device being tested, such as its tag or seal; the name of the manufacturer of the device; the identity of the reference device, equipment, and procedures used for the accuracy test and to adjust the device or, if an outside facility conducts the accuracy test, documentation regarding the traceability of the accuracy to a National Institute of Standards and Technology or other national metrology institute standard; the identity of the person or facility that performed the accuracy test and adjusted or calibrated the device; the date and results of each accuracy test, including the amount of adjustment; and the date on or before which the next accuracy test must be performed.

In addition to requesting public comment on the new recordkeeping provisions, the proposed rule also stated that FDA had submitted the recordkeeping provisions to OMB for review (72 FR 11990 at 12005). However, due to an administrative error, the Agency did not actually do so, and, therefore, FDA is submitting them to OMB now. Because OMB approval for the collections of information in the regulations the final rule amends is set to expire on August 31, 2011, FDA is also submitting those collections (as revised by the final rule) for OMB review, along with the others currently approved under OMB control number 0910–0037.

Description of Respondents: The respondents to this information collection are commercial processors and packers of acidified foods and thermally processed low-acid foods in hermetically sealed containers.

FDA estimates the burden of this information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Form No.	21 CFR section	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Form FDA 2541 (Registration)	108.25 and 108.35	515	1	515	.17	88
Form FDA 2541a (Process Filing).	108.25 and 108.35	1,489	8.62	12,835	.333	4,274
Form FDA 2541c (Process Filing).	108.35	84	7.77	653	.75	490
Total	.....	.....	.....	.....	.....	4,852

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA bases its estimates of the number of respondents and the hours per response on its experience with registration and process filing and on information from industry. FDA estimates the total burden of registration under §§ 108.25 and 108.35 to be 88 hours (515 respondents × 1 annual response × 0.17 hours = 87.55 hours, rounded to 88 hours). FDA estimates the total burden of process filing on Form FDA 2541a under §§ 108.25 and 108.35 to be 4,274 hours (1,489 respondents × 8.62 annual responses × 0.333 hours = 4,274.12 hours, rounded to 4,274 hours). FDA estimates the total burden of process filing on Form FDA 2541c under § 108.35 to be 490 hours (84 respondents × 7.77 annual responses × 0.75 hours = 489.51 hours, rounded to 490 hours). The reporting burden for § 108.25(d) and § 108.35(d) and (e) is minimal because notification of spoilage, process deviation, or contamination of product in distribution occurs less than once per year. Most firms discover these problems before the product is distributed and, therefore, are not required to report the occurrence. To avoid double-counting, estimates for §§ 108.25(g) and 108.35(h) have not been included because they merely cross-reference recordkeeping requirements contained in parts 113 and 114.

FDA permits electronic registration and filing on the Internet. The electronic submission capability of the Low Acid Canned Food (LACF) Program entitled *e*LACF was the second major registration application to be supported by and integrated under the FDA Unified Registration and Listing System (FURLs). Food canning establishments can request an electronic account by sending an e-mail to *lacf@fda.hhs.gov.*

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR part/section	Number of recordkeepers	Annual frequency of recordkeeping	Total annual records	Hours per record	Total hours
21 CFR Parts 113 and 114	9,500	1	9,500	250	2,375,000
Burden added by new § 113.100(c) and (d)	4,225	15	63,375	0.0097	615
Total	.....	.....	.....	.....	2,375,615

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA received six letters, each containing one or more comments on the proposed rule. Although the Agency did not identify any comments referring specifically to the PRA, several comments discussed the proposed recordkeeping provisions. FDA has summarized and responded to these comments in section II of the final rule (Comments 1, 4, 11 through 13, and 18). None of the comments on the proposed rule suggested that we modify our burden estimates for the new information collection provisions. Thus, we have not changed our estimates of the annual frequency per recordkeeping or the hours per record. We have, however, increased the estimated number of recordkeepers to reflect growth in the low-acid canned food processing industry since the 2007 proposed rule.

Currently, there are 9,491 active firms in the LACF database, which encompasses processors of low-acid

canned food, processors of acidified food, and processors of both types of food. Thus, we estimate the number of processors keeping records under parts 113 and 114 to be 9,500, as shown in table 2, row 1 of this document. In the final rule, we estimated that there are approximately 8,450 foreign and domestic low-acid canned food processing establishments. This estimate, which does not encompass establishments that process only acidified foods (because such processors are not affected by the final rule), was based on data in the LACF database as of September 2009. As discussed in the explanation of the recordkeeping estimate for the final rule in the following paragraphs, our estimate assumes that half of the LACF industry currently does not record all of the device accuracy testing information that the final rule requires. Thus, as shown in table 2, row 2 of this document, we estimate that 4,225 low-acid canned food manufacturers that are not currently keeping the records that are required under the final rule will begin to keep such records to comply with the final rule when it becomes effective.

FDA bases its estimates of the number of recordkeepers and the hours per record on its experience and on information from industry. FDA estimates that it takes 250 hours per respondent to comply with the recordkeeping requirements in parts 113 and 114. In table 2, row 1 of this document, FDA estimates the total burden of recordkeeping under parts 113 and 114 before the effective date of the final rule to be 2,375,000 hours (9,500 respondents $\times$ 250 hours = 2,375,000 hours). Table 2, row 2 reports the average annual recordkeeping burden of the final rule. The burden of the recordkeeping requirement of the final rule consists of the set-up time required to design and establish a form for recording the required information, and the additional hours of labor needed to record the information. The set-up time required for designing a new recordkeeping form is assumed to be minimal because we estimate that only a few data elements required in the final rule are currently unreported by some processors and that only small modifications to a processor's recordkeeping form would be required to accommodate the additional data elements.

We estimate that the amount of time needed to comply with the recordkeeping requirements of the final rule will be small because current industry practice is to keep track of most, if not all, of this information. Because current incentives to track accuracy of mercury-in-glass thermometers may vary across the industry, however, some information that is currently generated during accuracy tests may not be recorded as required under the final rule. Thus, we assume there will be a burden incurred from the final rule to record information that is currently generated, but not recorded.

We assume that half of the industry currently does not record all of the device accuracy testing information that the final rule requires. We further assume that current practice by these firms is to leave unrecorded 1 to 4 separate pieces of information required under the final rule, and that each piece of information takes between 10 and 15 seconds to record. Consequently, we estimate that half of all low-acid canned food manufacturers will spend between 10 seconds and 1 minute (i.e., 1×10 seconds and 4×15 seconds) per device to record information required in the final rule.

Based on a survey conducted by FDA between 1992 and 1993 of mercury-in-glass thermometer calibration in the low-acid canned food industry, we estimate that low-acid food firms use an average of 10 temperature-indicating devices, including reference devices. We estimate that 4,225 low-acid canned food manufacturers (half of the industry) currently do not fully record the accuracy test results required by the final rule. Because the regulations specify that each device must be tested upon installation and at least once per year thereafter, or more frequently if necessary to ensure accuracy, we estimate that each device requires 1 to 2 tests per year (midpoint of 1.5 tests per year). We therefore estimate the annual frequency per recordkeeping to be 15 (*i.e.,* 10 devices $\times$ 1.5 tests per year). We estimate the burden for recording the additional information to be between 10 and 60 seconds per device (midpoint of 35 seconds or 0.0097 hours per device). Therefore, the estimated total annual burden in hours for the recordkeeping requirements of the final rule is approximately 615 hours (63,375 $\times$ 0.0097 = 614.7 hours, rounded to 615 hours). Thus, the final rule increases the total burden of this information collection by approximately 0.3 percent, from 2,375,000 hours to 2,375,615 hours.

Dated: February 23, 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2011–4474 Filed 3–2–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0583]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Radioactive Drug Research Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 4, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0053. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Radioactive Drug Research Committees—(OMB Control Number 0910–0053)—Extension

Under sections 201, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 355, and 371), FDA has the authority to issue regulations governing the use of radioactive drugs for basic scientific research. Section 361.1 (21 CFR 361.1) sets forth specific regulations regarding the establishment and composition of Radioactive Drug Research Committees and their role in approving and monitoring basic research studies utilizing radiopharmaceuticals. No basic research

study involving any administration of a radioactive drug to research subjects is permitted without the authorization of an FDA-approved Radioactive Drug Research Committee (§ 361.1(d)(7)). The type of research that may be undertaken with a radiopharmaceutical drug must be intended to obtain basic information and not to carry out a clinical trial for safety or efficacy. The types of basic research permitted are specified in the regulation, and include studies of metabolism, human physiology, pathophysiology, or biochemistry.

Section 361.1(c)(2) requires that each Radioactive Drug Research Committee shall select a chairman, who shall sign all applications, minutes, and reports of the committee. Each committee shall meet at least once each quarter in which research activity has been authorized or conducted. Minutes shall be kept and shall include the numerical results of votes on protocols involving use in human subjects. Under § 361.1(c)(3), each Radioactive Drug Research Committee shall submit an annual report to FDA. The annual report shall include the names and qualifications of the members of, and of any consultants used by, the Radioactive Drug Research Committee, using FDA Form 2914, and a summary of each study conducted during the proceeding year, using FDA Form 2915.

Under § 361.1(d)(5), each investigator shall obtain the proper consent required under the regulations. Each female research subject of childbearing potential must state in writing that she is not pregnant, or on the basis of a pregnancy test be confirmed as not pregnant.

Under § 361.1(d)(8), the investigator shall immediately report to the Radioactive Drug Research Committee all adverse effects associated with use of the drug, and the committee shall then report to FDA all adverse reactions probably attributed to the use of the radioactive drug.

Section 361.1(f) sets forth labeling requirements for radioactive drugs. These requirements are not in the reporting burden estimate because they are information supplied by the Federal Government to the recipient for the purposes of disclosure to the public (5 CFR 1320.3(c)(2)).

Types of research studies not permitted under this regulation are also specified, and include those intended for immediate therapeutic, diagnostic, or similar purposes or to determine the safety or effectiveness of the drug in humans for such purposes (*i.e.,* to carry out a clinical trial for safety or efficacy). These studies require filing of an investigational new drug application (IND) under 21 CFR part 312, and the associated information collections are covered in OMB control number 0910–0014.

The primary purpose of this collection of information is to determine whether the research studies are being conducted in accordance with required regulations and that human subject safety is assured. If these studies were not reviewed, human subjects could be subjected to inappropriate radiation or pharmacologic risks.

Respondents to this information collection are the chairperson(s) of each individual Radioactive Drug Research Committee, investigators, and participants in the studies.

The burden estimates are based on FDA's experience with these reporting and recordkeeping requirements over the past few years and the number of submissions received by FDA under the regulations.

In the **Federal Register** of November 30, 2010 (75 FR 74059), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Forms	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
361.1(c)(3) and (4)	FDA 2914	80	1	80	1	80
361.1(c)(3)	FDA 2915	50	6.8	340	3.5	1,190
361.1(d)(8)		50	6.8	340	0.1	34
Total						1,304

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Annual frequency per recordkeeping	Total annual records	Hours per records	Total hours
361.1(c)(2)	80	4	320	10	3,200
361.1(d)(5)	50	6.8	340	0.75	255
Total					3,455

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 25, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–4741 Filed 3–2–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0098]

Agency Information Collection Activities; Proposed Collection; Comment Request; Infant Formula Label Statements Experimental Study

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a study entitled "Infant Formula Label Statements Experimental Study."

DATES: Submit either electronic or written comments on the collection of information by May 2, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Infant Formula Label Statements Experimental Study—(OMB Control Number 0910–NEW)

FDA is planning to conduct an experimental study about certain types of label statements on infant formula, such as those that are either structure function claims or similar to such claims. An example of the type of statements that are of interest is: "Supports brain and eye development." The Infant Formula Label Statements Experimental Study will collect information from four groups: Pregnant women, mothers of infants less than 12 months old, mothers of children older than 1 year but younger than 5 years old, and women of childbearing age who do not have a child younger than 5 years. The purpose of the study is to assess women's understanding of and response to various statements on infant formula labels. The study results will be used to help the Agency to understand the role that certain types of statements on infant formula labels have in influencing formula choice.

The data will be collected over the Internet from a sample of 5,000 adult women selected from an online consumer panel. Participants will be randomly assigned to an experimental condition. The study will show participants one of five explanations of the regulatory, scientific, or marketing context (or none of these) of infant formula marketing in the United States and will ask them to compare two sets of two experimental infant formula labels. One label will always be a control label with no statement similar to a structure function claim. The other label will include one of the statements of interest to the study. The study will focus on purchase choice, perceived similarity of the formula to breast milk, and perceived likelihood that the formula has certain health benefits. In addition, information about certain covariates will be collected, depending on the group the participant is in. Covariate information will include, as appropriate, month of pregnancy, plans for feeding the infant, number of children, age of youngest child, whether the youngest child was fed infant formula, whether the youngest child was ever breast fed, whether the mother bought infant formula for her youngest child, priorities used to select the formula purchased, and attitudes about the differences between breast milk and formula. Participation in the study is voluntary.

Approximately 10,000 women will be screened. We estimate that it will take a respondent 20 seconds (0.0055 hours) to complete the screening questions, for a total of 55 hours. A pretest will be conducted with 150 participants. We estimate that it will take a respondent 15 minutes (0.25 hours) to complete the experiment and 10 minutes (0.167 hours) to complete debriefing questions for the pretest, for a total of 25 minutes (0.42 hours) per respondent and a total of 63 hours for the pretest. Five thousand (5,000) adult women will complete the experiment. We estimate that it will take a respondent 15 minutes (0.25 hours) to complete the entire experiment, for a total of 1,250 hours. Thus, the total estimated burden is 1,368 hours. FDA's burden estimate is based on prior experience with consumer experiments that are similar to this proposed experiment.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Portion of study	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Screener	10,000	1	10,000	0.0055	55
Pretest	150	1	150	0.42	63
Experiment	5,000	1	5,000	0.25	1,250
Total					1,368

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 25, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–4740 Filed 3–2–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0344]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Testing Communications on Medical Devices and Radiation-Emitting Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Testing Communications on Medical Devices and Radiation-Emitting Products" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 18, 2010 (75 FR 63838), the Agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0678. The approval expires on January 31, 2014. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: February 16, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–4738 Filed 3–2–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2006–N–0238] (formerly 2006N–0062)

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Expanded Access to Investigational Drugs for Treatment Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Expanded Access to Investigational Drugs for Treatment Use" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 14, 2006 (71 FR 75147), the Agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0653. The approval expires on December 31, 2011. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: February 23, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–4739 Filed 3–2–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0478]

Albert Poet: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) permanently debarring Albert Poet, MD from providing services in any capacity to a person that has an approved or pending drug product application. We base this order on a finding that Dr. Poet was convicted of felonies under Federal law for conduct relating to the regulation of a drug product under the FD&C Act. Dr. Poet was given notice of the proposed permanent debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. Dr. Poet failed to respond. Dr. Poet's failure to respond constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is effective March 3, 2011.

ADDRESSES: Submit applications for special termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory

Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–632–6844.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(B) of the FD&C Act (21 U.S.C. 335a(a)(2)(B)) requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct otherwise relating to the regulation of any drug product under the FD&C Act.

On September 28, 2007, the U.S. District Court District of New Jersey entered judgment against Dr. Poet for 13 counts of mail fraud in violation of 18 U.S.C. 2 and 1341 and 1 count of causing a drug to be misbranded while it was held for sale after shipment in interstate commerce with the intent to defraud or mislead in violation of 21 U.S.C. 331(k), 333(a)(2), and 352(i)(3).

FDA's finding that debarment is appropriate is based on the felony convictions referenced herein for conduct relating to the regulation of a drug product. The factual basis for those convictions is as follows: During 2003–2004, Dr. Poet was a physician licensed to practice medicine in the State of New Jersey. Dr. Poet owned and operated the Shore Laser Center and PEAU, both located in New Jersey. As part of his practice, Dr. Poet injected patients with BOTOX, a Botulinum Toxin Type A drug.

From on or about December 4, 2003, through in or about December 2004, Dr. Poet knowingly and willfully devised a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, and promises. He maintained a Web site and placed regular advertisements in local newspapers offering BOTOX treatments at his office. Between December 4, 2003, and November 8, 2004, Dr. Poet placed 13 orders for a total of 26 vials of TRI–Toxin, a Botulinum Toxin Type A drug manufactured by Toxin Research International, Inc. TRI–Toxin was labeled "For Research Purposes Only, Not for Human Use." Dr. Poet injected many of the approximately 130 patients who sought BOTOX treatments with unapproved TRI–Toxin between January 1, 2004, and December 1, 2004. As part of his scheme to defraud, Dr. Poet did not inform most of his patients receiving the TRI–Toxin injections that they were receiving injections of a product not approved by FDA. Dr. Poet charged patients the same price for the cheaper, unapproved TRI–Toxin and the approved BOTOX. For purposes of executing the scheme and artifice, Dr. Poet knowingly and willfully caused the TRI–Toxin to be delivered by private and commercial interstate carrier.

As a result of his convictions, on December 13, 2010, FDA sent Dr. Poet a notice by certified mail proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(B) of the FD&C Act, that Dr. Poet was convicted of felonies under Federal law for conduct relating to the regulation of a drug product under the FD&C Act. The proposal also offered Dr. Poet an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Dr. Poet failed to respond within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(a)(2)(B) of the FD&C Act, under authority delegated to the Director (Staff Manual Guide 1410.35), finds that Albert Poet has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the FD&C Act.

As a result of the foregoing finding, Dr. Poet is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262) (see **DATES**) (see sections 306(c)(1)(B) and (c)(2)(A)(ii), and 201(dd) of the FD&C Act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Dr. Poet, in any capacity during Dr. Poet's debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Dr. Poet provides services in any capacity to a person with an approved or pending drug product application during his period of debarment he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Dr. Poet during his period of debarment (section 306(c)(1)(B) of the FD&C Act).

Any application by Dr. Poet for special termination of debarment under section 306(d)(4) of the FD&C Act should be identified with Docket No. FDA–2010–N–0478 and sent to the Division of Dockets Management (*see* **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 16, 2011.

Howard Sklamberg,

Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. 2011–4778 Filed 3–2–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–1981–N–0077 (formerly 81N–0393), FDA–1981–N–0248 (formerly 81N–0396), FDA–1982–N–0046 (formerly 82N–0095), FDA–1982–N–0264 (formerly 82N–0096), and FDA–1983–N–0137 (formerly 83N–0095); DESI 6514, 11935, and 12152]

Drugs for Human Use; Drug Efficacy Study Implementation; Oral Prescription Drugs Offered for Relief of Symptoms of Cough, Cold, or Allergy; Withdrawal of Hearing Requests; Final Resolution of Dockets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that all outstanding hearing requests pertaining to oral prescription drugs offered for relief of symptoms of cough, cold, or allergy, Docket Nos. FDA–1981–N–0077 (formerly 81N–0393), FDA–1981–N–0248 (formerly 81N–0396), FDA–1982–N–0046 (formerly 82N–0095), FDA–1982–N–0264 (formerly 82N–0096), and FDA–1983–N–0137 (formerly 83N–0095), have been withdrawn. Therefore, shipment in interstate commerce of the products identified in those dockets, or any identical, related, or similar (IRS) product that is not the subject of an approved new drug application (NDA) or abbreviated new drug application (ANDA) (other than an over-the-counter (OTC) product that complies with an

applicable OTC monograph), is unlawful as of the effective date of this notice.

DATES: *Effective Date:* This notice is effective March 3, 2011.

ADDRESSES: All communications in response to this notice should be identified with the appropriate docket number, and directed to Sakineh Walther, Division of New Drugs and Labeling Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Avenue, Bldg. 51, rm. 5242, Silver Spring, MD 20993–0002.

FOR FURTHER INFORMATION CONTACT: Sakineh Walther, Division of New Drugs and Labeling Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 5242, Silver Spring, MD 20993–0002, 301–796–3349, e-mail: *sakineh.walther@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of January 7, 2011 (76 FR 1174) (the January 7, 2011, notice), FDA announced that all outstanding hearing requests pertaining to certain dockets established under the Agency's Drug Efficacy Study Implementation (DESI) program had been withdrawn.[1] [2] Also in that notice, FDA announced the withdrawal of certain hearing requests pertaining to Docket Nos. FDA–1981–N–0077 (formerly 81N–0393), FDA–1981–N–0248 (formerly 81N–0396), FDA–1982–N–0046 (formerly 82N–0095), FDA–1982–N–0264 (formerly 82N–0096), and FDA–1983–N–0137 (formerly 83N–0095), and offered an opportunity for companies with outstanding hearing requests under those dockets to withdraw or affirm their outstanding hearing requests.

A. Docket No. FDA–1981–N–0077 (formerly 81N–0393) (DESI 6514)

The products reviewed under Docket No. *FDA–1981–N–0077 (formerly 81N–0393)* (DESI 6514) were Phenergan Expectorant with Codeine (containing promethazine hydrochloride, ipecac fluidextract, potassium guaiacolsulfonate, citric acid, sodium citrate, and codeine phosphate, marketed under NDA 8–306); Phenergan VC Expectorant Plain (containing promethazine hydrochloride, ipecac fluidextract, potassium guaiacolsulfonate, citric acid, sodium citrate, and phenylephrine hydrochloride, marketed under NDA 8–306); Phenergan VC Expectorant With Codeine (containing promethazine hydrochloride, ipecac fluidextract, potassium guaiacolsulfonate, citric acid, sodium citrate, phenylephrine hydrochloride, and codeine phosphate, marketed under NDA 8–306); Phenergan Expectorant Plain (containing promethazine hydrochloride, ipecac fluidextract, potassium guaiacolsulfonate, citric acid, and sodium citrate, marketed under NDA 8–604); and Pediatric Phenergan Expectorant with Dextromethorphan (containing promethazine hydrochloride, ipecac fluidextract, potassium guaiacolsulfonate, citric acid, sodium citrate, and dextromethorphan hydrobromide, marketed under NDA 11–265). In a notice published in the **Federal Register** of May 25, 1982 (47 FR 22610), FDA revoked the temporary exemption that permitted these drug products, and those products IRS to these products, to remain on the market beyond the time limit established for DESI. The notice also reclassified the products to lacking substantial evidence of effectiveness, and offered an opportunity for a hearing on a proposal to withdraw approval of the NDAs for the products.

After Wyeth Laboratories, the holder of the NDAs for the Phenergan products, withdrew its hearing request after approval of reformulated versions of four of its five products, FDA announced in the **Federal Register** of August 15, 1984 (49 FR 32681) that the Agency was withdrawing approval of NDAs 8–306, 8–604, and 11–265 pertaining to the old formulations of the Phenergan products, effective September 14, 1984.

At the time of the January 7, 2011, notice (76 FR 1174), there were two outstanding hearing requests under this docket filed by Bay Laboratories, 3654 West Jarvis, Skokie, IL 60076, for its IRS products Promethazine Expectorant with Codeine, Promethazine VC Expectorant Plain, Promethazine VC Expectorant with Codeine, Promethazine Expectorant Plain, and Promethazine Pediatric Expectorant, and by National Pharmaceuticals, Inc., 7205 Windsor Blvd., Baltimore, MD 21207, for its products IRS to all five Phenergan products considered under this docket. FDA was unable to find current contact information for Bay Laboratories and National Pharmaceuticals. In the January 7, 2011, notice, FDA gave these companies an opportunity to affirm or withdraw their hearing requests. Requests that were not affirmed within 30 days of that notice were to be deemed withdrawn by FDA.

B. Docket FDA–1981–N–0248 (formerly 81N–0396) (DESI 6514)

The products reviewed under Docket No. FDA–1981–N–0248 (formerly 81N–0396) (DESI 6514) were Dimetane Expectorant (containing brompheniramine maleate, phenylephrine hydrochloride, phenylpropanolamine hydrochloride, and guaifenesin, marketed under NDA 11–694); Dimetane Expectorant-DC (containing codeine phosphate, brompheniramine maleate, phenylephrine hydrochloride, phenylpropanolamine hydrochloride, and guaifenesin, marketed under NDA 11–694); and Actifed-C Expectorant (containing codeine phosphate, triprolidine hydrochloride, pseudoephedrine hydrochloride, and guaifenesin, marketed under NDA 12–575). In a notice published in the **Federal Register** of May 25, 1982, FDA revoked the temporary exemption that permitted these drug products, and those products IRS to these products, to remain on the market beyond the time limit established for DESI. The notice also reclassified the products to lacking substantial evidence of effectiveness, and offered an opportunity for a hearing on a proposal to withdraw approval of the NDAs for the products.

On April 3, 1984, A.H. Robins, the holder of the NDA for Dimetane Expectorant and Dimetane Expectorant-DC, withdrew its hearing request after approval of reformulated versions of its products. Accordingly, in the **Federal Register** of August 24, 1984 (49 FR 33726), FDA announced that it was withdrawing approval of those portions of NDA 11–694 pertaining to the old formulations of the Dimetane Expectorant products, effective September 24, 1984.

In the **Federal Register** of September 14, 1984 (49 FR 36169), FDA announced that it was withdrawing approval of those portions of NDA 12–575 pertaining to the old formulation of Actifed-C Expectorant, effective October 15, 1984, after the NDA holder, Burroughs Wellcome, obtained approval for a reformulated version of the product and withdrew its hearing request.

At the time of the January 7, 2011, notice, there were two outstanding

[1] For background on the DESI review in general and the DESI review as it relates to the dockets addressed in this notice, please see the January 7, 2011, notice.

[2] In the January 7, 2011, notice, FDA stated that with respect to Docket No. FDA–1982–N–0225 (formerly 82N–0078), Chlor-Trimeton Repetabs Tablets, containing 12 milligrams (mg) chlorpheniramine maleate and marketed under NDA 7–638, had been discontinued. FDA notes that NDA 7–638 is currently active; however, products under it are not marketed for indications found ineffective under DESI.

hearing requests under this docket filed by Bay Laboratories, 3654 West Jarvis, Skokie, IL 60076, for its IRS products Triphen Expectorant, Triphen Expectorant DC, and Pseudodine "C" Expectorant, and by National Pharmaceuticals, Inc., 7205 Windsor Blvd., Baltimore, MD 21207, for its products IRS to Dimetane Expectorant, Dimetane Expectorant DC, and Actifed-C. FDA was unable to find current contact information for Bay Laboratories and National Pharmaceuticals. In the January 7, 2011, notice, FDA gave these companies an opportunity to affirm or withdraw their hearing requests. Requests that were not affirmed within 30 days of that notice were to be deemed withdrawn by FDA.

C. Docket FDA–1982–N–0046 (formerly 82N–0095) (DESI 6514, 11935)

The products reviewed under Docket No. FDA–1982–N–0046 (formerly 82N–0095) (DESI 6514 and 11935) were Ambenyl Expectorant (containing codeine sulfate, bromodiphenhydramine hydrochloride, diphenhydramine hydrochloride, ammonium chloride, potassium guaiacolsulfonate, and menthol, marketed under NDA 9–319); and Pyribenzamine and Ephedrine Tablets (containing tripelennamine hydrochloride and 12 mg ephedrine sulfate, marketed under NDA 5–914). In a notice published in the **Federal Register** of May 25, 1982 (47 FR 22604), FDA revoked the temporary exemption that permitted these drug products, and those products IRS to these products, to remain on the market beyond the time limit established for DESI. The notice also reclassified the products to lacking substantial evidence of effectiveness, and offered an opportunity for a hearing on a proposal to withdraw approval of the NDAs for the products.

In the **Federal Register** of May 24, 1983 (48 FR 23311), FDA announced that it was withdrawing approval of NDA 5–914 as it pertains to Pyribenzamine and Ephedrine Tablets, effective June 23, 1983, because no hearing was requested for the product by the NDA holder. On February 27, 1984, Marion Laboratories, the NDA holder for Ambenyl Expectorant, withdrew its hearing request after a reformulated version of its product was approved. Accordingly, in the **Federal Register** of August 24, 1984, FDA announced it was withdrawing approval of those portions of NDA 9–319 pertaining to the old formulation of Ambenyl Expectorant, effective September 24, 1984.

At the time of the January 7, 2011, notice, there was one outstanding hearing request under this docket filed by National Pharmaceuticals, Inc., 7205 Windsor Blvd., Baltimore, MD 21207, for its products IRS to Ambenyl Expectorant. FDA was unable to find current contact information for National Pharmaceuticals. In the January 7, 2011, notice, FDA gave this company an opportunity to affirm or withdraw its hearing request. Its hearing request was to be deemed withdrawn if the company did not affirm the request within 30 days of that notice.

D. Docket FDA–1982–N–0264 (formerly 82N–0096) (DESI 12152)

The product reviewed under Docket No. FDA–1982–N–0264 (formerly 82N–0096) (DESI 12152) was Ornade Spansules. Ornade Spansules, as formulated early in the DESI review process, was a three-ingredient product containing 8 mg of chlorpheniramine maleate, 50 mg of phenylpropanolamine hydrochloride, and 2.5 mg of isopropamide, and was marketed under NDA 12–152. Subsequently, Ornade Spansules was reformulated as a controlled-release product containing 12 mg chlorpheniramine maleate and 75 mg phenylpropanolamine. In a notice published in the **Federal Register** of August 17, 1982 (47 FR 35870), FDA revoked the temporary exemption that permitted Ornade Spansules, as originally formulated, and those products IRS to it, to remain on the market beyond the time limit established for DESI. In the notice, FDA also announced the conditions for marketing Ornade Spansules, as reformulated, and the products IRS to it, for the indication for which they were regarded as effective, and offered an opportunity for a hearing concerning a proposal to withdraw approval of the NDA with respect to the old formulation and the indications reclassified to lacking substantial evidence of effectiveness.

In the **Federal Register** of December 12, 1984 (49 FR 48387), FDA announced that it was withdrawing approval of those portions of NDA 12–152 covering the old, three-ingredient formulation for Ornade Spansules, effective January 11, 1985, noting that no party submitted a hearing request regarding the three-ingredient formulation.

At the time of the January 7, 2011, notice, there were two outstanding hearing requests under this docket filed by Pioneer Pharmaceuticals, Inc., 209 40th Street, Irvington, NJ 07111, for its IRS product characterized by the company as a generic version of Ornade Spansules, and by Zenith Laboratories, Inc., 140 LeGrand Ave., Northvale, NJ 07647, for its IRS product, a sustained release product containing chlorpheniramine and phenylpropanolamine. FDA did not receive any response to its attempt to contact Zenith Laboratories and was unable to find current contact information for Pioneer Pharmaceuticals, Inc. In the January 7, 2011, notice, FDA gave these companies an opportunity to affirm or withdraw their hearing requests. Requests that were not affirmed within 30 days of that notice were to be deemed withdrawn by FDA.

E. Docket FDA–1983–N–0137 (formerly 83N–0095) (DESI 11935)

The products reviewed under Docket No. FDA–1983–N–0137 (formerly 83N–0095) (DESI 11935) were Dimetapp Extentabs and Dimetapp Elixir. As originally formulated during the period of the DESI review, Dimetapp Extentabs contained 12 mg brompheniramine maleate, 15 mg phenylephrine hydrochloride, and 15 mg phenylpropanolamine hydrochloride in controlled-release form, and was marketed under NDA 12–436; and Dimetapp Elixir contained 4 mg brompheniramine maleate, 5 mg phenylephrine hydrochloride, and 5 mg phenylpropanolamine hydrochloride per 5 milliliters (mL), and was marketed under NDA 13–087. In a notice published in the **Federal Register** of December 23, 1983 (48 FR 56854) (the December 23, 1983, notice), FDA revoked the temporary exemption that permitted these drug products, and those products IRS to these products, to remain on the market beyond the time limit established for DESI, and offered an opportunity for a hearing concerning a proposal to withdraw approval of the NDAs for the original formulations of these products and for the indications reclassified to lacking substantial evidence of effectiveness.

At the time of the publication of the December 23, 1983, notice, the manufacturer had submitted supplemental applications proposing to reformulate Dimetapp Extentabs to contain 12 mg brompheniramine maleate and 75 mg phenylpropanolamine hydrochloride in a controlled-release form, and Dimetapp Elixir to contain 4 mg brompheniramine maleate and 25 mg phenylpropanolamine hydrochloride per 5 mL. The supplements to NDA 12–436 and NDA 13–087 were approved by FDA on April 20, 1984, and March 29, 1984, respectively. In the December 23, 1983, notice, FDA also announced the conditions for marketing the reformulated versions of these products

for the indication for which they were regarded as effective.

At the time of the January 7, 2011, notice (76 FR 1174), there were 14 outstanding hearing requests under this docket filed by American Therapeutics Inc., 75 Carlough Rd., Bohemia, NY 11716, for its product IRS to Dimetapp Extentab Tablets; Amide Pharmaceutical, Inc., 101 East Main St., Little Falls, NJ 07424, for its IRS product Ami-Tapp; Bay Laboratories, Inc., 3654 West Jarvis, Skokie, IL 60076, for Triphen Elixir, its product IRS to Dimetapp Elixir; Carnrick Laboratories, Inc., 65 Horse Hill Rd., Cedar Knolls, NJ 07927, for Nolamine Timed Release Tablets, its product IRS to Dimetapp Extentabs; Copley Pharmaceutical, Inc., 398 West Second St., P.O. Box 107, Boston, MA 02127, for its products IRS to Dimetapp Extentabs; LuChem Pharmaceuticals, Inc., P.O. Box 6038, 8910 Linwood Ave., Shreveport, LA 71136, for its IRS products Ban-Tuss HC, Ban-Tuss C Expectorant, Tuss-Delay Tablets, Ban-Tuss Plain, Klerist-D Tablets, Respergen, Am-Tuss Liquid, Novadyne DH, Novadyne Expectorant, Dexophed Tablets, Chem-Tuss-SR, Chem-Tuss Elixir, Chem-Tuss DM, Chem-Tuss DME, and Chem-Tuss N; Mayrand Inc., 4 Dundas Circle, P.O. Box 8860, Greensboro, NC 27419, for its products IRS to Dimetapp Extentabs and Dimetapp Elixir; National Pharmaceutical Manufacturing Co., 7205 Windsor Blvd., Baltimore, MD 21207, for its product IRS to Dimetapp Elixir; Pharmaceutical Basics, Inc., 301 S. Cherokee, Denver, CO 80223, for its IRS product Basamine S.R. Tablets; Pioneer Pharmaceuticals, Inc., 209 40th St., Irvington, NJ 07111, for Pioten Tablets, its product IRS to Dimetapp Extentabs; Quantum Pharmics, Ltd., 26 Edison St., Amityville, NY 11701, for its IRS product, Brom-Tapp; Superpharm Corp., 155 Oval Dr., Central Islip, NY 11722, for its product IRS to Dimetapp Extentab Tablets; United States Trading Corp., 10718 McCune Ave., Los Angeles, CA 90034, for its products IRS to Dimetapp Extentabs; and Upsher-Smith Laboratories, Inc., 14905 23d Ave. North, Minneapolis, MN 55441, for unspecified products.

FDA was unable to find current contact information for American Therapeutics, Amide Pharmaceutical, Inc., Bay Laboratories, Inc., National Pharmaceutical Manufacturing Co., Pharmaceutical Basics, Inc., Superpharm Corp., and United States Trading Corp. FDA did not receive any response to its attempt to contact Carnrick Laboratories, a subsidiary of Elan Corp., PLC, 800 Gateway Blvd., South San Francisco, CA 94080; Copley Pharmaceutical, Inc.; LuChem Pharmaceuticals, Inc.; Merz Pharmaceuticals, LLC, P.O. Box 18806, Greensboro, NC 27419, successor to Mayrand Inc. Pharmaceuticals; Pioneer Pharmaceuticals, Inc.; Quantum Pharmics, Ltd.; or Upsher-Smith Laboratories, Inc. In the January 7, 2011, notice, FDA gave these companies an opportunity to affirm or withdraw their hearing requests. Requests that were not affirmed within 30 days of that notice were to be deemed withdrawn by FDA.

II. Final Resolution of Docket Nos. FDA–1981–N–0077 (formerly 81N–0393), FDA–1981–N–0248 (formerly 81N–0396), FDA–1982–N–0046 (formerly 82N–0095), FDA–1982–N–264 (formerly 82N–0096), and FDA–1983–N–0137 (formerly 83N–0095)

The time period for responding to the January 7, 2011, notice has elapsed, and no companies with outstanding hearing requests responded to the notice. Because no outstanding hearing requests were affirmed in response to the January 7, 2011, notice (or in response to FDA's previous attempts to contact companies with outstanding hearing requests), all of the outstanding hearing requests pertaining to Docket Nos. FDA–1981–N–0077 (formerly 81N–0393), FDA–1981–N–0248 (formerly 81N–0396), FDA–1982–N–0046 (formerly 82N–0095), FDA–1982–N–0264 (formerly 82N–0096), and FDA–1983–N–0137 (formerly 83N–0095) are deemed to be withdrawn. Therefore, shipment in interstate commerce of the products identified in those dockets, or any IRS product that is not the subject of an approved NDA or ANDA, is unlawful as of the effective date of this notice. This notice is not applicable to OTC products that comply with an OTC monograph (21 CFR 310.6(f)). Any person who wishes to determine whether a specific product is covered by this notice should write to the Center for Drug Evaluation and Research (*see* **ADDRESSES**).

III. Discontinued Products

Some firms may have previously discontinued the manufacturing or distribution of products covered by this notice without removing them from the listing of their products under section 510(j) of the Federal Food, Drug and Cosmetic Act (the FD&C Act) (21 U.S.C. 360(j)). Other firms may discontinue manufacturing or marketing listed products in response to this notice. Firms that wish to notify the Agency of product discontinuation should send a letter, signed by the firm's chief executive officer, fully identifying the discontinued product(s), including NDC number(s), and stating that the product(s) has (have) been discontinued. The letter should be sent to Sakineh Walther (*see* **ADDRESSES**).

Firms should also update the listing of their products under section 510(j) of the FD&C Act to reflect discontinuation of unapproved products. FDA plans to rely on its existing records, including drug listing records or other available information, when it targets violations for enforcement action. Firms should be aware that, after the effective date of this notice, FDA intends to take enforcement action without further notice against any firm that manufactures or ships in interstate commerce any unapproved product covered by this notice that is not the subject of an ongoing DESI proceeding.

IV. Reformulated Products

Some of the active ingredients found in drug products covered by this notice are included in the OTC monograph in 21 CFR part 341, "Cold, Cough, Allergy, Bronchodilator, and Antihistamine Drug Products for Over-the-Counter Human Use." OTC products that comply with the monograph may be marketed without approval.

However, FDA cautions firms against reformulating products into OTC products or different unapproved new drugs that are marketed under the same name or substantially the same name (including a new name that contains the old name). Reformulated products marketed under a name previously identified with a different active ingredient or combination of active ingredients have the potential to confuse health care practitioners and harm patients.

This notice is issued under sections 502 and 505 of the FD&C Act (21 U.S.C. 352 and 355), and under authority delegated to the Assistant Commissioner for Policy under section 1410.21 of the FDA Staff Manual Guide.

Dated: February 22, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–4702 Filed 3–2–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0100]

Drugs for Human Use; Unapproved and Misbranded Oral Drugs Labeled for Prescription Use and Offered for Relief of Symptoms of Cold, Cough, or Allergy; Enforcement Action Dates

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to take enforcement action against unapproved and misbranded oral drug products that are labeled for prescription use and offered for relief of symptoms of cold, cough, or allergy and persons who manufacture or cause the manufacture of such products. These drug products are marketed without approved applications, and many are inappropriately labeled for use in infants and young children. These drug products must obtain FDA approval of a new drug application (NDA) or an abbreviated new drug application (ANDA), or comply with an FDA over-the-counter (OTC) drug final monograph, before marketing.

DATES: This notice is effective March 3, 2011. For information about enforcement dates, see **SUPPLEMENTARY INFORMATION**, section IV.

ADDRESSES: All communications in response to this notice should be identified with Docket No. FDA–2011–N–0100 and directed to Sakineh Walther, Division of New Drugs and Labeling Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 5242, Silver Spring, MD 20993–0002.

FOR FURTHER INFORMATION CONTACT: Sakineh Walther, Division of New Drugs and Labeling Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 5242, Silver Spring, MD 20993–0002, 301–796–3349, e-mail: *sakineh.walther@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Cold, Cough, and Allergy Products Covered by This Notice

This **Federal Register** notice covers certain unapproved and misbranded drug products that are available in oral form and labeled for prescription use. These products are offered for relief of symptoms relating to cold, cough, or allergy, and include antitussives, expectorants, antihistamines, and nasal decongestants. This notice covers extended-release,[1] tannate, and immediate-release drug products.

B. Regulatory History of Products Covered by This Notice

Many of the drug products covered by this notice contain active ingredients that were introduced into the marketplace without prior review for effectiveness. When initially enacted in 1938, the Federal Food, Drug, and Cosmetic Act (the FD&C Act) required that FDA review and approve "new drugs" for safety, but not effectiveness, before they could legally be sold in interstate commerce.[2] The FD&C Act made it the sponsor's burden to show FDA that its drug was safe through the submission of an NDA. Between 1938 and 1962, if a drug obtained approval, FDA considered drugs that were identical, related, or similar (IRS) [3] to the approved drug to be "covered" by that approval, and allowed those IRS drugs to be marketed without independent approval.

In 1962, Congress amended the FD&C Act to require that new drugs be proven effective for their labeled indications, as well as safe. This amendment also required FDA to conduct a retrospective evaluation of effectiveness for all drugs approved as safe between 1938 and 1962. FDA contracted with the National Academy of Sciences/National Research Council (NAS/NRC) to make an initial evaluation of the effectiveness of over 3,400 products that had been approved only for safety between 1938 and 1962. The NAS/NRC reports for these drug products were submitted to FDA in the late 1960s and early 1970s. The Agency reviewed and reevaluated the reports and published its findings in **Federal Register** notices. FDA's administrative implementation of the NAS/NRC reports was called the Drug Efficacy Study Implementation (DESI). DESI covered the approximately 3,400 products specifically reviewed by the NAS/NRC, as well as the even larger number of IRS products that entered the market without FDA approval.[4] Many of the drug products covered by this notice contain the same active ingredients as drug products that were reviewed for effectiveness through the DESI process.

All drugs covered by the DESI review are "new drugs" under the FD&C Act. If FDA's final DESI determination classifies a drug product as ineffective for one or more indications, that drug product and those IRS to it can no longer be marketed for such indications and are subject to enforcement action as unapproved new drugs. If FDA's final DESI determination classifies a drug product as effective for one or more of its labeled indications, the drug, and those IRS to it, can be marketed for such indications, provided each product is the subject of an application approved for safety and effectiveness. Those drug products with NDAs approved before 1962 for safety therefore require approved supplements to their original applications if found effective under DESI; IRS drug products require an approved NDA or ANDA, as appropriate. Furthermore, labeling for these drug products may contain only those indications for which the DESI review found the product effective unless the firm marketing the product has received approval for additional indication(s).

In the early 1970s, FDA granted temporary exemptions from the time limits established for completing certain phases of the DESI program for certain oral prescription drugs offered for relief of cold, cough, allergy, and related symptoms (38 FR 34481, December 14, 1973). The exemptions were granted because of the close relationship between these prescription drugs and OTC drugs, which were subject to the ongoing OTC drug review. (*See* 21 CFR part 330.) Postponement of final evaluations of these DESI prescription products enabled the Agency to consider the recommendations of the OTC review panel in addition to any evidence submitted by NDA holders and other parties in response to various DESI notices covering relevant products.

II. Safety Concerns With Unapproved New Drugs

Because marketed unapproved new drug products have not been through

[1] The term "extended-release" is used in this document to include all timed-release products, including products labeled as "sustained-release," "controlled-release," "delayed-release," or "long-acting." (*See* 21 CFR 310.502(a)(14).)

[2] A "new drug" is defined by the FD&C Act as a drug that is not generally recognized, by experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling (section 201 of the FD&C Act (21 U.S.C. 321(p)).

[3] FDA's regulations at (21 CFR 310.6(b)(1)) provide: "An identical, related, or similar drug includes other brands, potencies, dosage forms, salts, and esters of the same drug moiety as well as of any drug moiety related in chemical structure or known pharmacological properties."

[4] Section 310.6(b)(2)) provides that when qualified experts determine that the findings in a DESI notice are applicable to an IRS drug, that IRS drug is affected by the DESI notice.

FDA's approval process, there may be safety risks associated with them. Some unapproved product labeling omits or modifies safety warnings or other information that is important to ensure safe use, such as drug interactions or potential adverse experiences. FDA is particularly concerned about pediatric labeling for these unapproved products. Some of the unapproved products covered by this notice are labeled and marketed for use in children as young as 1 month of age. Without reviewing applications for these products, FDA has no way to assess the scientific support, if any, for the use of these products in pediatric populations.

FDA also has concerns regarding the manufacturing processes for unapproved new drugs and changes in the formulations of these products. When new drugs are marketed without FDA approval, FDA does not have an opportunity, prior to product marketing, to determine whether the manufacturing process for the drugs is adequate to ensure that they are of suitable quality. Additionally, there is no opportunity prior to marketing for FDA to review and approve proprietary names to minimize potential safety issues caused by product name confusion. In fact, FDA has received reports of name confusion associated with unapproved prescription products covered by this notice. Look-alike and sound-alike similarities between product names may contribute to medication errors and adverse events.

Similarly, the new drug approval requirement allows the Agency to evaluate proposed changes to approved product formulations to ensure that such modifications meet FDA standards for safety and effectiveness and to ensure that formulation changes are accompanied, as necessary, by appropriate changes in product proprietary names or labeling, or other measures that may be warranted to minimize confusion and risks to patients. Modifications of product formulations that are not made under FDA's drug approval process thus pose an increased risk of confusing healthcare practitioners and causing harm to consumers, such as underdose or overdose, particularly in pediatric patients.

Finally, FDA has specific safety concerns about the products covered by this notice that are marketed as extended-release products. Many of these products contain amounts of active ingredients that could pose safety risks if the same amount of active ingredient were contained in an immediate-release dosage form. Without prior review of applications for these products, there is no assurance that the firms that market these products have established appropriate specifications for release of the active ingredients or that the products are properly formulated and manufactured to release their active ingredients to an extent and at a rate that is both safe and effective.

III. Legal Status of Products Identified in This Notice

A. Extended-Release Products

Some of the products covered by this notice are sold as extended-release products. Since 1959, FDA has concluded that all products in extended-release dosage forms are new drugs requiring approved NDAs or ANDAs before being marketed (24 FR 3756, May 9, 1959). Agency review of individual applications for extended-release products is needed to ensure that the finished product releases its active ingredient to an extent and at a rate that is both safe, with a predictable and controlled release of the dose, and effective, sustaining the intended effect over the entire dosing interval. Firms submitting applications are required to establish appropriate release specifications supported by clinical evidence, along with data showing that the finished product as manufactured by the firm releases its active ingredient according to those specifications.

The Agency's determination that all products in timed-release dosage form are new drugs requiring approved applications is codified at 21 CFR 310.502(a)(14). Approval of an NDA under section 505(b) of the FD&C Act (21 U.S.C. 355(b)) or an ANDA under section 505(j) of the FD&C Act is required as a condition for marketing all such products.

The unapproved extended-release drug products subject to this notice are all labeled for prescription use. Prescription drugs are defined under section 503(b)(1)(A) of the FD&C Act (21 U.S.C. 353(b)(1)(A)) as drugs that, because of toxicity or other potentially harmful effect, are not safe to use except under the supervision of a practitioner licensed by law to administer such drugs.[5] A drug that is labeled as a prescription drug but does not meet the definition of "prescription drug" under section 503(b)(1)(A) of the FD&C Act is misbranded under section 503(b)(4)(B) of the FD&C Act (21 U.S.C. 353(b)(4)(B)). Thus, if an extended-release drug covered by this notice is labeled as a prescription product, but does not meet the definition in section 503(b)(1)(A) of the FD&C Act, it is misbranded under section 503(b)(4)(B) of the FD&C Act. If an extended-release drug subject to this notice actually meets the definition of "prescription drug" under 503(b)(1)(A), it is misbranded under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)), in that it fails to bear adequate directions for use. An approved prescription drug can satisfy the "adequate directions for use" requirement if it bears the NDA-approved labeling (§§ 201.100(c)(2) and 201.115 (21 CFR 201.100(c)(2) and 201.115)). Because the unapproved prescription extended-release drug products covered by this notice do not have approved applications with approved labeling, they fail to bear "adequate directions for use," and are misbranded under section 502(f)(1) of the FD&C Act.

B. Tannates

Some of the products covered by this notice contain active ingredients that are in tannate salt form (tannate drugs). FDA has reviewed the publicly available scientific literature on these ingredients, and has determined that unapproved oral drugs labeled for prescription use and offered for relief of symptoms of cold, cough, or allergy that contain the following ingredients are not generally recognized as safe and effective (GRASE): Brompheniramine tannate; carbetapentane tannate; carbinoxamine tannate; chlorpheniramine tannate; dexbrompheniramine tannate; dexchlorpheniramine tannate; dextromethorphan tannate; diphenhydramine tannate; ephedrine tannate; phenylephrine tannate; pseudoephedrine tannate; pyrilamine tannate; and triprolidine tannate. Therefore, products containing these ingredients are new drugs within the meaning of section 201(p) of the FD&C Act, and require approved NDAs or ANDAs before marketing.

The unapproved tannate drug products subject to this notice are all labeled for prescription use. Prescription drugs are defined under section 503(b)(1)(A) of the FD&C Act as drugs that, because of toxicity or other potentially harmful effect, are not safe to use except under the supervision of a practitioner licensed by law to administer such drugs.[6] A drug that is

[5] The definition of "prescription drug" also includes a drug that is limited by an approved application to use under the professional supervision of a licensed practitioner (21 U.S.C. 353(b)(1)(B)). This prong of the definition obviously does not apply to the unapproved extended-release drug products covered by this notice.

[6] The definition of "prescription drug" also includes a drug that is limited by an approved application to use under the professional supervision of a licensed practitioner (21 U.S.C. 353(b)(1)(B)). This prong of the definition obviously

Continued

labeled as a prescription drug but does not meet the definition of "prescription drug" under section 503(b)(1)(A) of the FD&C Act is misbranded under section 503(b)(4)(B) of the FD&C Act. Thus, if a tannate drug covered by this notice is labeled as a prescription product, but does not meet the definition in section 503(b)(1)(A) of the FD&C Act, it is misbranded under section 503(b)(4)(B) of the FD&C Act. If a tannate drug covered by this notice actually meets the definition of "prescription drug," it is misbranded under section 502(f)(1) of the FD&C Act, in that it fails to bear adequate directions for use. An approved prescription drug can satisfy the "adequate directions for use" requirement if it bears the NDA-approved labeling (21 CFR 201.100(c)(2) and 201.115). Because the unapproved prescription tannate drug products covered by this notice do not have approved applications with approved labeling, they fail to bear "adequate directions for use," and are misbranded under section 502(f)(1) of the FD&C Act.

C. Immediate-Release Products

The remaining unapproved oral products covered by this notice are immediate-release products labeled for prescription use and offered for relief of symptoms associated with cold, cough, or allergy. The immediate-release products fall into the following three categories:

1. Drugs Inappropriately Labeled for Prescription Use

A small number of the immediate-release products covered by this notice conform to the requirements of the final OTC monograph at 21 CFR part 341, "Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use" (the final OTC Cold Cough monograph), except that they are labeled for prescription use only. Section 503(b)(1) of the FD&C Act establishes the definition of a "prescription drug." Drug products that do not meet the definition of a prescription drug but are labeled for prescription use are misbranded under section 503(b)(4)(B) of the FD&C Act. If these drugs conform to the requirements of the final OTC Cold Cough monograph, they are not new drugs and they do not require an approved NDA or ANDA in order to be legally marketed OTC.[7]

2. Drugs Containing Ingredients Included in the Final OTC Cold Cough Monograph But Labeled With Nonconforming Indications or Dosing Regimens

The majority of the immediate-release products covered by this notice are labeled for prescription use and contain ingredients that are included in the final OTC Cold Cough monograph, but have indications, dosing regimens, or both, that are inconsistent with that monograph. FDA has reviewed the indications and dosing regimens (dosing intervals and dosage amounts) in the labeling of over 300 such products, and has reviewed the publicly available scientific literature for studies of these products.[8] In no case did FDA find literature sufficient to support a determination that one of these products was GRASE for relief of symptoms of cold, cough, or allergy. Therefore, these products are all "new drugs" within the meaning of section 201(p) of the FD&C Act, that require approved NDAs or ANDAs before marketing.

The unapproved immediate-release drug products subject to this notice that contain ingredients that are included in the final OTC Cold Cough monograph, but with indications, dosing regimens, or both, that are inconsistent with that monograph, are all labeled for prescription use. Prescription drugs are defined under section 503(b)(1)(A) of the FD&C Act as drugs that, because of toxicity or other potentially harmful effect, are not safe to use except under the supervision of a practitioner licensed by law to administer such drugs.[9] A drug that is labeled as a prescription drug but does not meet the definition of "prescription drug" under section 503(b)(1)(A) of the FD&C Act is misbranded under section 503(b)(4)(B) of the FD&C Act. Thus, if an immediate-release drug covered by this notice is labeled as a prescription product, but does not meet the definition in section 503(b)(1)(A), it is misbranded under section 503(b)(4)(B). If an immediate-release drug covered by this notice does meet the definition of "prescription drug" in 503(b)(1)(A), it is misbranded under section 502(f)(1) of the FD&C Act, in that it fails to bear adequate directions for use. An approved prescription drug can satisfy the "adequate directions for use" requirement if it bears the NDA-approved labeling (§§ 201.100(c)(2) and 201.115). Because the unapproved prescription immediate-release drug products subject to this notice that contain ingredients that are included in the final OTC Cold Cough monograph, but with indications, dosing regimens, or both, that are inconsistent with that monograph, do not have approved applications with approved labeling, they fail to bear "adequate directions for use," and are misbranded under section 502(f)(1).

3. Drugs Containing Ingredients Not Included in the Final OTC Cold Cough Monograph

The remaining immediate-release products covered by this notice are labeled for prescription use and contain active ingredients that are not included in the final OTC Cold Cough monograph. FDA has reviewed the publicly available scientific literature on these ingredients, and has determined that the products covered by this notice and offered for relief of symptoms of cold, cough, or allergy that contain the following ingredients are not GRASE: Atropine; carbetapentane; cyproheptadine; dyphylline; hyoscyamine; methscopolamine nitrate; phenyltoloxamine; potassium guaiacosulfonate; promethazine; and scopolamine. Therefore, products covered by this notice containing these ingredients and marketed for relief of symptoms of cold, cough, or allergy are new drugs within the meaning of section 201(p) of the FD&C Act, and require approved NDAs or ANDAs prior to marketing.

The unapproved immediate-release drug products that are subject to this notice and that contain active ingredients not included in the final OTC Cold Cough monograph are all labeled for prescription use. Prescription drugs are defined under section 503(b)(1)(A) of the FD&C Act as drugs that, because of toxicity or other potentially harmful effect, are not safe to use except under the supervision of a practitioner licensed by law to administer such drugs.[10] A drug that is

does not apply to the unapproved tannate drug products covered by this notice.

[7] In addition to any other applicable requirements, firms that manufacture OTC drugs must comply with the labeling requirements at 21 CFR 201.66.

[8] The over 300 products reviewed by FDA represent all products in this category that FDA was able to identify.

[9] The definition of "prescription drug" also includes a drug that is limited by an approved application to use under the professional supervision of a licensed practitioner (21 U.S.C. 353(b)(1)(B)). This prong of the definition obviously does not apply to the unapproved immediate-release drug products subject to this notice and containing ingredients that are included in the final OTC Cold Cough monograph, but with indications, dosing regimens, or both, that are inconsistent with that monograph.

[10] The definition of "prescription drug" also includes a drug that is limited by an approved application to use under the professional supervision of a licensed practitioner (21 U.S.C. 353(b)(1)(B)). This prong of the definition obviously does not apply to the unapproved immediate-release drug products covered by this notice that contain active ingredients not included in the final OTC Cold Cough monograph.

labeled as a prescription drug but does not meet the definition of "prescription drug" under section 503(b)(1)(A) is misbranded under section 503(b)(4)(B) of the FD&C Act. Thus, if an immediate-release drug covered by this notice is labeled as a prescription product, but does not meet the definition in section 503(b)(1)(A), it is misbranded under section 503(b)(4)(B). If a drug covered by this notice meets the definition of "prescription drug" in 503(b)(1)(A), it is misbranded under section 502(f)(1) of the FD&C Act, in that it fails to bear adequate directions for use. An approved prescription drug can satisfy the "adequate directions for use" requirement if it bears the NDA-approved labeling (§§ 201.100(c)(2) and 201.115). Because the unapproved prescription immediate-release drug products covered by this notice that contain active ingredients not included in the final OTC Cold Cough monograph do not have approved applications with approved labeling, they fail to bear "adequate directions for use," and are misbranded under section 502(f)(1) of the FD&C Act.

IV. Notice of Enforcement Action

Although not required to do so by the Administrative Procedure Act, the FD&C Act, or any rules issued under its authority, or for any other legal reason, FDA is providing this notice to persons [11] who are marketing unapproved and misbranded oral drug products labeled for prescription use and offered for relief of symptoms relating to cold, cough, or allergy that the Agency intends to take enforcement action against such products and those who manufacture them or cause them to be manufactured or shipped in interstate commerce.

Manufacturing or shipping the drug products covered by this notice can result in enforcement action, including seizure, injunction, or other judicial or administrative proceeding. Consistent with policies described in the Agency's guidance entitled "Marketed Unapproved Drugs—Compliance Policy Guide" (the Marketed Unapproved Drugs CPG) (*http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM070290.pdf*), the Agency does not expect to issue a warning letter or any other further warning to firms marketing drug products covered by this notice prior to taking enforcement action. The Agency also reminds firms that, as stated in the Marketed Unapproved Drugs CPG, any unapproved drug marketed without a required approved application is subject to Agency enforcement action at any time. The issuance of this notice does not in any way obligate the Agency to issue similar notices or any notice in the future regarding marketed unapproved drugs.[12]

As described in the Marketed Unapproved Drugs CPG, the Agency may, at its discretion, identify a period of time during which the Agency does not intend to initiate an enforcement action against a currently marketed unapproved drug solely on the ground that it lacks an approved application under section 505 of the FD&C Act. With respect to drug products covered by this notice, the Agency intends to exercise its enforcement discretion for only a limited period of time because there are safety issues with respect to the products covered by this notice and numerous marketed products that have approved applications or comply with the applicable OTC drug final monograph are offered to treat symptoms relating to cold, cough, and allergy. Therefore, the Agency intends to implement this notice as follows.

For the effective date of this notice, see the **DATES** section of this document. FDA intends to take enforcement action against any drug product covered by this notice that is not listed with the Agency in full compliance with section 510 of the FD&C Act (21 U.S.C. 360) before March 2, 2011, and is manufactured, shipped, or otherwise introduced or delivered for introduction into interstate commerce by any person on or after March 3, 2011. FDA also intends to take enforcement action against any drug product covered by this notice that is listed with FDA in full compliance with section 510 of the FD&C Act but is not being commercially used or sold [13] in the United States on March 2, 2011 and that is manufactured, shipped, or otherwise introduced or delivered for introduction into interstate commerce by any person on or after March 3, 2011.

However, for drug products covered by this notice that are commercially used or sold in the United States, have a National Drug Code (NDC) number listed with FDA, and are in full compliance with section 510 of the FD&C Act before March 2, 2011 ("currently marketed and listed"), the Agency intends to exercise its enforcement discretion as follows. FDA intends to initiate enforcement action against any currently marketed and listed product covered by this notice that is manufactured on or after June 1, 2011 or that is shipped on or after August 30, 2011.[14] Further, FDA intends to take enforcement action against any person who manufactures or ships such products after these dates. Any person who has submitted or submits an application for a drug product covered by this notice but has not received approval must comply with this notice.

The Agency, however, does not intend to exercise its enforcement discretion as outlined previously if the following apply: (1) A manufacturer or distributor of drug products covered by this notice is violating other provisions of the FD&C Act, including, but not limited to, violations related to FDA's current good manufacturing practices, adverse drug event reporting, labeling or misbranding requirements other than those identified in this notice or (2) it appears that a firm, in response to this notice, increases its manufacture or interstate shipment of drug products covered by this notice above its usual volume during these periods.

Nothing in this notice, including FDA's intent to exercise its enforcement discretion, alters any person's liability or obligations in any other enforcement action, or precludes the Agency from initiating or proceeding with enforcement action in connection with any other alleged violation of the FD&C Act, whether or not related to a drug product covered by this notice. Similarly, a person who is or becomes enjoined from marketing unapproved or misbranded drugs may not resume marketing of such products based on FDA's exercise of enforcement discretion that is set forth in this notice.

Drug manufacturers and distributors should be aware that the Agency is exercising its enforcement discretion as described previously only in regard to

[11] A "person" includes individuals, partnerships, corporations, and associations (21 U.S.C. 321(e)).

[12] The Agency's general approach for dealing with these products in an orderly manner is spelled out in the Marketed Unapproved Drugs CPG. That CPG, however, provides notice that any product that is being marketed illegally, and the persons responsible for causing the illegal marketing of the product, are subject to FDA enforcement action at any time.

[13] For purposes of this notice, the term "commercially used or sold" means that the product has been used in a business or activity involving retail or wholesale marketing and/or sale.

[14] If FDA finds it necessary to take enforcement action against a product covered by this notice, the agency may take action relating to all of the defendant's other violations of the FD&C Act at the same time. For example, if a firm continues to manufacture or market a product covered by this notice after the applicable enforcement date has passed, to preserve limited agency resources, FDA may take enforcement action relating to all of the firm's unapproved drugs that require applications at the same time. (See, *e.g., United States* v. *Sage Pharmaceuticals,* 210 F.3d 475, 479–480 (5th Cir. 2000) (permitting the Agency to combine all violations of the act in one proceeding, rather than taking action against multiple violations of the act in "piecemeal fashion").)

drug products covered by this notice that are marketed under an NDC number listed with the Agency in full compliance with section 510 of the FD&C Act before March 2, 2011. As previously stated, drug products covered by this notice that are currently marketed but not listed with the Agency on the date of this notice must, as of the effective date of this notice, have approved applications prior to their shipment in interstate commerce. Moreover, any person or firm that has submitted or submits an application but has yet to receive approval for such products is still responsible for full compliance with this notice.

V. Discontinued Products

Some firms may have previously discontinued the manufacturing or distribution of products covered by this notice without removing them from the listing of their products under section 510(j) of the FD&C Act. Other firms may discontinue manufacturing or marketing listed products in response to this notice. Firms that wish to notify the Agency of product discontinuation should send a letter, signed by the firm's chief executive officer, fully identifying the discontinued product(s), including NDC number(s), and stating that the product(s) has (have) been discontinued. The letter should be sent to Sakineh Walther (*see* **ADDRESSES**). Firms should also update the listing of their products under section 510(j) of the FD&C Act to reflect discontinuation of products covered by this notice. FDA plans to rely on its existing records, including its drug listing records, or other available information when it targets violations for enforcement action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 502 and 505 (21 U.S.C. 352 and 355)) and under authority delegated to the Assistant Commissioner for Policy under section 1410.21 of the FDA Staff Manual Guide.

Dated: February 22, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–4703 Filed 3–2–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Organ Transplantation; Notice of Meeting

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Health Resources and Services Administration published a notice in the **Federal Register** of February 9, 2011 (76 FR 7223–7224) announcing an Advisory Committee on Organ Transplantation meeting on March 8, 2011. The type of meeting, time and place have been changed.

Correction

In the **Federal Register** of February 9, 2011, in FR Doc. 2011–2839, on page 7223, 2nd column, under the heading Department of Health and Human Services, Health Resources and Services Administration, Advisory Committee on Organ Transplantation; Notice of Meeting, change the Times and Place to read:

The meeting will be an Audio Conference Call on March 8, 2011, from 12 noon to 4 p.m. EST. To access the conference call, call the USA Toll Free Number 888–469–1090 and enter the Passcode 2741198. The conference call leader is Patricia A. Stroup. Participants should call no later than 11:45 a.m. EST in order for logistics to be set up. Participants are asked to register for the conference call by contacting Brittany Carey, HRM/Professional and Scientific Associates (PSA), the logistical support contractor for the meeting, at (703) 889–9033 or *b_carey@team-psa.com.* The registration deadline is March 7, 2011. The Department will try to accommodate those wishing to participate in the call.

The next face-to-face ACOT meeting is planned for August 2011. Details regarding an August meeting will be published in a subsequent **Federal Register** notice.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–4755 Filed 3–2–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Member Conflict.

Date: March 15, 2011.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, Chief, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@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. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4826 Filed 3–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel; Animal Models.

Date: March 15, 2011.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy I, 6701 Democracy Blvd., 1078, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Steven Birken, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 10th Fl., Bethesda, MD 20892, (301) 435–1078, *birkens@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Research Resources Special Emphasis Panel; CTSA Coordinating Center.

Date: March 28, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy I, 6701 Democracy Blvd., 1064, Bethesda, MD 20892–4874 (Telephone Conference Call).

Contact Person: Guo Zhang, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., Dem. 1, Room 1064, MSC 4874, Bethesda, MD 20892–4874, 301–435–0812, *zhanggu@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards, National Institutes of Health, HHS)

Dated: February 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4825 Filed 3–2–11; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Novel Drug Targets.

Date: March 23, 2011.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, 3147, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Jane K. Battles, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2744, *battlesja@mail.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Host-Pathogen Interactions.

Date: March 24, 2011.

Time: 12:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, 3147, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Jane K. Battles, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2744, *battlesja@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 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4824 Filed 3–2–11; 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; Consortia for AIDS Vaccine Research in Nonhuman Primates.

Date: March 29–30, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Lynn Rust, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550.

(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 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4823 Filed 3–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel; Services Conflict.

Date: March 10, 2011.

Time: 12 p.m. to 3 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: Aileen Schulte, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4780 Filed 3–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Biosensors for Early Cancer Detection and Risk Assessment.

Date: March 29, 2011.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 7141, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lalita D. Palekar, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7141, Bethesda, MD 20892, 301–496–7575, *palekarl@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Barrett's Esophagus Translational Research Network.

Date: May 25–26, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Zhiqiang Zou, MD, PhD, Scientific Review Officer, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8050A, MSC 8329, Bethesda, MD 20852, *zouzhiq@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4777 Filed 3–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, March 24, 2011, 12 p.m. to March 24, 2011, 2 p.m., National Institutes of Health, 6116 Executive Boulevard, 706, Rockville, MD 20852 which was published in the **Federal Register** on February 1, 2011, 76 FR 5595.

This notice is amending the name of the committee from "Detection of Cancer Biomarkers on a Universal Nanoplatform" to "Nanotechnology Imaging and Sensing Platforms for Improved Diagnosis of Cancer". The meeting is closed to the public.

Dated: February 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4775 Filed 3–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Molecular Mechanism of Adverse Metabolic Drug Effects.

Date: March 28, 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: Sathasiva B. Kandasamy, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892–9304, 301–435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4784 Filed 3–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: March 28, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Dennis E. Leszczynski, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6884, *leszczyd@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4783 Filed 3–2–11; 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, Systems Biology Grant Applications.

Date: March 25, 2011.

Time: 8 a.m. to 6 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: Arthur L. Zachary, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12, Bethesda, MD 20892. 301–594–2886. *zacharya@nigms.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 25, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4782 Filed 3–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Behavioral Mechanisms In Biomedical Strategies to Prevent HIV Infections.

Date: March 21, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Francois Boller, MD, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *bollerf@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Centers Program for Research on HIV/AIDS & MH.

Date: March 22, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Francois Boller, MD, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *bollerf@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4781 Filed 3–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently certified Laboratories and Instrumented Initial Testing Facilities (IITF) is published in the **Federal Register** during the first week of each month. If any Laboratory/IITF's certification is suspended or revoked, the Laboratory/IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any Laboratory/IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The "Mandatory Guidelines for Federal Workplace Drug Testing Programs", as amended in the revisions listed above, requires {or set}strict standards that Laboratories and Instrumented Initial Testing Facilities (IITF) must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies.

To become certified, an applicant Laboratory/IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a Laboratory/IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and Instrumented Initial Testing Facilities (IITF) in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A Laboratory/IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following Laboratories and Instrumented Initial Testing Facilities (IITF) meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Instrumented Initial Testing Facilities (IITF): None.

Laboratories:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory);

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264;

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150;

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (*Formerly:* Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.);

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (*Formerly:* Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.);

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (*Formerly:* Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.);

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (*Formerly:* Forensic Toxicology Laboratory Baptist Medical Center);

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917;

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281;

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310;

DynaLIFE Dx,* 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876, (*Formerly:* Dynacare Kasper Medical Laboratories);

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609;

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630;

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387;

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (*Formerly:* Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (*Formerly:* LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group);

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (*Formerly:* LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center);

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (*Formerly:* Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.);

Maxxam Analytics,* 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700, (*Formerly:* Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.);

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244;

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295;

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088;

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515;

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (*Formerly:* University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory);

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (*Formerly:* Centinela Hospital Airport Toxicology Laboratory);

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7;

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555;

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (*Formerly:* SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories);

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (*Formerly:* SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories);

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 800–877–2520, (*Formerly:* SmithKline Beecham Clinical Laboratories);

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227;

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276;

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027;

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052;

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438;

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273;

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260;

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

Dated: February 24, 2011.

Elaine Parry,

Director, Office of Management, Technology, and Operations, SAMHSA.

[FR Doc. 2011–4620 Filed 3–2–11; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2010–1137]

Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers: 1625–0058, 1625–0072 and 1625–0092

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding Information Collection Requests (ICRs), abstracted below, to the, Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of revisions to the following collections of information: 1625–0058, Application for Permit to Transport Municipal and Commercial Waste, 1625–0072, Waste Management Plans, Refuse Discharge Logs, Letters of Instruction for Certain Persons-in-Charge (PIC) and Great Lakes Dry Cargo Residue Recordkeeping, and 1625–0092 Sewage and Graywater Discharge Records for Certain Cruise Vessels Operating on Alaskan Waters. Our ICRs describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before April 4, 2011.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2010–1137] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulation.gov.* (b) To OIRA by e-mail via: *OIRA-submission@omb.eop.gov.*

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery:* To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St., SW., STOP 7101, Washington DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket

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* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of information subject to the collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2010–1137], and must be received by April 4, 2011. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the "Privacy Act" paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2010–1137], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), 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 DMF. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type "USCG–2010–1137" in the "Keyword" box. 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 will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice 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–2010–1137" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: USCG–2010–0978.

Privacy Act

Anyone can search the electronic form of comments received in 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 statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (75 FR 82038, December 29, 2010) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Requests

1. *Title:* Application for Permit to Transport Municipal and Commercial Waste.

OMB Control Number: 1625–0058.

Type of Request: Revision of a previously approved collection.

Respondents: Owners and operators of vessels.

Abstract: This information collection provides the basis for issuing or denying a permit, required under 33 U.S.C. 2601 and 33 CFR 151.1009, for the transportation of municipal or commercial waste in the coastal waters of the United States.

Forms: None.

Burden Estimate: The estimated burden has decreased from 116 hours to 13 hours a year.

2. *Title:* Waste Management Plans, Refuse Discharge Logs, Letters of Instruction for Certain Persons-in-Charge (PIC) and Great Lakes Dry Cargo Residue Recordkeeping.

OMB Control Number: 1625–0072.

Type of Request: Revision of a previously approved collection.

Respondents: Owners, operators, masters, and persons-in-charge of vessels.

Abstract: This information is needed to ensure that: (1) Certain U.S. oceangoing vessels develop and maintain a waste management plan; (2) certain U.S. oceangoing vessels maintain refuse discharge records; (3) certain individuals that act as person-in-charge of the transfer of fuel receive a letter of instruction, for prevention of pollution; and (4) certain Great Lakes vessels comply with dry cargo residue requirements.

Forms: CG–33.

Burden Estimate: The estimated burden has decreased from 67,030 hours to 65,464 hours a year.

3. *Title:* Sewage and Graywater Discharge Records for Certain Cruise Vessels Operating on Alaskan Waters.

OMB Control Number: 1625–0092.

Type of Request: Revision of a previously approved collection.

Respondents: Owners, operators and masters of vessels.

Abstract: To comply with the Consolidated Appropriations Act, 2001, Public Law 106–554, 114 Stat. 2763, 2763A–315, this information collection is needed to enforce sewage and

graywater discharges requirements from certain cruise ships operating on Alaskan waters.

Forms: Not applicable.

Burden Estimate: The estimated burden has increased from 637 hours to 2,121 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: February 24, 2011.

R. E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–4654 Filed 3–2–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: New Information Collection: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: OMB 63, Visa Processing Fee Payment; OMB Control No. 1615–New.

* * * * *

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 2, 2011.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by email, please make sure to add Visa Processing Fee Payment in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning OMB 63, Visa Processing Fee Payment. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Visa Processing Fee Payment.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; File No. OMB–63. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This information collection is necessary for USCIS to track payment of the visa processing fee and reconcile the payment received in the Federal Financial Management System (FFMS), and the applicant's file.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 500,000 responses at 10 minutes (.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 83,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: February 25, 2011,

Evadne Hagigal,

Senior Management and Program Analyst, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–4743 Filed 3–2–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–134, Extension of a Currently Approved Information Collection; Comment Request.

ACTION: 30-Day Notice of Information Collection Under Review: Form I–134, Affidavit of Support; OMB Control No. 1615–0014.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 14, 2010, at 75 FR 77891, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 4, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via

facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0014 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Affidavit of Support.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–134; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* This information collection is necessary to determine if at the time of application into the United States, the applicant is likely to become a public charge.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 44,000 responses at 90 minutes (1.5 hours) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 66,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: February 28, 2011.

Evadne Hagigal,

Senior Management and Program Analyst, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–4747 Filed 3–2–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form G–1145, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form G–1145, E-Notification of Application/Petition Acceptance; OMB Control No. 1615–0109.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 14, 2010, at 75 FR 77890, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 4, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0109 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* E-Notification of Application/Petition Acceptance.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–1145; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* If an applicant or petitioner wants to be notified via e-mail and/or text message on their cell phone that their application or petition has been accepted, they are requested to provide their e-mail address and/or cell phone number on Form G–1145, and attach the form to the application or petition.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000,000 responses at 3 minutes (.05) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW.,

Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: February 28, 2011.

Evadne Hagigal,

Senior Management and Program Analyst, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–4744 Filed 3–2–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form G–646, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30–Day Notice of Information Collection Under Review: Form G–646, Sworn Statement of Refugee Applying for Admission to the United States; OMB Control No. 1615–0097.

* * * * *

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 15, 2010, at 75 FR 78263, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 4, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at rfs.regs@dhs.gov, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0097 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Sworn Statement of Refugee Applying for Admission to the United States.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–646; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* The data collected by Form G–646 is used by USCIS to determine eligibility for the admission of the applicants to the United States as refugees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 75,000 responses at 20 minutes (.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 24,975 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: February 28, 2011.

Evadne Hagigal,

Senior Management and Program Analyst, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–4746 Filed 3–2–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–565, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30–Day Notice of Information Collection Under Review: Form N–565, Application for Replacement Naturalization/Citizenship Document; OMB Control No. 1615–0091.

* * * * *

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 23, 2010, at 75 FR 80835, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 4, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via

facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0091 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Replacement Naturalization/Citizenship Document.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–565; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* Form N–565 is used to apply for a replacement of a Declaration of Intention, Certificate of Citizenship or Replacement Certificate, or to apply for a special certificate of naturalization as a U.S. citizen to be recognized by a foreign country.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 29,298 responses at 55 minutes (.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 26,836 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: February 28, 2011.

Evadne Hagigal,

Senior Management and Program Analyst, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–4745 Filed 3–2–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–590, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–590, Registration for Classification as Refuge; OMB Control No. 1615–0068.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 14, 2010, at 75 FR 77889, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 4, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0068 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Registration for Classification as Refuge.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–590; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* Form I–590 provides a uniform method for applicants to apply for refugee status and contains the information needed for USCIS to adjudicate such applications.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 140,000 responses at 35 minutes (.583) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 81,620 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW.,

Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: February 28, 2011.

Evadne Hagigal,

Senior Management and Program Analyst, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–4748 Filed 3–2–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

The Bureau of Ocean Energy Management, Regulation and Enforcement

Environmental Documents Prepared for Proposed Oil, Gas, and Mineral Operations by the Gulf of Mexico Outer Continental Shelf (OCS) Region

AGENCY: The Bureau of Ocean Energy Management, Regulation and Enforcement, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals by the Gulf of Mexico OCS Region.

SUMMARY: The Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by BOEMRE for the following oil-, gas-, and mineral-related activities proposed on the Gulf of Mexico.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Bureau of Ocean Energy Management, Regulation and Enforcement, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 250, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: BOEMRE prepares SEAs and FONSIs for proposals that relate to exploration, development, production, and transport of oil, gas, and mineral resources on the Federal OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present BOEMRE conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes a major Federal action that significantly affects the quality of the human environment in accordance with NEPA Section 102(2)(C).

A FONSI is prepared in those instances where BOEMRE finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Activity/Operator	Location	Date
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 08–018.	Green Canyon, Block 06, Lease OCS–G 06987, located 123 miles from the nearest Louisiana shoreline.	6/7/2010
Hunt Oil Company, Structure Removal, SEA ES/SR 10–092.	East Cameron, Block 63, Lease OCS–G 22574, located 23 miles from the nearest Louisiana shoreline.	6/18/2010
Devon Energy Production Company, LP, Structure Removal, SEA ES/SR 10–090 & 10–091.	Eugene Island, Block 330, Lease OCS–G 02115, located 82 miles from the nearest Louisiana shoreline.	6/18/2010
Walter Oil & Gas Corporation, Structure Removal, SEA ES/SR 10–067.	Galveston, Block 239, Lease OCS–G 09032, located 22 miles from the nearest Texas shoreline.	6/18/2010
Apache Corporation, Structure Removal, SEA ES/SR 10–078.	South Marsh Island, Block 33, Lease OCS 00780, located 43 miles from the nearest Louisiana shoreline.	6/18/2010
Samson Contour Energy E&P, LLC., Structure Removal, SEA ES/SR 10–094.	Vermillion, Block 218, Lease OCS–G 01142, located 58 miles from the nearest Louisiana shoreline.	6/18/2010
EOG Resources, Inc., Structure Removal, SEA ES/SR 10–093.	Viosca Knoll, Block 31, Lease OCS–G 07870, located 26 miles from the nearest Alabama shoreline.	6/18/2010
Linder Oil Company, Structure Removal, SEA ES/SR 09–005A.	East Cameron, Block 245, Lease OCS–G 00970, located 80 miles from the nearest Louisiana shoreline.	6/19/2010
SPN Resources, LLC., Structure Removal, SEA ES/SR 10–098.	East Cameron, Block 330, Lease OCS–G 03540, located 102 miles from the nearest Louisiana shoreline.	6/19/2010
EOG Resources, Inc., Structure Removal, SEA ES/SR 10–085.	Viosca Knoll, Block 124, Lease OCS–G 08770, located 23 miles from the nearest Alabama shoreline.	6/19/2010
McMoRan Oil & Gas, LLC, Structure Removal, SEA ES/SR 10–081.	West Cameron, Block 426, Lease OCS–G 23596, located 73 miles from the nearest Louisiana shoreline.	6/19/2010
McMoRan Oil & Gas, LLC., Structure Removal, SEA ES/SR 10–102.	West Cameron, Block 522, Lease OCS–G 14340, located 95 miles from the nearest Louisiana shoreline.	6/19/2010
Maritech Resources, Inc., Structure Removal, SEA ES/SR 10–028.	West Cameron, Block 630, Lease OCS–G 02560, located 119 miles from the nearest Louisiana shoreline.	6/19/2010
McMoRan Oil & Gas, LLC., Structure Removal, SEA ES/SR 10–099.	West Cameron, Block 639, Lease OCS–G 02027, located 123 miles from the nearest Louisiana shoreline.	6/19/2010
HC Resources, LLC, Structure Removal, SEA ES/SR 10–086 & 10–087.	Chandeleur, Block 37, Lease OCS–G 10917, located 35 miles from the nearest Louisiana shoreline.	6/28/2010
Merit Energy Company, Structure Removal, SEA ES/SR 10–105.	Matagorda Island, Block 704, Lease OCS–G 10203, located 34 miles from the nearest Texas shoreline.	6/30/2010
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 10–095.	Ship Shoal, Block 169, Lease OCS–G 00820, located 28 miles from the nearest Louisiana shoreline.	7/1/2010
McMoRan Oil & Gas, LLC, Structure Removal, SEA ES/SR 10–103.	Vermilion, Block 156, Lease OCS–G 21597, located 40 miles from the nearest Louisiana shoreline.	7/1/2010
McMoRan Oil & Gas, LLC, Structure Removal, SEA ES/SR 10–064.	West Cameron, Block 648, Lease OCS–G 22411, located 126 miles from the nearest Louisiana shoreline.	7/1/2010
Nippon Oil Exploration U.S.A. Limited, Structure Removal, SEA ES/SR 10–100 & 10–101.	South Marsh Island, Block 243, Lease OCS–G 02595, located 15 miles from the nearest Louisiana shoreline.	7/2/2010

Activity/Operator	Location	Date
Merit Energy Company, LLC, Structure Removal, SEA ES/SR 10–088.	Vermilion, Block 385, Lease OCS–G 24861, located 104 miles from the nearest Louisiana shoreline.	7/2/2010
BP Exploration & Production, Inc., Revised Exploration Plan, SEA R–5055 AA.	Mississippi Canyon, Block 252, Lease OCS–G 32306, located in the Central Planning Area of the Gulf of Mexico, 48 miles offshore, south of Plaquemines Parish, Louisiana.	7/10/2010
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 10–106.	High Island, Block A 555, Lease OCS–G 02384, located 95 miles from the nearest Texas shoreline.	7/12/2010
Ridgelake Energy, Inc., Structure Removal, SEA ES/SR 10–084.	High Island, Block A567, Lease OCS–G 17202, located 116 miles from the nearest Texas shoreline.	7/12/2010
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 10–097.	South Timbalier, Block 130, Lease OCS 00456, located 28 miles from the nearest Louisiana shoreline.	7/12/2010
Seneca Resources Corporation, Structure Removal, SEA ES/SR 09–221A & 09–222A.	Vermilion, Block 309, Lease OCS–G 16310, located 74 miles from the nearest Louisiana shoreline.	7/12/2010
Mariner Energy, Inc., Structure Removal, SEA ES/SR 06–031 A.	Eugene Island, Block 314, Lease OCS–G 01981, located 78 miles from the nearest Louisiana shoreline.	7/22/2010
Anadarko E&P Company LP, Structure Removal, SEA ES/SR 03–070A.	Eugene Island, Block 296, Lease OCS–G 02105, located 210 miles from the nearest Louisiana shoreline.	7/23/2010
Apache Corporation, Structure Removal, SEA ES/SR 09–223.	Eugene Island, Block 296, Lease OCS–G 02105, located 71 miles from the nearest Louisiana shoreline.	7/23/2010
El Paso E&P Company, L.P., Structure Removal, SEA ES/SR 10–108.	South Timbalier, Block 212, Lease OCS–G 14538, located 52 miles from the nearest Louisiana shoreline.	7/23/2010
El Paso E&P Company, L.P., Structure Removal, SEA ES/SR 10–110.	West Cameron, Block 150, Lease OCS 00254, located 24 miles from the nearest Louisiana shoreline.	7/23/2010
Tana Exploration Company, LLC, Structure Removal, SEA ES/SR 10–007 A.	East Cameron, Block 271, Lease OCS–G 27050, located 90 miles from the nearest Louisiana shoreline.	7/24/2010
Apache Corporation, Structure Removal, SEA ES/SR 10–023.	West Cameron, Block 615, Lease OCS–G 15118, located 138 miles from the nearest Louisiana shoreline.	7/24/2010
Callon Petroleum Operating Company, Structure Removal, SEA ES/SR 10–112.	East Cameron, Block 268, Lease OCS–G 25967, located 80 miles from the nearest Louisiana shoreline.	7/28/2010
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 10–096.	Eugene Island, Block 230, Lease OCS–G 00979, located 46 miles from the nearest Louisiana shoreline.	7/30/2010
GOM Shelf LLC, Structure Removal, SEA ES/SR 10–26A.	Matagorda Island, Block 586, Lease OCS–G 14791, located 24 miles from the nearest Texas shoreline.	7/30/2010
El Paso E&P Company, L.P., Structure Removal, SEA ES/SR 10–107.	Ship Shoal, Block 278, Lease OCS–G 15297, located 53 miles from the nearest Louisiana shoreline.	7/30/2010
Pioneer Natural Resources USA, Inc., Structure Removal, SEA ES/SR 10–109.	Brazos, Block A39, Lease OCS–G 04559, located 51 miles from the nearest Texas shoreline.	8/2/2010
Helis Oil & Gas Company, L.L.C., Structure Removal, SEA ES/SR 10–111.	Galveston, Block 227, Lease OCS–G 21322, located 22 miles from the nearest Texas shoreline.	8/2/2010
GOM Shelf LLC, Structure Removal, SEA ES/SR 10–030A.	Matagorda Island, Block 633, Lease OCS–G 06042, located 15 miles from the nearest Texas shoreline.	8/5/2010
Apache Corporation, Structure Removal, SEA ES/SR 08–051A.	East Cameron, Block 336, Lease OCS–G 03388, located 106 miles from the nearest Louisiana shoreline.	8/12/2010
GOM Shelf LLC, Structure Removal, SEA ES/SR 10–033A.	Matagorda Island, Block 588, Lease OCS–G 18782, located 18 miles from the nearest Texas shoreline.	8/12/2010
Apache Corporation, Structure Removal, SEA ES/SR 09–085A.	Mustang Island, Block 757, Lease OCS–G 03019, located 28 miles from the nearest Texas shoreline.	8/13/2010
Shell Offshore, Inc., Geological & Geophysical Survey, SEA L10–027.	Located in the Central Gulf of Mexico Area, 120 miles south of Intracoastal City, Louisiana.	8/16/2010
Apache Corporation, Structure Removal, SEA ES/SR 10–079A.	Mustang Island, Block 787, Lease OCS–G 11221, located 26 miles from the nearest Texas shoreline.	8/18/2010
Sojitz Energy Venture, Inc., Structure Removal, SEA ES/SR 10–029.	Mississippi Canyon, Block 486, Lease OCS–G 06957, located 42 miles from the nearest Louisiana shoreline.	8/19/2010
Energy Resource Technology GOM, Inc., Well Conductor Removal, SEA APM EC346–006.	East Cameron, Block 346, Lease OCS–G 06655, located 103 miles from the nearest Louisiana shoreline.	8/25/2010
Energy XXI GOM, LLC, Structure Removal, SEA ES/SR 10–035.	High Island, Block A–356, Lease OCS–G 02746, located 100 miles from the nearest Texas shoreline.	8/26/2010
Chevron U.S.A. Inc., Well Conductor Removal, SEA APM ST131–L001.	South Timbalier, Block 131, Lease OCS 00457, located 28 miles from the nearest Louisiana shoreline.	8/26/2010
W & T Offshore, Inc., Structure Removal, SEA ES/SR 10–119.	East Cameron, Block 368, Lease OCS–G 16273, located 92 miles from the nearest Louisiana shoreline.	8/30/2010
Energy Partners, Ltd., Well Conductor Removal, SEA APM EC378–003.	East Cameron, Block 378, Lease OCS–G 12856, located 107 miles from the nearest Louisiana shoreline.	8/30/2010
Forest Oil Corporation, Structure Removal, SEA ES/SR 08–106.	Eugene Island, Block 287, Lease OCS–G 01979, located 69 miles from the nearest Louisiana shoreline.	8/30/2010
GOM Shelf LLC, Structure Removal, SEA ES/SR 09–091.	High Island, Block A 323, Lease OCS–G 02414, located 105 miles from the nearest Texas shoreline.	8/30/2010
Gryphon Exploration Company, Structure Removal, SEA ES/SR 10–114.	Mustang Island, Block 804, Lease OCS–G 26442, located 25 miles from the nearest Texas shoreline.	8/30/2010
Dynamic Offshore Resources NS, LLC, Structure Removal, SEA ES/SR 10–116.	Vermilion, Block 161, Lease OCS–G 01127, located 49 miles from the nearest Louisiana shoreline.	8/31/2010

Activity/Operator	Location	Date
Stone Energy Corporation, Structure Removal, SEA ES/SR 10–131.	Ship Shoal, Block 118, Lease OCS 00068, located 16 miles from the nearest Louisiana shoreline.	9/2/2010
Stone Energy Corporation, Structure Removal, SEA ES/SR 10–132 & 10–133.	Ship Shoal, Block 119, Lease OCS 00069, 14–16 miles from the nearest Louisiana shoreline.	9/2/2010
Stone Energy Corporation, Structure Removal, SEA ES/SR 10–124, 10–125 & 10–126.	Ship Shoal, Block 113, Lease OCS 00067, located 18 miles from the nearest Louisiana shoreline.	9/10/2010
Maritech Resources, Inc., Structure Removal, SEA ES/SR 10–115.	Ship Shoal, Block 268, Lease OCS–G 07757, located 52 miles from the nearest Louisiana shoreline.	9/10/2010
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 10–122.	South Timbalier, Block 24, Lease OCS 00387, located 6 miles from the nearest Louisiana shoreline.	9/13/2010
Transcontinental Gas Pipe Line Company, LLC, Structure Removal, SEA ES/SR 10–113.	Vermilion, Block 77, Right-of-Way No. 00701, located 21 from the nearest Louisiana shoreline.	9/13/2010
McMoRan Oil & Gas LLC, Structure Removal, SEA ES/SR 10–104.	Grand Isle, Block 103, Lease OCS–G 21125, located 45 miles from the nearest Louisiana shoreline.	9/15/2010
Mariner Energy, Inc., Structure Removal, SEA ES/SR 10–141.	Matagorda Island, Block 618, Lease OCS–G 07201, located 20 miles from the nearest Texas shoreline.	9/15/2010
W & T Offshore, Inc., Structure Removal, SEA ES/SR 10–143.	Ship Shoal, Block 028, Lease OCS 00346, located 7 miles from the nearest Louisiana shoreline.	9/15/2010
W & T Offshore, Inc., Structure Removal, SEA ES/SR 10–142.	Ship Shoal, Block 94, Lease OCS–G 23891, located 17 miles from the nearest Louisiana shoreline.	9/15/2010
Tennessee Gas Pipeline Company, Structure Removal, SEA ES/SR 10–138.	Eugene Island, Block 250, Right-of-Way OCS–G 01687F, located 82 miles from the nearest Louisiana shoreline.	9/16/2010
NCX Company, L.L.C., Structure Removal, SEA ES/SR 07–009A.	Eugene Island, Block 349, Lease OCS–G 02322, located 82 miles from the nearest Louisiana shoreline.	9/16/2010
Pyramid GOM, Inc., Structure Removal, SEA ES/SR 10–149.	High Island, Block 135, Lease OCS 00741, located 25 miles from the nearest Texas shoreline.	9/16/2010
Callon Petroleum Operating Company, Structure Removal, SEA ES/SR 10–117 & 10–118.	Ship Shoal, Block 35, Lease OCS–G 22691, located 20 miles from the nearest Louisiana shoreline.	9/16/2010
Pyramid GOM, Inc., Structure Removal, SEA ES/SR 10–148.	High Island, Block 136, Lease 00742, located 25 miles from the nearest Texas shoreline.	9/20/2010
Pyramid GOM, Inc., Structure Removal, SEA ES/SR 10–146.	High Island, Block 136, Lease OCS 00742, located 25 miles from the nearest Texas shoreline.	9/20/2010
BP Exploration & Production Inc., Structure Removal, SEA ES/SR 10–139.	High Island, Block A–119, Lease OCS–G 26519, located 52 miles from the nearest Louisiana shoreline.	9/20/2010
Pyramid GOM, Inc., Structure Removal, SEA ES/SR 10–145 & 10–147.	High Island, Block 161, Lease OCS 00744, located 27 miles from the nearest Texas shoreline.	9/21/2010
Nippon Oil Exploration U.S.A. Limited, Structure Removal, SEA ES/SR 10–134.	Eugene Island, Block 177, Lease OCS–G 22667, located 27 miles from the nearest Louisiana shoreline.	9/22/2010
W & T Offshore, Inc., Structure Removal, SEA ES/SR 10–144.	Ship Shoal, Block 029, Lease OCS 00345, located 7 miles from the nearest Louisiana shoreline.	9/22/2010
Nippon Oil Exploration U.S.A. Limited, Structure Removal, SEA ES/SR 10–135.	South Marsh Island, Block 235, Lease OCS–G 02300, located 14 miles from the nearest Louisiana shoreline.	9/22/2010
McMoRan Oil & Gas LLC, Structure Removal, SEA ES/SR 96–107A, 10–073A & 10–120.	West Cameron, Block 118, Lease OCS 00757, located 18 miles from the nearest Louisiana shoreline.	9/23/2010
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 10–150.	South Marsh Island, Block 218, Lease OCS 00310, located 8 miles from the nearest Louisiana shoreline.	9/26/2010
Stone Energy Corporation, Structure Removal, SEA ES/SR 10–127, 10–128, 10–129 & 10–130.	Ship Shoal, Block 93, Lease OCS 00063, located 10 miles from the nearest Louisiana shoreline.	9/27/2010
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 10–156.	South Marsh, Block 241, Lease OCS 00310, located 13 miles from the nearest Louisiana shoreline.	9/30/2010

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSIs prepared by the Gulf of Mexico OCS Region are encouraged to contact BOEMRE at the address or telephone listed in the **FOR FURTHER INFORMATION** section.

Dated: February 16, 2011.

Lars Herbst,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 2011–4756 Filed 3–2–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

Environmental Document Prepared in Support of Oil and Gas Activities on the Alaska Outer Continental Shelf

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice of availability of a recent Environmental Assessment and Finding of No Significant Impact prepared by

the Bureau of Ocean Energy Management, Regulation and Enforcement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA), the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and the Department of the Interior regulations on NEPA (43 CFR part 46), BOEMRE announces the availability of an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) prepared by BOEMRE for oil and gas activities proposed on the Alaska Outer Continental Shelf (OCS).

FOR FURTHER INFORMATION CONTACT: Jeffrey Loman, Deputy Regional Director, BOEMRE, Alaska OCS Region, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5823; telephone 1–800–764–2627; e-mail *AKwebmaster@boemre.gov.*

EA Availability: To obtain a copy of an EA and/or FONSI, you may contact BOEMRE or visit the BOEMRE Web site at *http://alaska.boemre.gov/.*

SUPPLEMENTARY INFORMATION: Notice is submitted to comply with BOEMRE procedure for EA/FONSI which states: "Each OCS regional office shall prepare a quarterly Notice to be published in the **Federal Register** (FR) which lists all EAs and FONSIs prepared for OCS permitting activities in the Region during the 3-month period preceding the date that the Notice is submitted for publication (40 CFR 1506.6(b)). If no EAs and FONSIs were prepared for a 3-month period, no FR Notice is required."

BOEMRE prepares EAs that examine the potential environmental effects of proposals for activities to evaluate oil and gas resource potential on the Alaska OCS. Each EA examines the potential environmental effects of activities described in the proposals and presents BOEMRE conclusions regarding the level and significance of those effects. EAs are used as the basis for determining whether or not approvals of the proposals would significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where BOEMRE finds that approval of the proposals will not result in significant effects on the quality of the human environment. This notice constitutes the notice of availability to the public of the following environmental documents:

Project name	Location	Project purpose	FONSI
ION Geophysical, Inc., Beaufort and Chukchi Seas Seismic Survey, OCS EIS/EA MMS 2010–027.	Beaufort Sea and Chukchi Sea, Alaska	Conduct 2D Seismic Survey	9/9/2010

BOEMRE has concluded that the proposed action would not significantly affect the quality of the human environment and that the preparation of an EIS was not required. Mitigation measures identified during the NEPA process would have been applied to the proposal to ensure environmental protection and safety if the action had occurred. The 2D seismic survey in the Beaufort Sea and Chukchi Sea did not occur because the survey vessel was unavailable due to unanticipated maintenance.

Dated: February 27, 2011.

L. Renee Orr,

Acting Associate Director for Offshore Energy and Minerals Management.

[FR Doc. 2011–4757 Filed 3–2–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of two meetings to be held on April 14, 2011 and August 18, 2011.

SUMMARY: This notice sets forth the dates of April 14, 2011 and August 18, 2011 of the Gettysburg National Military Park Advisory Commission.

DATES: The public meetings will be held on April 14, 2011 and August 18, 2011 from 7 p.m. to 9 p.m.

Location: The meetings will be held at the Ford Education Center in the Visitor Center/Museum Complex, 1195 Baltimore Pike, Gettysburg, Pennsylvania 17325.

Agenda: The April 14, 2011 and August 18, 2011 meetings will consist of Election of the Chair and Vice-Chair, the Sub-Committee Reports from the Historical, Executive, and Interpretive Committees; Federal Consistency Reports Within the Gettysburg Battlefield Historic District; Operational Updates on Park Activities which will consist of Historic Landscape Rehabilitation, Park Construction, Cyclorama Environmental Assessment Update, Freedom Transit Initiative, FY11 Appropriations and the Citizens Open Forum where the public can make comments and ask questions on any park activity.

FOR FURTHER INFORMATION CONTACT: Bob Kirby, Superintendent, Gettysburg National Military Park, 1195 Baltimore Pike, Suite 100, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Gettysburg National Military Park Advisory Commission, 1195 Baltimore Pike, Suite 100, Gettysburg, Pennsylvania 17325. 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.

Dated: February 10, 2011.

Bob Kirby,

Superintendent, Gettysburg NMP/Eisenhower NHS.

[FR Doc. 2011–4818 Filed 3–2–11; 8:45 am]

BILLING CODE 4310–JT–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–474 and 731–TA–1176 (Final)]

Drill Pipe and Drill Collars From China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 705(b) and 735(b) of the Tariff

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Act of 1930 (19 U.S.C. 1671d(b)) and (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports of drill pipe and drill collars from China, provided for in subheadings 7304.22, 7304.23, and 8431.43 of the Harmonized Tariff Schedule of the United States, that the U.S. Department of Commerce has determined are subsidized and sold in the United States at less than fair value ("LTFV").[2] [3]

Background

The Commission instituted these investigations effective December 31, 2009, following receipt of a petition filed with the Commission and Commerce by VAM Drilling USA Inc., Houston, TX; Rotary Drilling Tools, Beasley, TX; Texas Steel Conversions, Inc., Houston, TX; TMK IPSCO, Downers Grove, IL; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC, Pittsburgh, PA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of drill pipe and drill collars from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and dumped within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on September 9, 2010 (75 FR 54912). The hearing was held in Washington, DC, on January 5, 2011, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on February 24, 2011. The views of the Commission are contained in USITC Publication 4213 (February 2011), entitled Drill Pipe and Drill Collars from China: Investigation Nos. 701–TA–474 and 731–TA–1176 (Final).

[2] Chairman Deanna Tanner Okun, Commissioner Daniel R. Pearson, and Commissioner Shara L. Aranoff dissenting.

[3] Vice Chairman Irving A. Williamson, Commissioner Charlotte R. Lane, and Commissioner Dean A. Pinkert determine that they would not have found material injury but for the suspension of liquidation.

By order of the Commission.

Issued: February 24, 2011.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2011–4713 Filed 3–2–11; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1071–1072 (Review)]

Magnesium From China and Russia

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on magnesium from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission also determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on magnesium from Russia would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Background

The Commission instituted these reviews on March 1, 2010 (75 FR 9252) and determined on June 4, 2010 that it would conduct full reviews (75 FR 35086, June 21, 2010). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on August 10, 2010 (75 FR 48360). The hearing was held in Washington, DC, on December 7, 2010, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on February 24, 2011. The views of the Commission are contained in USITC Publication 4214 (February 2011), entitled *Magnesium from China and Russia: Investigation Nos.731–TA–1071–1072 (Review).*

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Charlotte R. Lane dissenting.

[3] Commissioner Dean A. Pinkert did not participate in these reviews.

By order of the Commission.

Issued: February 24, 2011.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2011–4729 Filed 3–2–11; 8:45 am]

BILLING CODE 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 Vaginal Ring Birth Control Devices,* DN 2789; 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 Femina Pharma Incorporated on February 25, 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 Vaginal Ring Birth Control Devices. The complaint

names as respondents Merck & Co., Inc. of Whitehouse, NJ; Schering Plough Corporation of Kenilworth, NJ; Organon USA, Inc. of Roseland, NJ; N.V. Organon of Oss, Netherlands; CVS Caremark Corporation of Woonsocket, RI; CVS Pharmacy, Inc. of Woonsocket, RI; Wal-Mart Stores, Inc. of Betonville, AZ; Walgreens Co. of Deerfield, IL; The Canamerican Drugs Inc. of Winnipeg, Canada; The Canamerican Global Inc. of Winnipeg, Canada; Canadian Med Service of Winnipeg, Canada; Panther Meds Inc. of Winnipeg, Canada; Canada Drugs Online of British Columbia, Canada; Drug World Canada of British Columbia, Canada; CanDrug Health Solutions Inc. of British Columbia, Canada; Big Mountain Drugs of British Columbia, Canada; BestBuyRx.com of British Columbia, Canada; Blue Sky Drugs of British Columbia, Canada; ABC Online Pharmacy of Burnaby, Canada; Canadadrugs.com LP of Winnipeg, Canada; North Drug Store of Winnipeg, Canada; and Canada Pharmacy of Blaine, WA.

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. 2789") 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)).

By order of the Commission.

Issued: February 25, 2011.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2011–4732 Filed 3–2–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on February 17, 2011, a proposed consent decree in *United States* v. *JELD–WEN, Inc.,* Civil Action No. 1:10–CV–494–PA, was lodged with the United States District Court for the District of Oregon.

In this action the United States sought the reimbursement of past costs incurred at the Circle DE Lumber Site in Klamath Falls, Oregon. Under the proposed consent decree, JELD–WEN has agreed to pay the United States $700,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *JELD–WEN, inc.,* Civil Action No. 1:10, DOJ Ref. 90–11–3–09471/1.

During the public comment period, the consent decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–4762 Filed 3–2–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on February 25, 2011, a proposed consent decree in *United States* v. *SKF USA Inc., Crane Co., and Osram Sylvania, Inc.,* Civil Action No. 3:09–cv–00174, was lodged with the United States District Court for the Western District of Pennsylvania.

The proposed consent decree resolves claims that the United States filed under Section 107 of CERCLA, 42 U.S.C. 9607, for reimbursement of costs incurred and to be incurred in connection with

response actions at the Barefoot Disposal Site ("Site") in Blair County, Pennsylvania. Under the proposed consent decree, the Settling Defendants, SKF USA Inc., Crane Co., and Osram Sylvania, Inc., will reimburse the United States $575,000 for past response costs and limited future response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *SKF USA Inc., Crane Co., and Osram Sylvania, Inc.,* DOJ No. 90–11–3–09307.

The proposed consent decree may be examined at the office of the United States Attorney's Office, 700 Grant Street, Suite 4000, Pittsburgh, PA 15219, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/endr/Consent_Decrees.html.* A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $25.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2011–4718 Filed 3–2–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Funding Opportunity and Solicitation for Grant Applications (SGA) for the Enhanced Transitional Jobs Demonstration (ETJD)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Solicitation for Grant Applications (SGA).

Funding Opportunity Number: SGA/DFA PY 10–11.

SUMMARY: Through this notice, the Department of Labor's Employment and Training Administration (ETA) announces the availability of approximately $40 million in grant funds authorized by the Consolidated Appropriations Act of 2010 to support successful applicants in providing enhanced transitional jobs (ETJ) programs, as well as other activities and services, to increase the workforce participation of low-income, hard-to-employ populations, specifically non-custodial parents and/or ex-offenders reentering their communities. ETA intends to fund grantees proposing to implement ETJ program models that go beyond transitional jobs (TJ) programs currently operating or tested previously. ETA seeks applications from either Local Workforce Investment Boards or non-profit community or faith-based organizations with 503(c)(3) IRS status with experience with providing TJ programs, or that represents a partnership that includes an organization with experience providing TJ programs. Applicants must demonstrate that a relationship exists with the required partners or that such a relationship could be established quickly because of existing connections and agreements to work together. Applicants may also include other partners that can provide needed services for program participants and/or refer participants to the applicant as described in the SGA. Upon selection, all grantees will be required to participate in a random assignment evaluation.

The complete SGA and any subsequent SGA amendments, in connection with the Consolidated Appropriations Act of 2010 is described in further detail on ETA's Web site at *http://www.doleta.gov/grants* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications is April 15, 2011.

FOR FURTHER INFORMATION CONTACT: Mamie Williams, 200 Constitution Avenue, NW., Room N4716, Washington, DC 20210; telephone: 202–693–3341.

Signed at Washington, DC, this 28th day of February, 2011.

Eric Luetkenhaus,

Grant Officer, Employment and Training Administration.

[FR Doc. 2011–4788 Filed 3–2–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a "Certification of Non-Relocation and Market and Capacity Information Report" (Form 4279–2) for the following:

Applicant/Location: Puerto Rico Housing Finance Authority, San Juan, Puerto Rico.

Principal Product/Purpose: The loan, guarantee, or grant application is for the construction of a seven story building of approximately 102,258 square feet, which will comprise an assisted living, nursing home and a skilled nursing facility for a total of 376 beds in a 1.77 cuerdas lot. The company is to be located in San Juan, Puerto Rico. The NAICS industry codes for this enterprise are: 623311 (Assisted Living); 623110 (Nursing Home and Skilled Nursing Facility).

DATES: All interested parties may submit comments in writing no later than March 17, 2011. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov;* or transmit via fax (202) 693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number

(202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2011–4804 Filed 3–2–11; 8:45 am]

BILLING CODE 4510–FN–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 2010–10]

Section 302 Report

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Inquiry.

SUMMARY: Congress has directed the Copyright Office ("Office") to prepare a report addressing possible mechanisms, methods, and recommendations for phasing out the statutory licensing requirements set forth in Sections 111, 119, and 122 of the Copyright Act. This notice seeks comment on marketplace solutions to replace the use of the statutory licenses for the retransmission of over-the-air broadcast signals, suggestions for ways to implement market-based licensing practices, and legislative and regulatory actions that would be needed to bring about these changes.

DATES: Comments due 45 days after date of publication in the **Federal Register**. Reply comments due 75 days after date of publication in the **Federal Register**.

ADDRESSES: All comments and reply comments shall be submitted electronically. A comment page containing a comment form is posted on the Copyright Office Web site at *http://www.copyright.gov/docs/section302*. The Web site interface requires submitters to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browser button. To meet accessibility standards, all comments must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Copyright Office at 202–707–0796 for special instructions.

FOR FURTHER INFORMATION CONTACT: Ben Golant, Assistant General Counsel, or Tanya M. Sandros, Deputy General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366 or by electronic mail at *bgol@loc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

There are three statutory licenses in the U.S Copyright Act governing the retransmission of distant and local television broadcast station signals. The cable statutory license, codified in Section 111 of the Act, permits a cable operator to retransmit both local and distant radio and television station signals to its subscribers who pay a fee for cable service. The satellite carrier statutory license, codified in Section 119 of the Act, permits a satellite carrier to provide distant broadcast television station signals to its subscribers. Satellite carriers may also retransmit local television station signals into the stations' local markets on a royalty-free basis pursuant to the Section 122 statutory license. Use of this license is contingent upon the satellite carrier complying with the rules, regulations, and authorizations established by the Federal Communications Commission ("FCC") governing the carriage of local television station signals. *See* 17 U.S.C. 122(a)(2).

Sections 111, 119, and 122 operate in place of transactions that would otherwise be left to the open marketplace. They allow cable operators and satellite carriers to retransmit the television broadcast content carried on local and distant broadcast signals without having to incur the transaction costs associated with individual negotiations for such programming. In exchange for the statutory right to publicly perform copyrighted broadcast programming, the users of the Section 111 and Section 119 licenses pay royalties in accordance with the separate rate structures set forth in the law. Larger cable operators pay a percentage of royalties based upon the gross receipts generated by a cable system, while satellite carriers pay royalties on a per subscriber, per signal, per month basis. Cable operators and satellite carriers must file Statements of Account (and pay royalty fees) every six months with the Office and report which broadcast signals they have retransmitted.

Under the statutory licenses, local and distant broadcast television stations transmit a variety of programming, including network and syndicated programming, movies, sports programming, local news broadcasts, noncommercial shows, religious material, and music of all types. The cable operators and satellite carriers pay royalties at the rate set forth by law. These royalty fees are collected by the Copyright Office and invested in government securities until the time that copyright owners can seek and participate in the process of allocating such fees. Under Chapter 8 of the Copyright Act, the Copyright Royalty Judges ("CRJs"), not the Office, are charged with authorizing the distribution of the royalty fees and adjudicating royalty claim disputes arising under Sections 111 and 119 of the Act.[1]

Prior to the enactment of the Copyright Act of 1976, U.S. copyright

[1] Copyright owners who have historically claimed a share of the statutory royalties are as follows: (1) "Program Suppliers" (commercial entertainment programming) (2) "Joint Sports Claimants" (professional and college sports programming); (3) "Commercial Television Claimants" (local commercial television programming); (4) "Public Television Claimants" (national and local noncommercial television programming); (5) "National Public Radio" (noncommercial radio programming); (6) "Devotional Claimants" (religious television programming); (7) "Music Claimants" (musical works included in television programming); and (8) "Canadian Claimants" (Canadian television programming).

law recognized only one statutory (or, as it was then called, "compulsory") license, for the making and distribution of phonorecords of musical compositions that had already been distributed to the public. The 1976 Act added a number of other statutory license provisions, including Section 111. In 1988, Congress passed the Satellite Home Viewer Act, codifying Section 119 as part of the Copyright Act. Section 119 was designed to sunset after a period of five years, but Congress has reauthorized that Section four times hence in 1994, 1999, 2004, and again in 2010 (as noted below). Currently, Section 119 is due to expire on December 31, 2014. In 1999, as part of the Satellite Home Viewer Improvement Act ("SHVIA"), Congress enacted Section 122, the local-into-local license. Section 122, as well as Section 111, are permanent and are not subject to "sunset" like Section 119, although Congress in 2010 had updated the text of both sections to some degree.[2]

II. Section 302 of the Satellite Television Extension and Localism Act

A. Background

On May 27, 2010, the President signed the Satellite Television Extension and Localism Act of 2010. *See* Public Law 111–175, 124 Stat. 1218 (2010) (hereinafter "STELA"). The legislation extended the term of the Section 119 license for another five years, updated the statutory license structures to account for changes resulting from the nationwide transition to digital television, and revised the Section 111 and Section 122 licenses in several other respects. In addition, STELA instructed the Copyright Office, the Government Accountability Office ("GAO") and the FCC to conduct studies and report findings to Congress on different structural and regulatory aspects of the broadcast signal carriage marketplace in the United States.

Section 302 of STELA, entitled "Report on Market Based Alternatives to Statutory Licensing," charges the Copyright Office with the following:

Not later than 18 months after the date of the enactment of this Act, and after consultation with the Federal Communications Commission, the Register of Copyrights shall submit to the appropriate Congressional committees a report containing:

(1) Proposed mechanisms, methods, and recommendations on how to implement a phase-out of the statutory licensing requirements set forth in sections 111, 119, and 122 of title 17, United States Code, by making such sections inapplicable to the secondary transmission of a performance or display of a work embodied in a primary transmission of a broadcast station that is authorized to license the same secondary transmission directly with respect to all of the performances and displays embodied in such primary transmission;

(2) any recommendations for alternative means to implement a timely and effective phase-out of the statutory licensing requirements set forth in sections 111, 119, and 122 of title 17, United States Code; and

(3) any recommendations for legislative or administrative actions as may be appropriate to achieve such a phase-out.

In response to these directives, the Office now seeks comments and information from the public on several issues that are central to the scope and operation of Section 302 and critical to the Office's analysis of the legal and business landscapes.[3] This Notice of Inquiry ("NOI") summarizes these issues, raises a number of specific questions for public consideration, and invites other comments as appropriate and relevant.

B. Fulfilling the Mandates of Section 302

1. Section 302: Goals of the study

The Office expects to achieve several goals in its report to Congress. First, it seeks to provide Congress with a balanced appraisal of the marketplace arrangements that could occupy the space left open if Sections 111, 119, and 122 were eliminated from the Copyright Act. Next, it intends to offer Congress a choice of options from which it might approach and repeal the statutory licenses. Finally, in order to provide context and points of comparison for our report, the Office intends to discuss the current state of licensing in the video programming marketplace.

2. Replacing the Statutory Licenses

In the absence of the statutory licenses, cable operators and satellite carriers would need to rely on marketplace mechanisms to clear the public performance rights for the content transmitted by broadcast stations. The intent here is to explore marketplace alternatives that would permit cable operators and satellite carriers to retransmit the entire broadcast signal just as they have been allowed to do under the statutory licenses. The Office submits that there are at least three different approaches that should be considered in this discussion: (1) Sublicensing, (2) private licensing, and (3) collective licensing. The Office seeks comment on the viability of each of these approaches and welcomes input on other possible licensing options.

a. *Sublicensing.* Section 302(1) of STELA directs the Office to study how to implement a phase-out of the Section 111, 119 and 122 statutory licenses "by making such sections inapplicable to the secondary transmission of a performance or display of a work embodied in a primary transmission of a broadcast station that is authorized to license the same secondary transmission directly with respect to all of the performances and displays embodied in such primary transmission." This approach involves a marketplace transaction known as sublicensing. Sublicensing in the context of the video program marketplace involves non-exclusive contractual arrangements whereby a television station, while negotiating licenses with copyright owners for the public performance of copyrighted programming in a local market, would also negotiate permission for the broadcast station to sublicense to third party distributors such as cable operators and satellite carriers. Sublicense agreements are essentially non-exclusive contracts that allow broadcast stations to convey performance rights to others in the distribution chain. Both the extent of the rights and the fees for further use could be fixed as part of the initial contract between the copyright owner and the broadcaster.

In its 1997 Report to Congress entitled "A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals" ("1997 Report"), the Office asked, as an alternative to statutory licensing, whether the government should require broadcast stations to acquire cable retransmission rights from copyright owners, and allow the cable operator to negotiate with the broadcast station for the entire signal. The Office noted that this mechanism was first suggested by the FCC as a marketplace alternative to the Section 111 license.[4] The Office did not make

[2] With each reauthorization, Congress has modified the terms and conditions of the Section 119 license and, in some cases, reduced its scope. For example, in 2004, Congress narrowed Section 119 by inserting an "if local-no distant" provision, which effectively limited a satellite carrier's statutory right to carry distant signals in those markets where local into local service is offered.

[3] The Office notes that on June 30, 2008, it submitted a comprehensive Report to Congress regarding the efficacy of the Section 111, 119, and 122 licenses. *See Satellite Home Viewer Extension and Reauthorization Act 109 Report: A Report of the Register of Copyrights,* June 2008 ("Section 109 Report"). The Office cites to the record established in the Section 109 proceeding throughout this inquiry.

[4] 1997 Report at 24–25. In its 1989 statutory licensing study, the FCC stated that, in the absence of Section 111, television stations would be able to acquire cable retransmission rights to "packages" of the programming that they broadcast. It further

Continued

any specific recommendations regarding sublicensing in its 1997 Report.

In the Section 109 Report, however, the Office did state that sublicensing was a possible, and reasonable, alternative to statutory licensing. The Office noted that it is a market-driven concept that has been in practice as long as cable operators have carried non-broadcast networks. It further noted that sublicensing has been so successful that there are now over 500 channels of video programming available for distribution in the multichannel marketplace.[5] The Office concluded that Sections 111 and 119 have impeded the development of a sublicensing system and only when these statutory licenses are repealed will it be known whether sublicensing is a workable solution.

Sublicensing is not an option that was viewed positively by all commenters in the Section 109 proceeding. In its comments, NAB argued that a sublicensing approach, under which broadcasters would be expected to acquire distant market retransmission rights and then license them to cable operators and satellite carriers, would not work as a direct substitute for the statutory licenses. According to NAB, broadcasters whose stations are currently retransmitted as distant signals, typically by a handful of systems in adjacent television markets, have no core financial incentive to engage in sublicensing. It commented that since broadcasters rely principally on advertising revenues, and advertisers would not assign value to potential audiences in a few scattered cable communities outside the station's home market, "there is no direct economic incentive for such broadcasters to undertake the cost and administrative burden of acting as a clearinghouse for such distant carriage rights." NAB Reply Comments in the Section 109 Proceeding at 7–8.

NAB stated that neither the prevalence of cable networks nor even the rise of an after-market for the delivery of individual broadcast network programs supports the proposition that sublicensing would be a viable alternative to the statutory licenses. It commented that the factors relevant in those situations are not applicable to broadcasters, who focus their economic activities on the local market. NAB concluded that the fundamental economic model that drives such cable networks simply does not translate to the broadcast station context. *Id.*

Issues and Questions. The Office seeks comment on whether sublicensing is an effective alternative to both the local and distant signal statutory licenses, including specifically, comments about the current state of sublicensing of television programming in the United States. For example, how does sublicensing function in the marketplace today, especially with regard to basic cable networks? Are broadcast stations truly different from cable networks as the NAB suggests? What percentage of the public view broadcast stations through their cable and satellite subscriptions rather than directly over the air? If most of the public accesses television stations through multichannel video programming distributors, would this provide an incentive for the broadcasters to take another look at sublicensing the content for secondary transmission? Are there sublicensing examples from other countries that may be used as models in this regard? The Office also welcomes any scholarly articles on sublicensing audiovisual content or related issues that will inform the debate.

b. *Private Licensing.* Another possibility is that interested parties would develop and choose to engage in forms of direct licensing in the event statutory licensing were eliminated. Under this option, a cable operator or satellite carrier would negotiate with each copyright owner of a specific broadcast program for the right to perform the work publicly. On this point, it is important to note that the current distant signal licenses do not bar such arrangements. Copyright owners and cable operators have always been free to enter into private licensing agreements for the retransmission of distant broadcast programming. The Copyright Office has, in fact, accepted the use of private licensing in lieu of the cable statutory license to clear the public performance rights for broadcast content carried on the signal.[6] On this point, the Office notes that there are public records in the Copyright Office noting the existence of private copyright license agreements between television station group owner Entravision Communications Corporation and cable operators in Rhode Island for the carriage of broadcast content transmitted by WUNI–TV.[7] Broadcast stations that own the rights to the programs they transmit have also negotiated programming agreements with satellite carriers outside the context of Section 119. For example, DirecTV reported that it has entered into agreements for the retransmission of broadcast programming transmitted by certain television stations in Puerto Rico. *See* Section 109 Report at 86. Nevertheless, the private licensing of broadcast content has not been widespread because cable operators and satellite carriers have grown accustomed to using the statutory licenses and few broadcast stations own all the rights to the programming carried on their signals.

Under one possible private licensing model, the copyright owner and either the cable system or satellite carrier would enter into a written agreement covering the public performance right for the copyrighted work. The statutory license would be replaced with a marketplace-based license from a single individual or entity that has the right to authorize the retransmission of the copyrighted content carried on the broadcast signal, such as in the case of WUNI–TV, noted above. The Office seeks comment on whether privately negotiated copyright licenses, of the type described above, are a plausible and effective marketplace alternative to the three existing statutory licenses. To gauge the practicality of private licensing options, the Office seeks comment on how many private copyright licenses currently exist and how they function. Moreover, the Office seeks comment on whether there are any successful private licensing models in operation outside the United States that the Office may examine for purposes of this inquiry.

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stated that cable operators could then negotiate with a single entity, the broadcast station, for carriage rights to each package. The FCC remarked that the creation of dozens of cable networks by the cable and content industries provided "convincing evidence" that the transactions costs associated with full copyright liability are quite manageable. The FCC believed that this method is efficient and practical. The FCC concluded that this "networking" mechanism that is so widely employed in other forms of video distribution, appeared well-suited to the acquisition of cable retransmission rights for broadcast signals as well. *Id.,* citing 1989 FCC Study, 4 FCC Rcd at 6712.

[5] This point was raised by Disney in its testimony submitted to the Copyright Office during hearings on Section 109 of the SHVERA in 2007. *See* Section 109 Hearing Testimony of Preston Padden at 2 (July 24, 2007).

[6] *See Policy Decision Concerning Status of Low Power Television Stations,* 49 FR 46829, 46830 (Nov. 28, 1984) ("If copyright owners and cable systems uniformly agree that negotiated retransmission consents supersede the compulsory license requirements, the Copyright Office has no reason to question this interpretation provided that the negotiated license covers retransmission rights for all copyrighted works carried by a particular broadcasting station for the entire broadcast day for each day of the entire accounting period.").

[7] *See* Letter to Faye W. Eden, Coxcom Inc., from Donna M. Thacker, Sr. Licensing Examiner, U.S. Copyright Office, dated March 30, 2002 (acknowledging that WUNI has been carried by Cox under a private licensing agreement) (letter on file with the Licensing Division of the Copyright Office).

Finding Copyright Owners. The Office recognizes that private licensing may be difficult when there are multiple copyright owners in the marketplace. There are thousands of hours of programming broadcast by television stations on a weekly basis.[8] Before private negotiations can commence, cable operators and satellite carriers must be able to identify the rights holders to the programs carried by broadcast stations. This daunting task has been ameliorated by the existing statutory licensing systems, but it would have to be confronted if Sections 111, 119, and 122, were repealed.

On this point, the Office notes that certain parties are working on an extensive video program cataloging effort to identify the universe of audiovisual content available to the public. According to trade press reports, a new international coalition announced the launch of the Entertainment Identifier Registry ("EIDR"), a non-profit global independent registry that provides a uniform approach to cataloging movies, television shows, and other commercial audiovisual assets, with unique identifiers ("IDs"). The registry is set up as an industry resource to help streamline digital commerce and simplify consumer transactions.[9] The Office seeks comment on this effort and ask whether such a registry could be used to facilitate private copyright clearances by quickly identifying the copyright owner(s) associated with the rights to a particular broadcast program and perhaps serve as a clearing house for use of the work based on rate schedules established by copyright owners. If the EIDR is inapt for identifying the owners of broadcast content for retransmission purposes, the Office seeks comment on possible alternatives that would perform the same function.

In the Section 109 Report proceeding, the record revealed that cable operators were carrying, on average, two to three distant signals per system. *See* Section 109 Report at 51. The Office seeks comment on whether this information is still accurate or whether recent trendlines indicate either a decrease or increase in the number of distant signals carried. If the number of distant signals is low, then it may not be so burdensome to negotiate private license agreements with the copyright owners of the programming carried on this finite set of signals, if the owners of the copyrighted content could be easily identified. However, the Office recognizes that both cable operators and satellite carriers may have a heavier burden if they have to negotiate for the public performance rights of content on local broadcast signals, in the absence of Sections 111 and 122, given that there are nearly 1,800 full power television stations in the 210 markets across the United States. The Office notes, however, that hundreds of television stations are affiliated with several national broadcast networks and carry similar daytime and primetime programming across markets. Is it practicable to use private licensing arrangements to clear the rights for all programs transmitted by local television stations? Does the presence of a significant amount of national network programming on local broadcast stations makes private licensing a more manageable task?

Hold-ups. In the Section 109 Report proceeding, Echostar explained the "hold-up" phenomenon inherent in the rights clearance process. It asserted that when the last content owner in a station's broadcast line-up "comes to the table" to negotiate, this owner may have an unfair advantage. It stated that the copyright holder can "hold up" the negotiations by demanding excessive compensation for broadcast rights because without the agreement, the distributor will end up carrying a channel with a "hole" in its schedule. Echostar Comments in the Section 109 Proceeding at 8. The Office seeks comment on the extent of this problem and whether other program suppliers would see it as an opportunity to air their programming in the open slot. On the other hand, if hold-ups are, in fact, impediments to private negotiations, the Office asks whether this should be a reason not to recommend private licensing as a marketplace option and if there are legislative solutions that could address the problem.

c. *Collective Licensing.* Collective licensing is another possible alternative to statutory licensing. Like private licensing, it can take a variety of specific forms, but in general, it would require copyright owners to voluntarily empower one or more third party organizations to negotiate licenses with cable operators and satellite carriers for the public performance rights for their works transmitted by a television broadcast station. In the Section 109 Report, the Office found that collective licensing was a possible marketplace solution that users and copyright owners may consider for the efficient disposition of the public performance right to broadcast television programming. Section 109 Report at 90.

At this time, there are no collective licensing bodies in the United States whose business it is to license the public performance of audiovisual works transmitted by television broadcast signals. However, there are currently three performance rights organizations ("PROs") that administer the public performance right on behalf of the copyright owners of musical works: (1) The American Society of Composers, Authors and Publishers ("ASCAP"); (2) Broadcast Music, Inc. ("BMI"); and (3) SESAC, Inc. These organizations offer a blanket, nonexclusive license to users, allowing them to publicly perform the music in the PROs' respective repertories.

It should be noted that ASCAP and BMI operate under government supervision. To protect licensees from possible monopolistic behavior and antitrust concerns associated with PROs, the U.S. Department of Justice has entered into court-administered antitrust consent decrees with BMI and ASCAP. Both consent decrees have been updated over time and are similar in scope. The consent decrees allow ASCAP and BMI to administer the public performance right for musical works. They also require the PROs to grant a public performance license on a non-exclusive basis and deter discrimination amongst similarly situated licensees. The consent decrees require per-program licensing as an option for licensees instead of obliging everyone to purchase a blanket license. A significant provision in the consent decrees is the designation of the United States District Court for the Southern District of New York as a special rate court which resolves license fee disputes. If the PRO and the prospective licensee cannot agree on a reasonable fee for a proposed license, then either party can petition the special rate court to resolve the issue. SESAC is currently not bound by a consent decree, but in

[8] Recent press reports indicate that seven companies (CBS, Disney, Discovery, Fox, NBC Universal, Time Warner, and Viacom) account for 90% of all the professionally produced video that people watch. *See* David Lieberman, *Web and Other Options are Shaking Up How We Watch TV,* USA TODAY, *http://www.usatoday.com* (Jan. 3, 2011). However, there are an indeterminable number of copyright owners who own the 10% of video programming not produced by the top seven.

[9] *See Leading Entertainment Companies Create Registry for Movie and Television Content,* GlobalNewsWire.com (Oct. 27, 2010), *http://www.globenewswire.com/* ("Members of EIDR will have open access to the registry and/or be able to supply their content to the registry for identification. For content distributors, access to unique IDs will help eliminate confusion between assets with the same name or different cuts of the same video, helping to ensure that the right products are being distributed to the consumer. For content producers, the ability to register all of their assets will help simplify their post-production process and potentially lead to greater distribution of their products. Other companies in the supply chain can benefit from a streamlined communication process between their suppliers and distributors.")

2009, a class action lawsuit, which is still pending, was filed on behalf of local television stations alleging that SESAC is engaged in price fixing and other anticompetitive acts.[10]

Questions for the Public. The Office generally seeks comment on the benefits, drawbacks, costs, and operation of collective licensing structures for copyrighted works. Specifically, the Office seeks comment on the U.S. system for the collective licensing of music and whether there are any lessons to be learned in developing a collective licensing body for audiovisual works. If collective licensing of broadcast television content in the United States was found to be the appropriate marketplace replacement for Sections 111, 119, and 122, would oversight mechanisms like the consent decrees noted above be necessary? The Office also seeks input on collective licensing models around the world that may be relevant to our study.[11] Finally, the Office asks whether there are any regulatory impediments or other legal issues that may prevent parties from entering into collective agreements.

d . *Other Licensing Alternatives.* This Notice raises specific questions about three marketplace approaches to licensing copyrighted broadcast television content in the marketplace. However, these identified licensing systems should not be viewed as the universe of possible options nor should comments be limited to these three approaches. Comment on other possible marketplace solutions, not mentioned above, that would facilitate the cable and satellite retransmission of programs carried by television broadcast stations, are encouraged.

3. Eliminating the Statutory Licenses

The Office has two core mandates under Section 302 of the STELA. The first is to consider and recommend possible alternatives to the current statutory licensing systems in the Copyright Act, with a particular but not an exclusive focus on sublicensing by broadcasters. The second is to consider and recommend "a timely and effective phase-out" of the three licenses. While this step concerns "process" rather than "substance," some of the suggested approaches are keyed to the market-based alternatives previously discussed. That is, any proposals addressing the elimination of the statutory licenses would need to be considered in the context of specific marketplace solutions. Thus, the phase-out options are offered as conceptual blueprints that may be redrawn in light of the comments regarding the appropriate replacements for the existing statutory licensing systems. Moreover, the approaches addressed below may not be the only phase-out options available. As such, recommendations on other possible alternatives are welcome and will be considered.

a. *The Per-Station Approach.* Under this plan, the respective statutory licenses would be unavailable where the public performance rights for all of the programs on a single broadcast station can be cleared through a single entity and carriage terms and conditions are made available to the distributor in a timely manner so that it is able to enter into a private carriage agreement. The Office believes that this approach closely approximates the intent of Congress as reflected in Section 302(1) of STELA. The Office seeks comment on whether this piecemeal approach is a viable "phase-out" option. Assuming that a single entity could clear the rights, would negotiations between the licensing entity and each cable system and satellite carrier be necessary? Would this option be more workable if the single entity holding the rights were required to establish a rate schedule based on criteria that would ensure uniformity of treatment among similarly situated cable systems and satellite carriers?

b. *The Staggered Approach.* An alternative means to eliminate the statutory licenses is for Congress to gradually phase them out over a period of time. Under this approach, Congress could first eliminate the distant signal licensing constructs on a set date and then repeal the local-into-local licensing constructs a few years later. Given that cable operators and satellite carriers retransmit significantly more local broadcast stations than distant broadcast stations, this method would allow the cable and satellite industries more time to plan ahead and clear public performance rights with copyright owners of programming transmitted by broadcast stations in a local market. The Office seeks comment on this approach and its benefits and drawbacks. The Office seeks specific comment on whether this method would be considered "timely" as that term is used in Section 302.

c. *The Statutory Sunset Approach.* Another possible approach to ending the statutory licensing systems for the retransmission of broadcast television signals is by Congressional edict. Under this framework, Congress would establish a hard date to repeal Sections 111, 119, and 122 all at once. For example, Congress could enact legislation in January 2013 that would repeal the licenses effective as of January 1, 2015. An alternative plan, at least for Section 119, is for Congress to sunset the satellite distant signal license in those markets where local-to-local service is available on a defined date.

The Office notes, however, that the elimination of the statutory licenses on a date certain could lead to channel line-up disruptions on a large scale as broadcast signals would likely be dropped by cable operators and satellite carriers unless a workable marketplace solution for the retransmission of broadcast content is in place beforehand. How much time would be needed to establish marketplace alternatives and would it be necessary to have a transition period during which the statutory license would remain available? The Office also notes that at least insofar as local broadcast stations are concerned, elimination of the statutory licenses would be difficult to implement if the Communications Act's broadcast signal carriage provisions remain in place. Without legislation addressing the issues surrounding the mandatory carriage of local television signals under title 47 of the U.S. Code, cable operators and satellite carriers would be stuck with a carriage obligation without the right to retransmit the programming carried on those signals. The Office seeks specific comment on these possibilities and asks for input on what other drawbacks may result from the adoption of a flash cut option.

III. Licensing Models in the New Video Programming Marketplace

As discussed below, cable operators, satellite carriers, and copyright owners have experimented with innovative content distribution strategies over the last decade. Creative licensing arrangements have developed alongside these new business models. The Office seeks comment on three new programming models: (1) Video on Demand; (2) DirecTV's "The 101" linear channel; and (3) online video distribution, and asks how these new licensing structures work and how they

[10] Amended Complaint at 2, 35–36, *Meredith Corp.* v. *SESAC,* No. 09–9177 (S.D.N.Y. Mar. 18, 2010).

[11] The Office notes, for example, that collective licensing has played a crucial role in the European Union. Anke Schierholz, *Collective Rights Management in Europe: Practice and Legal Framework, in* European Copyright Law: A Commentary 1150 (Michel M. Walter & Silke von Lewinski eds., 2010); *see also,* Daniel Gervais, *Collective Management of Copyright: Theory and Practice in the Digital Age,* COLLECTIVE MANAGEMENT OF COPYRIGHT: THEORY AND PRACTICE IN THE DIGITAL AGE (Wolters Kluwer, 2d ed. 2010); Thomas Riis & Jens Schovsbo, *Extended Collective Licenses and the Nordic Experience—Its a Hybrid but is It a Volvo or a Lemon?,* 33 Colum. J.L. & Arts 1, 11 (2010).

benefit all stakeholders in the distribution chain. This information will help the Office understand how the video programming marketplace functions and the kinds of licensing arrangements that drive the online market.

Video-on-Demand. Over the past decade, cable operators have offered video-on-demand ("VOD") services over their platforms. VOD allows subscribers to select and view individual television programs and movies, for free or for a fee, on an a la carte basis any time during the day. The Office seeks comment on how copyright owners license content for VOD distribution, and the extent to which it might obviate the need for continued operation of the section 111, 119 and 122 statutory licenses.

Linear Channel Packaging. DirecTV currently offers to its subscribers "The 101," a satellite channel carrying older, or recently cancelled, broadcast and cable programming. In contrast to VOD, which permits subscribers to select and choose individual program offerings, the 101 is a linear channel designed and structured by DirecTV that is available to its customers on a 24 hour/7 days a week basis. The Office seeks comment on how DirecTV obtains and licenses content for The 101, and the extent to which such services might obviate the need for continued operation of the section 111, 119 and 122 statutory licenses.

Online Video. It is likely that more and more television programming will migrate to the Internet in the years ahead. Broadcast content is now widely available to consumers through streaming video services and per-program downloads available at Apple's iTunes store and other outlets. In fact, some estimate that fifty percent of broadcast network content is available on online platforms the day after it airs on television.[12] Many of these shows have been available for free online for a number of years through Web services such as Hulu.com or directly from the network's Web site. Is the television marketplace entering an era when the current statutory licenses are no longer needed because all broadcast programming is becoming available online?

In addition to the pantheon of free online video services, there are two burgeoning types of subscriber-based streaming television models that have gained notoriety in the marketplace. First is the "TV Everywhere" model where cable/satellite subscribers who can confirm their TV subscription through an online registration process, can watch live cable programming on the Web just as it appears on TV for no additional charge.[13] The second model is exemplified by online subscription services such as Hulu Plus and Netflix that allow subscribers to watch television shows and motion pictures online by paying a monthly fee directly to the service, without the need to be a cable or satellite subscriber.[14] And, it is worth noting that the broadcast industry is also taking part in the development of a secured online distribution system, powered by Syncbak, which will enable the online viewing of local television signals in their local markets.[15]

Questions for the public. The Office seeks comment on how broadcast content is licensed for distribution over the Internet and what types of business models are likely to succeed in the online space. Further, the Office seeks comment on whether the TV Everywhere effort and popular services, such as Hulu and Netflix, will eventually offer live broadcast signals to their subscribers with a broadband connection. If so, we ask what licensing models might be used to clear the public performance rights for programs carried by television broadcast stations for online distribution, by aggregators like Hulu, or through technological solutions, as exemplified by Syncbak, and whether these alternative means of obtaining access to broadcast programming will vitiate the rationale underlying the Section 111, 119 and 122 statutory licenses.

IV. Conclusion

The Office hereby seeks comment from the public on the factual and policy matters related to the study mandated by Section 302 of the Satellite Television Extension and Localism Act of 2010. If there are any additional pertinent issues not discussed above, the Office encourages interested parties to raise those matters in their comments. In addition, the Office is considering having a roundtable or formal hearing on the matters raised in this NOI in June 2011. An announcement of such a proceeding, if it were to occur, will be provided by public notice in the future.

Dated: February 25, 2011.

Maria A. Pallante,

Acting Register of Copyrights.

[FR Doc. 2011–4717 Filed 3–2–11; 8:45 am]

BILLING CODE 4110–30–P

[12] *How Much Network Programming Was Actually "On Online" This Season?* Clicker Blog, *http://www.clicker.com* (July 13, 2010).

[13] Comcast will begin to stream live content from Time Warner's cable networks later this year under their TV Everywhere licensing agreement. *See* Todd Spangler, *Comcast, Turner Broaden TV Everywhere Pact to Cover Live Streaming, http://www.broadcastingcable.com* (Feb. 2, 2011). There are no press reports indicating whether or when cable operators will be carrying broadcast content under the TV Everywhere plan.

[14] Hulu management has recently discussed recasting the service as an "online cable operator" that would use the Internet to send live television channels and video-on-demand content to subscribers. *See* Sam Schechner and Jessica Vascellaro, *Hulu Reworks Its Script as Digital Change Hits TV,* Wall Street Journal, January 27, 2011.

[15] Syncbak's proprietary authentication technology synchronizes broadband and broadcast delivery of television, creating a means for viewers to watch broadcast content in real-time on any broadband enabled device. *See http://www.syncbak.com.* Syncbak offers a technical solution to the Internet delivery of broadcast stations; it is not an agent for clearing the public performance rights for programs carried on such stations.

NATIONAL SCIENCE FOUNDATION

Submission for OMB Review; Comment Request Survey of Principal Investigators on Earthquake Engineering Research Awards Made by the National Science Foundation, 2003–2009

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Science Foundation has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 22, 2010 (volume 75, number 204, page 65385) and allowed 60-days for public comment. No comments were received from members of the public. The purpose of this notice is to allow an additional 30 days for public comment.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NSF. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Joy Pauschke, National Science Foundation, Suite 545, 4201 Wilson Blvd, Arlington, VA, 22230, or call non-toll-free number 703–292–8360, or e-mail your request, including your address to: *jpauschk@nsf.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication. NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Proposed Collection: Title: Survey of Principal Investigators on Earthquake Engineering Research Awards Made by the National Science Foundation, 2003–2009. *Type of Information Collection Request:* New collection. *Need and Use of Information Collection:* At the end of fiscal year 2014, NSF will have completed ten years of support for operations and research of the George E. Brown, Jr. Network for Earthquake Engineering Simulation (NEES). The purpose of the proposed information collection is to inform decision making about the need for multi-user earthquake engineering research infrastructure beyond 2014. The proposed data collection will consist of a survey of Principal Investigators on NSF earthquake engineering research awards, including but not limited to research awards made by the NEES program to facilitate use of the NEES network and infrastructure. Categories of information to be collected from these individuals include: (1) Novelty of research questions and approach; (2) access to and use of specific types of research infrastructure (including those provided by the NEES network); (3) incorporation of education, outreach, and training activities; (4) number and diversity of participants in funded research activities; and (5) outputs and outcomes of funded research activities. *Frequency of Response:* Once. *Affected Public:* Individuals. *Type of Respondents:* NSF grantees. The annual reporting burden is as follows: *Estimated Number of Respondents:* 194 per year. *Estimated Number of Responses per Respondent:* 1. *Average Burden Hours Per Response:* 0.5. *Estimated Total Annual Burden Hours Requested:* 97. The annualized cost to respondents is estimated at: $3,777. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Dated: February 28, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–4772 Filed 3–2–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Comment Request: National Science Foundation—Applicant Survey

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewed clearance of 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 3 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 on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by May 2, 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 Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton at (703) 292–7556 or send e-mail to *splimpto@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: "National Science Foundation Applicant Survey."

OMB Approval Number: 3145–0096.

Expiration Date of Approval: June 30, 2011.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project: The current National Science Foundation Applicant survey has been in use for several years. Data are collected from applicant pools to examine the racial/sexual/disability composition and to determine the source of information about NSF vacancies.

Use of the Information: Analysis of the applicant pools is necessary to determine if NSF's targeted recruitment efforts are reaching groups that are underrepresented in the Agency's workforce and/or to defend the Foundation's practices in discrimination cases.

Burden on the Public: The Foundation estimates about 4,000 responses annually at 1 minute per response; this computes to approximately 67 hours annually.

Dated: February 28, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–4760 Filed 3–2–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company; Notice of Availability of Application for a Combined License

On March 28, 2008, Southern Nuclear Operating Company (SNC), acting on behalf of itself and Georgia Power Company, Oglethorpe Power Corporation (an Electric Membership Corporation), Municipal Electric Authority of Georgia, and the City of

Dalton, Georgia, an incorporated municipality in the State of Georgia acting by and through its Board of Water, Light and Sinking Fund Commissioners (Dalton Utilities), herein referred to as the applicant, filed with the U.S. Nuclear Regulatory Commission (NRC, the Commission) pursuant to Section 103 of the Atomic Energy Act and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," an application for combined licenses (COLs) for two AP1000 advanced passive pressurized water reactors at the Vogtle Electric Generating Plant (VEGP) site located in Burke County, Georgia. The reactors are to be identified as VEGP Units 3 and 4. The application is currently under review by the NRC staff.

An applicant may seek a COL in accordance with Subpart C of 10 CFR Part 52. The information submitted by the applicant includes certain administrative information, such as financial qualifications submitted pursuant to 10 CFR 52.77, as well as technical information submitted pursuant to 10 CFR 52.79. This notice is being provided in accordance with the requirements found in 10 CFR 50.43(a)(3).

A copy of the application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and via the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. The accession number for the application cover letter is ML081050133. Other publicly available documents related to the application, including revisions filed after the initial submission, are also posted in ADAMS. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to pdr.resource@nrc.gov. The application is also available at *http://www.nrc.gov/reactors/new-reactors/col.html*.

Dated at Rockville, Maryland, this 24th day of February, 2011.

For the Nuclear Regulatory Commission.

Ravindra Joshi,

Senior Project Manager, AP10000 Projects Branch 1, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2011–4803 Filed 3–2–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305; NRC–2008–0484]

Dominion Energy Kewaunee, Inc.; Kewaunee Power Station; Notice of Issuance of Renewed Facility Operating License No. DPR–43 for an Additional 20-Year Period; Record of Decision

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, the Commission) has issued a renewed facility operating license No. DPR–43 to Dominion Energy Kewaunee, Inc. (licensee), the operator of the Kewaunee Power Station (KPS). Renewed facility operating license No. DPR–43 authorizes operation of KPS by the licensee at reactor core power levels not in excess of 1772 megawatts thermal, in accordance with the provisions of the KPS renewed license and its technical specifications.

The notice also serves as the record of decision for the renewal of facility operating license No. DPR–43, consistent with Title 10 of the Code of Federal Regulations Section 51.103 (10 CFR 51.103). As discussed in the final supplemental environmental impact statement (FSEIS) for KPS, dated August 2010, the Commission has considered a range of reasonable alternatives that included supercritical coal-fired generation; natural gas combined-cycle generation; a combination of conservation, efficiency, wood-fired generation, and wind power; and non-renewal of the operating license. The factors considered in the record of decision can be found in the supplemental environmental impact statement (SEIS) for KPS.

KPS is a pressurized-water reactor located near the Town of Carlton, Wisconsin. The application for the renewed license complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter I, the Commission has made appropriate findings, which are set forth in the license. Prior public notice of the action involving the proposed issuance of the renewed license and of an opportunity for a hearing regarding the proposed issuance of the renewed license was published in the **Federal Register** on October 1, 2008 (73 FR 57154).

For further details with respect to this action, see: (1) Dominion Energy Kewaunee, Inc. license renewal application for KPS dated August 12, 2008, as supplemented by letters through November 23, 2010; (2) the Commission's safety evaluation report (NUREG–1958), published in January 2011; (3) the licensee's updated safety analysis report; and (4) the Commission's final environmental impact statement (NUREG–1437, Supplement 40), for KPS, published in August 2010. These documents are available at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.*

Copies of renewed facility operating license No. DPR–43 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of License Renewal. Copies of the KPS safety evaluation report (NUREG–1958) and the final environmental impact statement (NUREG–1437, Supplement 40) may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161 (*http://www.ntis.gov*), 703–605–6000, or Attention: Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250–7954 (*http://www.gpoaccess.gov*), 202–512–1800. All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account number or VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 24th day of February, 2011.

For the Nuclear Regulatory Commission.

David J. Wrona,

Chief, Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–4805 Filed 3–2–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2011–22; Order No. 681]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice addresses a recent Postal Service filing concerning proposed changes to First-Class Mail Parcel Product offerings. These changes include removing commercial First-Class Mail Parcels from the market dominant list and adding a new product to the competitive product list. This notice identifies preliminary procedural steps and invites public comment.

DATES: *Comments are due:* March 16, 2011; *reply comments are due:* March 25, 2011.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: On February 24, 2011, the Postal Service filed a request with the Commission to modify the market dominant and the competitive product lists pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*[1] The Postal Service proposes to: (1) remove commercial First-Class Mail Parcels from the market dominant product list; and (2) add a new product, provisionally titled Lightweight Commercial Parcels, to the competitive product list.

The Postal Service explains that commercial First-Class Mail Parcels refers to the First-Class Mail Commercial Base Parcels and the First-Class Mail Commercial Plus Parcels price categories of the First-Class Mail Parcels product. *Id.* at 1, n.1. It contends that these are essentially fulfillment shipping offerings that compete with an assortment of comparable products offered by competitors. *Id.* at 2. Thus, the Postal Service proposes to remove these price categories from the market dominant First-Class Mail Parcels product and add the price categories to the competitive product list as a new product titled "Lightweight Commercial Parcels." Content restrictions will be added to the new product prohibiting the inclusion of letters as defined under the Private Express Statutes. This proposal does not affect the current market dominant retail First-Class Mail Parcels offerings.

The Postal Service includes the following attachments with its Request:

- Attachment A—Resolution of the Governors of the United States Postal Service, Resolution No. 11–3, Restructuring First-Class Mail Parcel Product Offerings;
- Attachment B—Statement of Supporting Justification; and
- Attachment C—Mail Classification Changes.

The Commission establishes Docket No. MC2011–22 to consider the Postal Service's product list modification proposals described within its Request.

Interested persons may submit comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.* and the general provisions of title 39. Comments are due no later than March 16, 2011. Reply comments, if any, are due March 25, 2011. The Postal Service's filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Emmett Rand Costich to serve as Public Representative in the captioned proceedings.

It is ordered:

1. The Commission establishes Docket No. MC2011–22 for consideration of matters raised by the Postal Service's Request.

2. Comments by interested persons in this proceeding are due no later than March 16, 2011.

3. Reply comments by interested persons in this proceeding are due no later than March 25, 2011.

4. Pursuant to 39 U.S.C. 505, Emmett Rand Costich is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–4742 Filed 3–2–11; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service Under Section 3642, February 24, 2011 (Request).

POSTAL REGULATORY COMMISSION

[Docket No. A2011–9; Order No. 682]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Mitchellville Post Office in Mitchellville, Tennessee has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioner, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* March 10, 2011; *deadline for notices to intervene:* March 22, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on February 23, 2011, the Commission received a petition for review of the closing of the Mitchellville post office in Mitchellville, Tennessee. The petition, which was filed by Larry D. Draper (Petitioner), is postmarked February 19, 2011, and was posted on the Commission's Web site February 23, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and designates the case as Docket No. A2011–9 to consider the Petitioner's appeal. If the Petitioner would like to further explain his position with supplemental information or facts, the Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than March 30, 2011.

Categories of issues apparently raised. The Petitioner raises the issue of failure to consider the effect on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The

deadline for the Postal Service to file the administrative record with the Commission is March 10, 2011. 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is March 10, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's Webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents also are available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov*, unless a waiver is obtained. 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Those, other than the Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before March 22, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the administrative record regarding this appeal no later than March 10, 2011.

2. Any responsive pleading by the Postal Service to this Notice is due no later than March 10, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Cassandra L. Hicks is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this Notice and Order in the **Federal Register**.

PROCEDURAL SCHEDULE

February 23, 2011	Filing of Appeal.
March 10, 2011	Deadline for Postal Service to file administrative record in this appeal.
March 10, 2011	Deadline for the Postal Service to file any responsive pleading
March 22, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
March 30, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
April 19, 2011	Deadline for answering brief in support of Postal Service (*see* 39 CFR 3001.115(c)).
May 4, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
May 11, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
June 20, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–4752 Filed 3–2–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 27d–1 and Form N–27D–1; SEC File No. 270–499; OMB Control No. 3235–0560.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collections of information under the Investment Company Act of 1940 ("Act") [1] summarized below.

Rule 27d–1 (17 CFR 270.27d–1) is entitled "Reserve Requirements for Principal Underwriters and Depositors to Carry Out the Obligations to Refund Charges Required by Section 27(d) and Section 27(f) of the Act." Form N–27D–1 (17 CFR 274.127d–1) is entitled "Accounting of Segregated Trust Account." Rule 27d–1 requires the depositor or principal underwriter for an issuer of a periodic payment plan to deposit funds into a segregated trust account to provide assurance of its ability to fulfill its refund obligations under sections 27(d) and 27(f) of the Act. The rule sets forth minimum reserve amounts and guidelines for the management and disbursement of the assets in the account. A single account may be used for the periodic payment plans of multiple investment companies. Rule 27d–1(j) directs depositors and principal underwriters to make an accounting of their segregated trust accounts on Form N–27D–1, which is intended to facilitate the

[1] 15 U.S.C 80a–1 *et seq.*

Commission's oversight of compliance with the reserve requirements set forth in rule 27d–1. The form requires depositors and principal underwriters to report deposits to a segregated trust account, including those made pursuant to paragraphs (c) and (e) of the rule. Withdrawals pursuant to paragraph (f) of the rule also must be reported. In addition, the form solicits information regarding the minimum amount required to be maintained under paragraphs (d) and (e) of rule 27d–1. Depositors and principal underwriters must file the form once a year on or before January 31 of the year following the year for which information is presented.[2]

Rule 27d–1, which was explicitly authorized by statute, provides assurance that depositors and principal underwriters of issuers have access to sufficient cash to meet the demands of certificate holders who reconsider their decisions to invest in a periodic payment plan. The information collection requirements in rule 27d–1 enable the Commission to monitor compliance with reserve rules.

Effective October 27, 2006, the Military Personnel Financial Services Protection Act banned the issuance or sale of new periodic payment plans. Accordingly, the staff estimates that there is no information collection burden associated with rule 27d–1 or Form N–27D–1. For administrative purposes, however, we are requesting approval for an information collection burden of one hour per year. This estimate of burden hours is not derived from a comprehensive or necessarily even representative study of the cost of the Commission's rules and forms.

Complying with the collection of information requirements of rule 27d–1 is mandatory for depositors or principal underwriters of issuers of periodic payment plans unless they comply with the requirements in rule 27d–2 (17 CFR 270.27d–2). The information provided pursuant to rule 27d–1 is public and, therefore, 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 valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 25, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4723 Filed 3–2–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–6; SEC File No. 270–506; OMB Control No. 3235–0564.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Section 17(a) of the Investment Company Act of 1940 (the "Act") generally prohibits affiliated persons of a registered investment company ("fund") from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls.[1] Rule 17a–6 (17 CFR 270.17a–6) permits a fund and a "portfolio affiliate" (a company that is an affiliated person of the fund because the fund controls the company, or holds five percent or more of the company's outstanding voting securities) to engage in principal transactions that would otherwise be prohibited under section 17(a) of the Act under certain conditions. A fund may not rely on the exemption in the rule to enter into a principal transaction with a portfolio affiliate if certain prohibited participants (*e.g.,* directors, officers, employees, or investment advisers of the fund) have a financial interest in a party to the transaction. Rule 17a–6 specifies certain interests that are not "financial interests," including 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. A board making this finding is required to record the basis for the finding in its meeting minutes. This recordkeeping requirement is a collection of information under the Paperwork Reduction Act of 1995 ("PRA").[2]

The rule is designed to permit transactions between funds and their portfolio affiliates in circumstances in which it is unlikely that the affiliate would be in a position to take advantage of the fund. In determining whether a financial interest is "material," the board of the fund should consider whether the nature and extent of the interest in the transaction is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement. The information collection requirements in rule 17a–6 are intended to ensure that Commission staff can review, in the course of its compliance and examination functions, the basis for a board of director's finding that the financial interest of an otherwise prohibited participant in a party to a transaction with a portfolio affiliate is not material.

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 principal transactions under rule 17a–6 that will result in a collection of information.

The Commission requests authorization to maintain an inventory of one burden hour to ease future renewals of rule 17a–6's collection of information analysis should funds rely

[2] Instead of relying on rule 27d–1 and filing Form N–27D–1, depositors or principal underwriters for the issuers of periodic payment plans may rely on the exemption afforded by rule 27d–2. In order to comply with rule 27d–2: (i) The depositor or principal underwriter must secure from an insurance company a written guarantee of the refund requirements; (ii) the insurance company must satisfy certain financial criteria; and (iii) the depositor or principal underwriter must file as an exhibit to the issuer's registration statement, a copy of the written undertaking, an annual statement that the insurance company has met the requisite financial criteria on a monthly basis, and an annual audited balance sheet.

[1] 15 U.S.C. 80a–17(a).

[2] 44 U.S.C. 3501.

on this exemption to the term "financial interest" as defined in rule 17a–6.

The estimate of 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 this collection of information requirement is necessary to obtain the benefit of relying on rule 17a–6. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) 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.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 25, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4724 Filed 3–2–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 27d–2, SEC File No. 270–500, OMB Control No. 3235–0566.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of the collections of information under the Investment Company Act of 1940 ("Act") summarized below.

Rule 27d–2 (17 CFR 270.27d–2) is entitled "Insurance Company Undertaking in Lieu of Segregated Trust Account." Rule 27d–1 (17 CFR 270.27d–1) under the Act requires the depositor or principal underwriter for an issuer of periodic payment plans to deposit funds into a segregated trust account to provide assurance of its ability to fulfill its refund obligations under sections 27(d) and 27(f) of the Act.[1] Rule 27d–2 provides an exemption from rule 27d–1 under the Act for depositors or principal underwriters for the issuers of periodic payment plans. In order to comply with the rule: (i) The depositor or principal underwriter must secure from an insurance company a written guarantee of the refund requirements; (ii) the insurance company must satisfy certain financial criteria; and (iii) the depositor or principal underwriter must file as an exhibit to the issuer's registration statement, a copy of the written undertaking, an annual statement that the insurance company has met the requisite financial criteria on a monthly basis, and an annual audited balance sheet.

Rule 27d–2, which was explicitly authorized by statute, provides assurance that depositors and principal underwriters of issuers have access to sufficient cash to meet the demands of certificate holders who reconsider their decisions to invest in a periodic payment plan. The information collection requirement in rule 27d–2 enables the Commission to monitor compliance with insurance company undertaking requirements.

Effective October 27, 2006, the Military Personnel Financial Services Protection Act banned the issuance or sale of new periodic payment plans. Accordingly, the staff estimates that there is no longer any information collection burden associated with rule 27d–2. For administrative purposes, however, we are requesting approval for an information collection burden of one hour per year. This estimate of burden hours is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

[1] The rule sets forth minimum reserve amounts and guidelines for the management and disbursement of the assets in the account. Rule 27d–1(j) directs depositors and principal underwriters annually to make an accounting of their segregated trust accounts on Form N–27D–1, which is filed with the Commission. The form requires depositors and principal underwriters to report deposits to a segregated trust account, including those made pursuant to paragraphs (c) and (e) of the rule. Withdrawals pursuant to paragraph (f) of the rule also must be reported. In addition, the form solicits information regarding the minimum amount required to be maintained under paragraphs (d) and (e) of rule 27d–1.

Complying with the collection of information requirements of rule 27d–2 is mandatory for depositors or principal underwriters of issuers of periodic payment plans who rely on the rule for an exemption from complying with rule 27d–1 and filing Form N–27D–1. The information provided pursuant to rule 27d–2 is public and, therefore, will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) 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.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 25, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4727 Filed 3–2–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–10, SEC File No. 270–507, OMB Control No. 3235–0563.

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") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Section 17(a) of the Investment Company Act of 1940 (the "Act"), generally prohibits affiliated persons of a registered investment company

("fund") from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls.[1] Section 2(a)(3) of the Act defines "affiliated person" of a fund to include its investment advisers.[2] Rule 17a–10 (17 CFR 270.17a–10) permits (i) a subadviser of a fund to enter into transactions with funds the subadviser does not advise but that are affiliated persons of a fund that it does advise (*e.g.,* other funds in the fund complex), and (ii) a subadviser (and its affiliated persons) to enter into transactions and arrangements with funds the subadviser does advise, but only with respect to discrete portions of the subadvised fund for which the subadviser does not provide investment advice.

To qualify for the exemptions in rule 17a–10, the subadvisory relationship must be the sole reason why section 17(a) prohibits the transaction. In addition, the advisory contracts of the subadviser entering into the transaction, and any subadviser that is advising the purchasing portion of the fund, must prohibit the subadvisers from consulting with each other concerning securities transactions of the fund, and limit their responsibility to providing advice with respect to discrete portions of the fund's portfolio.[3] Section 17(a) of the Investment Company Act of 1940 (the "Act"), generally prohibits affiliated persons of a registered investment company ("fund") from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls. Section 2(a)(3) of the Act defines "affiliated person" of a fund to include its investment advisers. Rule 17a–10 permits (i) a subadviser of a fund to enter into transactions with funds the subadviser does not advise but that are affiliated persons of a fund that it does advise (*e.g.,* other funds in the fund complex), and (ii) a subadviser (and its affiliated persons) to enter into transactions and arrangements with funds the subadviser does advise, but only with respect to discrete portions of the subadvised fund for which the subadviser does not provide investment advice.

To qualify for the exemptions in rule 17a–10, the subadvisory relationship must be the sole reason why section 17(a) prohibits the transaction. In addition, the advisory contracts of the subadviser entering into the transaction, and any subadviser that is advising the purchasing portion of the fund, must prohibit the subadvisers from consulting with each other concerning securities transactions of the fund, and limit their responsibility to providing advice with respect to discrete portions of the fund's portfolio. This requirement regarding the prohibitions and limitations in advisory contracts of subadvisors relying on the rule constitutes a collection of information under the Paperwork Reduction Act of 1995 ("PRA").[4]

The staff assumes that all funds existing in 2003 amended their advisory contracts following the amendments to rule 17a–10 that year that conditioned certain exemptions upon these contractual alterations, and therefore there is no continuing burden for those funds.[5] Staff also assumes that funds that came into existence after 2003 included the contractual requirements in rule 17a–10 in their subadvisory agreements and therefore there is no continuing burden for those funds.

Based on an analysis of fund filings, the staff estimates that approximately 252 fund portfolios enter into new subadvisory agreements each year.[6] Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 17a–10. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 10f–3, 12d3–1, and 17e–1, and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally among all four rules. Therefore, we estimate that the burden allocated to rule 17a–10 for this contract change would be 0.75 hours.[7] Assuming that all 252 funds that enter into new subadvisory contracts each year include in their contract the provisions required by the rule, we estimate that the rule's contract requirement will result in 189 burden hours annually, with an associated cost of approximately $59,724.[8]

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 this collection of information requirement is necessary to obtain the benefit of relying on rule 17a–10. 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.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) 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.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 25, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4730 Filed 3–2–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 12d3–1; SEC File No. 270–504; OMB Control No. 3235–0561.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995

[1] 15 U.S.C. 80a–17(a).

[2] 15 U.S.C. 80a–2(a)(3)(E).

[3] 17 CFR 270.17a–10(a)(2).

[4] 44 U.S.C. 3501.

[5] We assume that funds formed after 2003 that intended to rely on rule 17a–10 would have included the required provision as a standard element in their initial subadvisory contracts.

[6] Based on information in Commission filings, we estimate that 42.5 percent of funds are advised by subadvisers.

[7] This estimate is based on the following calculation: 3 hours ÷ 4 rules = 0.75 hours.

[8] These estimates are based on the following calculations: 0.75 hours × 252 portfolios = 189 burden hours; $316 per hour × 189 hours = $59,724 total cost. The Commission staff's estimates concerning the wage rates for attorney time are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The $316 per hour figure for an attorney is from the Securities Industry and Financial Markets Association's *Management & Professional Earnings in the Securities Industry 2009,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

(44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Section 12(d)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a) generally prohibits registered investment companies ("funds"), and companies controlled by funds, from purchasing securities issued by a registered investment adviser, broker, dealer, or underwriter ("securities-related businesses"). Rule 12d3–1 ("Exemption of acquisitions of securities issued by persons engaged in securities related businesses" (17 CFR 270.12d3–1)) permits a fund to invest up to five percent of its assets in securities of an issuer deriving more than fifteen percent of its gross revenues from securities-related businesses, but a fund may not rely on rule 12d3–1 to acquire securities of its own investment adviser or any affiliated person of its own investment adviser.

A fund may, however, rely on an exemption in rule 12d3–1 to acquire securities issued by its subadvisers in circumstances in which the subadviser would have little ability to take advantage of the fund, because it is not in a position to direct the fund's securities purchases. The exemption in rule 12d3–1 is available if (i) the subadviser is not, and is not an affiliated person of, an investment adviser that provides advice with respect to the portion of the fund that is acquiring the securities, and (ii) the advisory contracts of the subadviser, and any subadviser that is advising the purchasing portion of the fund, prohibit them from consulting with each other concerning securities transactions of the fund, and limit their responsibility in providing advice to providing advice with respect to discrete portions of the fund's portfolio.

Based on an analysis of fund filings, the staff estimates that approximately 252 fund portfolios enter into subadvisory agreements each year.[1] Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 12d3–1. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 10f–3, 17a–10, and 17e–1 and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally to all four rules. Therefore, we estimate that the burden allocated to rule 12d3–1 for this contract change would be 0.75 hours.[2] Assuming that all 252 funds that enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 189 burden hours annually.[3]

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 this collection of information requirement is necessary to obtain the benefit of relying on rule 12d3–1. 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.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) 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.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 25, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4725 Filed 3–2–11; 8:45 am]

BILLING CODE 8011–01–P

[1] Based on information in Commission filings, we estimate that 42.5 percent of funds are advised by subadvisers.

[2] This estimate is based on the following calculation (3 hours ÷ 4 rules = .75 hours).

[3] This estimate is based on the following calculation: (0.75 hours × 252 portfolios = 189 burden hours.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63960; File No. SR–FINRA–2011–008]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Require Public Disclosure of Any Access or Post-Transaction Fees for Executions Against a Public Quotation in an OTC Equity Security

February 24, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 18, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. 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

FINRA is proposing to require members to disclose on the member's Web site fees imposed against its published quotation in any OTC Equity Security consistent with FINRA Rule 6450 (Restrictions on Access Fees).

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, 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, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 22, 2010, the SEC approved, among other rules, new FINRA Rule 6450 (Restrictions on Access Fees).[3] Rule 6450 provides that a firm may not impose, nor permit to be imposed, non-subscriber access or post-transaction fees against its published quotation in any OTC Equity Security that exceed or accumulate to more than:

- $0.003 per share, if the published quotation is priced equal to or greater than $1.00; or
- The lesser of (a) 0.3% of the published quotation price on a per share basis or (b) 30% of the minimum pricing increment under Rule 6434 relevant to the display of the quotation on a per share basis if the published quotation is less than $1.00.

FINRA is filing the proposed rule change to add Supplementary Material .01 (the "disclosure rule") to provide that a member must disclose on its Web site, in a clear and conspicuous manner, fees (and changes to fees) imposed against its published quotations as provided for in Rule 6450 at least three (3) business days in advance.[4] Where a member makes multiple fee schedules available, the applicability of each schedule must be clear (*e.g.,* volume discount tiers and rates). Members must maintain and preserve records of the fee schedules required to be made available pursuant to this disclosure rule for the period of time and accessibility specified in SEA Rule 17a–4(b) under the Exchange Act.

FINRA has requested that the Commission approve the proposed rule change on an accelerated basis, so that it may become effective as soon as possible. The effective date of the proposed rule change will be two weeks after Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,[5] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide transparency to members as to the level of non-subscriber access or post-transaction fees imposed against published quotations in OTC Equity Securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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 Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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–FINRA–2011–008 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–FINRA–2011–008. 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 FINRA. 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–FINRA–2011–008 and should be submitted on or before March 24, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4720 Filed 3–2–11; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 62359, 75 FR 37488 (June 29, 2010) (Order Approving File No. SR–FINRA–2009–054).

[4] For purposes of the first three business days of the disclosure rule's operation, members would be in compliance with the advance notice requirement if they have posted the fees prior to 9 a.m. on the trading day upon which they impose the fee.

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63966; File No. SR–FINRA–2011–009]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate Duplicative Filings Under FINRA Rule 9610(a)

February 25, 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 February

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

22, 2011, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is filing the proposed rule change to amend FINRA Rule 9610 (Application) to delete the requirement that members provide a copy of an application for exemptive relief to FINRA's Office of General Counsel ("OGC").

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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 FINRA Rule 9600 Series sets forth procedures for members seeking exemptive relief from certain enumerated rules. Currently, Rule 9610(a) requires members to file a written application for exemptive relief with the FINRA department or staff responsible for making a decision on the application, and it also requires members to provide a copy of that application to OGC. OGC receives a significant number of copies of exemptive relief applications, the processing of which uses valuable staff resources. Additionally, in the event of an appeal, the FINRA department or staff that decided the member's application for exemptive relief provides a copy of that application to OGC. FINRA is proposing to delete the requirement that members provide a copy of the application for exemptive relief to OGC. FINRA believes that the proposed change will make the process of seeking exemptive relief more efficient by eliminating duplicative filings and providing members with a single point of contact, and it also will save staff resources. Moreover, with respect to those matters that are appealed, OGC will continue to receive a copy of the member's application for exemptive relief from the FINRA department or staff that decided the application.

FINRA is not proposing any changes to FINRA Rule 9630 (Appeal), which will continue to require members to file, in the event of an appeal, a written notice of appeal with OGC and provide a copy of the notice of appeal to the FINRA department or staff that decided the application for exemptive relief.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change enhances the efficiency of the exemptive relief process by eliminating duplicative filings and providing members with a single point of contact.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6]

FINRA has asked the Commission to waive the 30-day operative delay set forth in Rule 19b–4(f)(6). The Commission believes that the proposal is intended to promote efficiency by eliminating duplicative filings and providing members with a single point of contact. The Commission sees no benefit to delaying the implementation of these changes, and therefore believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. The Commission hereby grants such waiver.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[3] 17 CFR 240.19b–4(f)(6).

[4] 15 U.S.C. 78*o*–3(b)(6).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

[7] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–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–FINRA–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 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 FINRA. 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–FINRA–2011–009, and should be submitted on or before March 24, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4721 Filed 3–2–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63968; File No. SR–NASDAQ–2011–030]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt New Rule 4763 To Implement the Amendments to Regulation SHO

February 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on February 22, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially 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, pursuant to Section 19(b)(1) of the Act [3] and Rule 19b–4 [4] thereunder, proposes to adopt new Rule 4763 as a written policy or procedure to implement the amendments to Rules 200(g) and 201 of Regulation SHO.[5]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com/NASDAQ/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 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

On February 26, 2010, the Commission adopted amendments to Rules 200(g) and 201 of Regulation SHO.[6] The amendments became effective on May 10, 2010, and compliance is required by February 28, 2011.[7] The amendments to Rule 201 of Regulation SHO require trading centers [8] such as NASDAQ to establish, maintain, and enforce certain written policies and procedures reasonably designed to comply with the rule.[9] NASDAQ is proposing to adopt new Rule 4763 as a written policy and procedure to implement the amendments to Rules 200(g) and 201 of Regulation SHO.

Proposed Rule 4763(a) defines the terms "covered security," "listing market," and "national best bid" as having the same meaning as such terms have in Rule 201 of Regulation SHO.[10]

Under Proposed Rule 4763(b), entitled "Short Sale Price Test," the System [11] will not execute or display a short sale order with respect to a covered security at a price that is less than or equal to the current national best bid if the price of that security decreases by 10% or more from the security's closing price on the listing market as of the end of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] 17 CFR 242.200(g); 17 CFR 242.201. *See* Securities Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232 (Mar. 10, 2010) ("Adopting Release") (amending Rules 201 and 200 of Regulation SHO to adopt a short sale price test restriction and "short exempt" marking requirement). *See also* Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010) (extending the compliance date of the amendments to Rules 201 and 200 of Regulation SHO until February 28, 2011).

[6] *See supra* note 5.

[7] *Id.*

[8] Rule 201(a)(9) states the term "trading center" will have the same meaning as in Rule 600(b)(78). 17 CFR 242.201(a)(9). Rule 600(b)(78) of Regulation NMS defines a "trading center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." 17 CFR 242.600(b)(78).

[9] *See* 17 CFR 242.201(b). The amendments to Rule 200(g) of Regulation SHO provide a "short exempt" marking requirement. *See* 17 CFR 242.200(g).

[10] *See* Rule 201(a) of Regulation SHO. The System will utilize the national best bid from the systems information processor. Rule 201(a)(1) defines "covered security" to mean any "NMS stock" as defined under Rule 600(b)(47) of Regulation NMS. 17 CFR 242.201(a)(1). Rule 600(b)(47) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." 17 CFR 242.600(b)(47). Rule 600(b)(46) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." 17 CFR 242.600(b)(46).

[11] *See* NASDAQ Rule 4751(a). The term "Nasdaq Market Center" or "System" shall mean the automated system for order execution and trade reporting owned and operated by NASDAQ.

regular trading hours on the prior day ("Trigger Price").[12] For covered securities for which NASDAQ is the listing market, the NASDAQ Official Closing Price ("NOCP") for each security is established by the NASDAQ Closing Cross pursuant to procedures set forth in Rule 4754.[13]

Under Proposed Rule 4763(c), Determination of Trigger Price, NASDAQ will continuously compare each execution by the System with the NOCP [14] and alert the single plan processor [15] when a Trigger Price has been reached.[16] The single plan processor will then disseminate a notice to market participants in accordance with procedures established by the single plan processor.[17] When the single plan processor disseminates such notice, NASDAQ will systematically apply the short sale price test restriction for short sale orders in the covered security in the manner described in Proposed Rule 4763(b).

Under Proposed Rule 4763(d), Duration of Short Sale Price Test, once triggered, the short sale price test restriction shall remain in effect until the next trading day when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system,[18] as provided for in Regulation SHO Rule 201(b)(1)(ii) (the "Short Sale Period"). There are two exceptions in the proposed rule.[19] First, if the Exchange determines pursuant to Proposed Rule 4763(d)(1) that the short sale price test restriction for a covered security was triggered because of a clearly erroneous execution,[20] NASDAQ may lift the short sale price test restriction before the Short Sale Period ends for covered securities for which the Exchange is the listing market.[21] Second, if NASDAQ determines pursuant to Proposed Rule 4763(d)(2) that the prior day's closing price for a covered security is incorrect in the System and resulted in an incorrect determination of the Trigger Price, the Exchange may correct the prior day's NOCP and lift the short sale price test restriction before the Short Sale Period ends.

Under Proposed Rule 4763(e), Re-pricing of Orders during Short Sale Period, during a Short Sale Period, short sale orders that are limited to the current national best bid or lower and short sale market orders will be re-priced by the System one minimum allowable price increment above the current national best bid ("Permitted Price"). To reflect declines in the national best bid, the Exchange will continue to re-price a short sale order at the lowest Permitted Price down to the order's original limit price, or if a market order, until the order is filled. Non-displayed orders between the NASDAQ bid and offer at the time of receipt will also be re-priced upward to a Permitted Price to correspond with a rise in the national best bid. During the Short Sale Period, immediate or cancel ("IOC") orders requiring that all or part of the order be executed immediately will be executed to the extent possible at a Permitted Price and higher and then cancelled, and will not be re-priced. Inter-market sweep orders not marked "short exempt" will be handled in the same manner as IOC orders.

Also during the Short Sale Period, Limit-on-Open and Market-on-Open Orders defined in NASDAQ Rule 4752(a)(3) and (a)(4) and Limit-on-Close and Market-on-Close Orders defined in NASDAQ Rule 4754(a)(4) and (a)(5) shall be re-priced as described above unless the spread between the national best bid and offer is $0.01.[22] In that case, such orders shall be converted to Mid-Point Peg Orders defined in NASDAQ Rule 4751(f)(4). Once converted, such orders will be priced at the midpoint of the national best bid and offer and may execute in sub-pennies if necessary to obtain a midpoint price.[23] Converting and re-pricing on-open and on-close orders will facilitate that such orders are permitted to execute in the critical opening and closing crosses. As noted in the Adopting Release, the "short sale price test restrictions of Rule 201 will accommodate matching systems that execute trades at an independently-derived price because such systems are designed so that matches occur above the current national best bid." [24]

Pursuant to Proposed Rule 4763(f), Execution of Permissible Orders during the Short Sale Period, during the Short Sale Period, the System will execute and display a short sale order without regard to whether the order is at a Permitted Price or higher if, at the time of initial display of the short sale order, the order was at a price above the then current national best bid. This determination is consistent with Rule 201(b)(1)(iii)(A) of Regulation SHO. Short sale orders that are entered into the System prior to the Short Sale Period but are not displayed will be re-priced as described in Proposed Rule 4763(e) as set forth above.

Finally, under Proposed Rule 4763(g), Short Exempt Orders, during the Short Sale Period, the System will execute and display orders marked "short exempt" without regard to whether the

[12] *See* Rule 201(b)(1)(i) of Regulation SHO. Such execution or display needs to be in compliance with applicable rules concerning minimum pricing increments. *See* 17 CFR 242.612.

[13] *See* NASDAQ Rule 4754. The NASDAQ Closing Cross will begin at 4 p.m. EST. The process begins at 3:50 p.m. EST, when NASDAQ begins to electronically disseminate order imbalance indicator messages every 5 seconds, to which participants may send orders in response. This occurs until 4 p.m. EST when the NASDAQ Closing Cross is executed by bringing together all of NASDAQ's order books at a single price which maximizes the number of shares of eligible interest that can be executed.

[14] Under Proposed Rule 4763(c)(2), if a covered security did not trade on NASDAQ on the prior trading day (due to a trading halt, trading suspension, or otherwise), NASDAQ's determination of the Trigger Price shall be based on the last sale price on the Exchange for that security on the most recent day on which the security traded. *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A No. 3.1

[15] *See* 17 CFR 242.201(a)(6).

[16] *See* Rule 201(b)(3) of Regulation SHO. *See* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A No. 1.1 (explaining calculation of the Trigger Price).

[17] *See* NASDAQ UTP Vendor Alert 2010–9 (July 15, 2010), available at *http://www.nasdaqtrader.com/TraderNews.aspx?id=uva2010-009*.

[18] *See* 17 CFR 242.201(b)(1)(ii). *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A No. 2.1.

[19] If the price of a covered security declines intra-day by at least 10% on a day on which the security is already subject to the short sale price test restriction of Rule 201, the restriction will be re-triggered and, therefore, will continue in effect for the remainder of that day and the following day. *See* Adopting Release, 75 FR at 11253, n. 290. In addition, Rule 201 does not place any limit on the frequency or number of times the circuit breaker can be re-triggered with respect to a particular stock. *See* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A No. 2.2.

[20] *See* NASDAQ Rule 4762 which cross-references NASDAQ Rule 11890 for the standard of determining when a trade is "clearly erroneous." The terms of a transaction executed on NASDAQ are "clearly erroneous" when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security. A transaction made in clearly erroneous error and cancelled by both parties or determined by NASDAQ to be clearly erroneous will be removed from the consolidated tape.

[21] *See* 17 CFR 242.201(a)(3).

[22] In the event of a locked market, the short sale on-open or on-close orders will be re-priced one minimum allowable price increment above the current national best bid.

[23] Re-pricing of orders, including conversion to midpoint orders in the case of on-open and on-close orders, occurs simultaneously with the execution of the opening and closing crosses. NASDAQ's system takes a snapshot of the orders on the book and the current national best bid, validates for compliance with Rule 201 of Regulation SHO, and simultaneously executes all orders that are available for execution at the crossing price.

[24] *See* Adopting Release, 75 FR 11232, at fn. 242–244 and accompanying text.

order is at a Permitted Price or higher.[25] The System will accept orders marked "short exempt" at any time when the System is open for order entry regardless of whether the short sale price test has been triggered in the covered security. NASDAQ member firms marking orders "short exempt" in reliance on Rule 201(c) or 201(d) are responsible for ensuring that any such orders meet the criteria of these provisions and are accurately marked as "short exempt."[26]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[27] which requires, among other things, the rules of an exchange to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act[28] in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it implements rules adopted by the Commission in Regulation SHO under the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[29] and Rule 19b–4(f)(6)[30] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[31] normally may not become operative prior to 30 days after the date of filing.[32] However, Rule 19b–4(f)(6)(iii)[33] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NASDAQ has requested that the Commission waive the 30-day operative delay so that it may implement the change no later than February 28, 2011 to coincide with the compliance date for the amendments to Rules 200(g) and 201 of Regulation SHO. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed rule change, among other things, implements the amendments to Rules 200(g) and 201 of Regulation SHO which have a February 28, 2011 compliance date.[34] For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[35]

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–NASDAQ–2011–030 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–2011–030. 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 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–NASDAQ–2011–030 and should be submitted on or before March 24, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4722 Filed 3–2–11; 8:45 am]

BILLING CODE 8011–01–P

[25] *See* 17 CFR 242.201(b)(1)(iii)(B).

[26] *See* Rules 200(g)(2), 201(c) and 201(d) of Regulation SHO. *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A Nos. 4.2, 5.4 and 5.5.

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78k–1(a)(1).

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f)(6).

[31] *Id.*

[32] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[33] *Id.*

[34] *See supra* note 5.

[35] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[36] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12477 and #12478]

Oregon Disaster #OR–00036

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 Oregon (FEMA–1956–DR), dated 02/17/2011.

Incident: Severe Winter Storm, Flooding, Mudslides, Landslides, and Debris Flows.

Incident Period: 01/13/2011 through 01/21/2011.

Effective Date: 02/17/2011.

Physical Loan Application Deadline Date: 04/18/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 11/17/2011.

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 02/17/2011, 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: Clackamas, Clatsop, Crook, Douglas, Lincoln, Tillamook.

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 12477B and for economic injury is 12478B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–4426 Filed 3–2–11; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*.

(SSA)

Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov*.

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than May 2, 2011. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above email address.

1. *Statement Regarding Marriage—20 CFR 404.726—0960–0017.* Section 216(h)(1)(A) of the Social Security Act (the Act) directs SSA to apply state law to determine an individual's marital relationship. Some state laws recognize marriages without a ceremony (i.e., common-law marriages). In such cases, SSA provides the same spouse/widow(er) benefits to the common-law spouses as it does to ceremonially married spouses. To determine common-law spouses, SSA must elicit information from blood relatives or other persons who are knowledgeable about the alleged common-law relationship. SSA uses Form SSA–753, Statement Regarding Marriage, to collect information from third parties to verify the applicant's statements about intent, cohabitation, and holding out to the public as married, which are the basic tenets of a common-law marriage. SSA uses the information to determine if a valid marital relationship exists, and if the common-law spouse is entitled to Social Security spouse or widow(er) benefits. The respondents are third parties who can confirm or deny the alleged common-law marriage.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 40,000.

Frequency of Response: 1.

Average Burden per Response: 9 minutes.

Estimated Annual Burden: 6,000 hours.

2. *Railroad Employment Questionnaire—20CFR 404.1401, 404.1406–404.1408 —0960–0078.* Railroad workers, their dependents, or survivors can concurrently apply for railroad retirement and Social Security benefits at SSA whenever the number holder, or claimant on the number holder's SSN, worked in the railroad industry. SSA uses the information from Form SSA–671 to coordinate Social Security claims processing with the Railroad Retirement Board and to determine benefit entitlement and amount. The respondents are Social Security benefit applicants employed by a railroad or dependents of railroad workers.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 125,000.

Frequency of Response: 1.

Average Burden of Response: 5 minutes.

Estimated Annual Burden: 10,417 hours.

3. *Statement of Death by Funeral Director—20 CFR 404.715 and 404.720—0960–0142.* When a Social Security-insured worker dies, the funeral director or funeral home responsible for the worker's burial or cremation completes Form SSA–721 and sends it to SSA. SSA uses this information for three purposes: (1) To establish proof of death for the insured worker; (2) to determine if the insured worker was receiving any pre-death

benefits that SSA needs to terminate; and (3) to ascertain which surviving family member is eligible for the lump-sum death payment or other death benefits. The respondents are funeral directors who handle funeral arrangements for the insured individuals.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 319,811.

Frequency of Response: 1.

Average Burden per Response: 3.5 minutes.

Estimated Annual Burden: 18,656 hours.

4. *Government Pension Questionnaire—20 CFR 404.408a—0960–0160.* When someone is concurrently receiving spouse or surviving spousal Social Security benefits and a government pension based on non-Social Security earnings, SSA may reduce the benefit amount by two-thirds the amount of the government pension under the Act's Government Pension Offset (GPO) provision. We use Form SSA–3885, Government Pension Questionnaire, to document such cases. SSA uses the information to determine whether the GPO applies, to identify exceptions, and to determine the benefit reduction amount and effective date. The respondents are individuals and households.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 76,000.

Frequency of Response: 1.

Average Burden per Response: 12.5 minutes.

Estimated Annual Burden: 15,833 hours.

5. *Request for Hearing by Administrative Law Judge—20 CFR 404.929, 404.933, 416.1429, 404.1433, 405.722, 418.1350—0960–0269.* When SSA denies applicants' or beneficiaries' requests for new or continuing benefits, those applicants or beneficiaries are entitled to request a hearing to appeal the decision. SSA uses the information from Form HA–501 to determine if the individual filed the request within the prescribed time, is the proper party, and has taken the steps necessary to obtain the right to a hearing. SSA also uses the information to determine the individual's reason(s) for disagreeing with SSA's prior determinations in the case; if the individual has additional evidence to submit; if the individual wants an oral hearing or a decision on-the-record; and whether the individual has (or wants to appoint) a representative. The respondents are Social Security benefit applicants and recipients who want to appeal SSA's denial of their request for new or continued benefits and Medicare Part B recipients who must pay the Medicare Part B Income-Related Monthly Adjustment Amount.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper & Modernized Claims System	334,735	1	10	55,789
i501	334,734	1	19	105,999
Totals	669,469	.....	.....	161,788

6. *Administrative Review Process for Adjudicating Initial Disability Claims—20 CFR 404.949, 404.950, 404.957(a), 404.961, 404.982, 404.987–404.988, 404.1450, 404.1499, 416.1457(a), 416.1461, 416.1482, and 416.1487–416.1488—0960–0710.* Claimants have a statutory right under the Act and current regulations to apply for Social Security disability insurance benefits or Supplemental Security Income (SSI). SSA must collect information at each step of the administrative process to adjudicate claims fairly and efficiently. SSA collects this information to establish a claimant's right to administrative review and the severity of the claimant's alleged impairments. SSA uses the information to determine entitlement or continuing eligibility to disability insurance benefits or SSI payments and to enable appeals of these determinations. The respondents are applicants for title II disability insurance benefits or title XVI SSI.

Type of Request: Revision of an OMB-approved information collection.

20 CFR Section number	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
404.961 and 416.1461	12,220	1	20	4,073
404.950 and 404.1450	1,040	1	20	347
404.949 and 404.1449	2,888	1	60	2,888
404.957(a) and 416.1457(a)	21,078	1	10	3,513
404.982 and 416.1482	2,520	1	30	1,260
404.987–404.988 and 416.1487–416.1488	12,425	1	30	6,213
Totals	52,171	.....	.....	18,294

Dated: February 28, 2011.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2011–4797 Filed 3–2–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 7354]

30-Day Notice of Proposed Information Collections: DS–4143, Brokering Prior Approval (License), OMB No. 1405–0142; DS–4142, Annual Brokering Report, OMB No. 1405–0141

ACTION: Notice of request for public comment and submission to OMB of proposed collections of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Brokering Prior Approval (License).
- *OMB Control Number:* 1405–0142.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* None.
- *Respondents:* Business and Nonprofit Organizations.
- *Estimated Number of Respondents:* 1,515.
- *Estimated Number of Responses:* 150.
- *Average Hours per Response:* 2 hours.
- *Total Estimated Burden:* 300 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain Benefits.
- *Title of Information Collection:* Annual Brokering Report.
- *OMB Control Number:* 1405–0141.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* None.
- *Respondents:* Business and Nonprofit Organizations.
- *Estimated Number of Respondents:* 1,515.
- *Estimated Number of Responses:* 1,515.
- *Average Hours per Response:* 2 hours.
- *Total Estimated Burden:* 3,030 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Mandatory.

DATES: Submit comments to the Office of Management and Budget (OMB) until 30 days from March 3, 2011.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collections and supporting documents from Nicholas Memos, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112, who may be reached via phone at (202) 663–2804, or via e-mail at *memosni@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The export, temporary import, temporary export and brokering of defense articles, defense services and related technical data are licensed by the Directorate of Defense Trade Controls in accordance with the International Traffic in Arms Regulations (22 CFR parts 120–130) and Section 38 of the Arms Export Control Act. Those of the public who manufacture or export defense articles, defense services, and related technical data, or the brokering thereof, must register with the Department of State. Persons desiring to engage in brokering activities must submit an application or written request to conduct the transaction to the Department to obtain a decision whether it is in the interests of U.S. foreign policy and national security to approve the transaction. Also, registered brokers must submit annual reports regarding all brokering activity that was transacted, and registered manufacturers and exporter must maintain records of defense trade activities for five years.

Methodology: These forms/information collections may be sent to the Directorate of Defense Trade Controls via the following methods: Electronically, mail, and/or fax.

Dated: February 24, 2011.

Robert S. Kovac,

Managing Director of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 2011–4793 Filed 3–2–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 7353]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Youth Leadership and Teacher Professional Development Program With Bosnia and Herzegovina

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/PE/C/PY–11–29.

Catalog of Federal Domestic Assistance Number: 19.415.

Application Deadline: April 22, 2011.

Executive Summary: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for the Youth Leadership and Teacher Professional Development Program with Bosnia and Herzegovina. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to conduct U.S.-based exchange activities on civic education, leadership, and community service for high school students and teachers from Bosnia and Herzegovina. The Bureau will be supporting two exchanges for 21 participants each during the course of 2012; each exchange will be three to four weeks in duration. Applicants should apply to implement both exchanges. The Office of Public Affairs (OPA) of the U.S. Embassy in Sarajevo will recruit, screen, and select the participating secondary school students and teachers. OPA and the award recipient will jointly support follow-on activities for the alumni.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural

Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * * to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Overview: The Youth Leadership and Teacher Professional Development Program with Bosnia and Herzegovina has been implemented annually since 1999 through a partnership of the Office of Public Affairs (OPA) in the U.S. Embassy in Sarajevo and a U.S. organization or institution that has received an award from the Bureau of Educational and Cultural Affairs (ECA).

The goals of the program are to:

(1) Promote mutual understanding between the people of the United States and the people of Bosnia and Herzegovina;

(2) Prepare young leaders to become responsible citizens and contributing members of their communities and to develop their leadership skills;

(3) Nurture a cadre of students and teachers to be actively engaged in addressing issues of concern in their schools and communities upon their return home and are equipped with the knowledge, skills, and confidence to become citizen activists.

The objectives of the program are for participants to be able to:

(1) Demonstrate a better understanding of the elements of a participatory democracy as practiced in the United States;

(2) Demonstrate critical thinking, problem-solving, and leadership skills; and

(3) Demonstrate skill at developing project ideas, planning a course of action, and bringing the projects to fruition.

Participants will be engaged in a variety of activities during the U.S. exchange such as workshops, community and/or school-based programs, seminars, and other activities that are designed to achieve the program's stated goals. Opportunities for the youth and adult participants to interact with their American peers in a sustained, substantive, and in-depth manner must be prominently integrated into the exchange program.

The applicant should present a program plan that allows the participants to thoroughly explore civic participation in the United States in a creative, memorable, and practical way. Exchange activities should be designed to be replicable and provide practical knowledge and skills that the participants can apply to school and civic activities at home. The two exchanges need not be exactly the same; the program activities may be modified to take advantage of different resources, but should still aim to fulfill the same objectives.

One of the U.S.-based exchanges will take place in spring 2012 and the other in fall 2012. Applicants should propose the period of the exchange, but the exact timing of the project may be altered through the mutual agreement of the Department of State and the award recipient. The program should be no less than three weeks and up to four weeks in duration. Program development should begin in the late summer of 2011.

The participants will be high school students between the ages of 15 and 18 who have demonstrated leadership abilities in their schools and/or communities, and high school teachers who have demonstrated an interest in youth leadership and are expected to remain in positions where they can continue to work with youth. Participants will be proficient in the English language. Each delegation will be 18 students and three teachers.

Applicants should outline their team's capacity for doing projects of this nature, focusing on three areas of competency: (1) Provision of leadership and civic education programming, (2) age-appropriate programming for youth, and (3) working with individuals from Bosnia and Herzegovina or other areas of Southeast Europe. Applicants need not have a partner in Bosnia and Herzegovina, as the U.S. Embassy in Sarajevo will recruit and select the participants from selected cities in the Federation and in Republika Srpska and will organize a pre-departure orientation.

In pursuit of the goals outlined above, each exchange program provided by the U.S. award recipient organization will include the following:

- Working with OPA to provide program materials and preparation sessions at the pre-departure orientation in Sarajevo.
- A welcome orientation.
- The planning of three to four weeks of exchange activities that provide a creative and substantive program that develops both the youth and the adult participants' knowledge and skill base in civic education, community service, and youth leadership development. The academic and extracurricular components will focus primarily on interactive activities, practical experiences, and other hands-on opportunities that explore the program themes. Some activities should be school and/or community-based, and community service must also be included. It is crucial that programming involve American peers wherever possible. Cultural, social, and recreational activities will balance the schedule.
- Opportunities for the educators to work with their American peers and other professionals and volunteers to help them foster youth leadership, civic education, and community service programs at home.
- The arrangement of homestays for the participants in the United States with properly screened and briefed American families for the majority of the exchange period. Criminal background checks must be conducted for all members of host families (and others living in the home) who are 18 years of age or older.
- Logistical arrangements, including lodging and meals not taken at homestays, disbursement of stipends, local travel, and travel between sites.
- The development and implementation of a plan to monitor the participants' safety and well-being while on the exchange, and to create opportunities for participants to share potential issues and resolve them promptly. The award recipient will be required to provide proper staff supervision and facilitation to ensure that the teenagers have safe and pedagogically rich programs. Staff, along with the adult participants, will assist the youth with cultural adjustments, provide societal context to enhance learning, and counsel students as needed.
- A closing session to summarize the project's activities and prepare participants for their return home.
- Assistance in follow-on activities in Bosnia and Herzegovina, particularly by facilitating continued engagement among the participants, advising and supporting them in the implementation of community service projects, and offering opportunities to reinforce the ideas, values and skills imparted during the exchange. Exchange participants should return home from the exchange prepared to conduct projects that serve a need in their schools or communities, which will be supported by project staff through a follow-on visit in the fall.

• The design and implementation of an evaluation plan that assesses the impact of the project.

Please note:

In a cooperative agreement, the Department of State is substantially involved in program activities above and beyond routine grant monitoring. The Department's activities and responsibilities for this program are as follows:

(1) The U.S. Embassy will serve as the in-country partner and manage the recruitment and selection of the participants, cover their in-country expenses, arrange and purchase the international travel, and oversee their follow-on activities.

(2) Provide advice and assistance in the execution of all program components.

(3) Facilitate interaction within the Department of State, to include ECA, the regional bureaus, and overseas posts.

(4) Arrange meetings with Department of State officials in Washington, DC.

(5) Issue DS–2019 forms and J–1 visas for the participants. All participants will travel on a U.S. Government designation for the J Exchange Visitor Program.

(6) Approve final calendar of exchange activities.

(7) Monitor and evaluate the program, through regular communication with the award recipient and possibly one or more site visits.

Additional Information:

The organization must inform the ECA Program Officer of their progress at each stage of the project's implementation in a timely fashion, and will be required to obtain approval of any significant program changes in advance of their implementation.

Proposals must clearly demonstrate how the stated objectives will be met. The proposal narrative should provide detailed information on the major project activities, and applicants should explain and justify their programmatic choices. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Projects must comply with J–1 visa regulations for the International Visitor and Government Visitor category. Please be sure to refer to the complete Solicitation Package—this RFGP, the Project Objectives, Goals, and Implementation (POGI), and the Proposal Submission Instructions (PSI)—for further information.

II. Award Information

Type of Award: Cooperative Agreement.

Fiscal Year Funds: 2011.

Approximate Total Funding: $200,000.

Approximate Number of Awards: One.

Approximate Average Award: $200,000.

Anticipated Award Date: Pending availability of funds, proposed start date is summer 2011.

Anticipated Project Completion Date: February 28, 2013.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this cooperative agreement for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs. Please note that cost sharing is one of the criteria by which proposals will be judged.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with Office of Management and Budget (OMB) Circular A–110 (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements:

(a.) Bureau cooperative agreement guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making an award in an amount that exceeds $60,000 to support the program and administrative costs required to implement these exchange programs. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b.) Proposed sub-award recipients are also limited to grant funding of $60,000 or less if they do not have four years of experience in conducting international exchanges.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package:

Please contact the Youth Programs Division, Office of Citizen Exchanges (ECA/PE/C/PY/T), 3rd floor, U.S. Department of State, 2200 C Street, NW., Washington, DC 20037, telephone (202) 632–6421, or e-mail *LantzCS@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number (ECA/PE/C/PY–11–29) when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Bureau Program Officer Carolyn Lantz and refer to the Funding Opportunity Number (ECA/PE/C/PY–11–29) on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet:

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. All Federal award recipients and sub-recipients must maintain current registrations in the Central Contractor Registration (CCR) database and have a Dun and Bradstreet Data Universal Numbering System (DUNS) number. Recipients and sub-recipients must maintain accurate and up-to-date information in the CCR until all program and financial activity and reporting have been completed. All entities must review and update the information at least annually after the initial registration and more frequently if required information changes or another award is granted.

You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA Federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR 62, organizations receiving grants under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of grantee program organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR 62 et. seq., including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: Office of Designation, Private Sector Programs Division, U.S. Department of State, ECA/EC/D/PS, SA–5, 5th Floor, 2200 C Street, NW., Washington, DC 20037.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal

include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: Friday, April 22, 2011.

Reference Number: ECA/PE/C/PY–11–29.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*), or

(2) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and six copies of the application should be sent to:

U.S. Department of State, Bureau of Educational and Cultural Affairs, Program Management Division ECA–IIP/EX/PM, Ref.: ECA/PE/C/PY–11–29, SA–5, Floor 4, 2200 C Street, NW., Washington, DC 20037.

With the submission of the proposal package, please also e-mail the Executive Summary, Proposal Narrative, and Budget sections of the proposal, as well as any essential attachments, in Microsoft Word and/or Excel to the program officer at *LantzCS@state.gov.* The Bureau will provide these files electronically to the Office of Public Affairs at the U.S. Embassy in Sarajevo for its review.

IV.3f.2. Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation

packages are available at Grants.gov in the "Find" portion of the system.

Please Note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.*

Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.* ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

V.2. Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below.

1. Quality of the program idea: Objectives should be reasonable, feasible, and flexible. The proposal should clearly demonstrate how the institution will meet the program's objectives and plan. The proposed program should be creative and well developed, respond to the design outlined in the solicitation, and demonstrate originality. It should be clearly and accurately written, substantive, and with sufficient detail.

2. Program planning: A detailed agenda and work plan should clearly demonstrate how objectives would be achieved. The agenda and plan should adhere to the program overview and guidelines described above. The substance of workshops, seminars, presentations, school-based activities, and/or site visits should be described in detail. Proposals should also provide a plan for a Bureau-supported follow-on visit by project staff to Bosnia and Herzegovina, plus a plan for continued follow-on activity, not necessarily with Bureau support, that ensures that this program is not an isolated event.

3. Support of diversity: Support of diversity is an important feature of Bureau programs. The proposal should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity in program content. Applicants should demonstrate readiness to accommodate participants with physical disabilities.

4. Institutional capacity and track record: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals. The proposal should demonstrate an institutional record, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the Bureau's Office of Contracts. The Bureau will consider the past performance.

5. Program evaluation: The proposal should include a plan to evaluate the program's success, both as the activities unfold and at the end of the program. The proposal should include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Please see Section IV.3d.3. of this announcement for more information.

6. Cost-effectiveness and cost sharing: The applicant should demonstrate efficient use of Bureau funds. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices:

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal

with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements:

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants. http://fa.statebuy.state.gov.

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus one copy of the following reports:

(1.) A final program and financial report no more than 90 days after the expiration of the award;

(2.) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3.) A SF–PPR, "Performance Progress Report" Cover Sheet with all interim program reports.

(4.) Interim program and financial reports, as required in the cooperative agreement.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements:

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Carolyn Lantz, Youth Programs Division, ECA/PE/C/PY/T, 2200 C St., NW., 3rd Floor, U.S. Department of State, Washington, DC 20037, Telephone: (202) 632–6421, E-mail: *LantzCS@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–11–29.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice:

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: February 23, 2011.

Ann Stock,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–4716 Filed 3–2–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7323]

U.S. National Commission for UNESCO Notice of Meeting in Closed and Open Session

The U.S. National Commission for UNESCO will hold a meeting in closed session on Thursday March 10, 2011, from 1 p.m. to 1:30 p.m. EST. Commission members will convene in closed session in order to discuss applications for the U.S. National Commission for UNESCO Laura W. Bush Traveling Fellowship, a fellowship funded through privately donated funds. This session will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(6) because it is likely to involve discussion of information of a personal nature regarding the relative merits of individual applicants where disclosure would constitute a clearly unwarranted invasion of personal privacy.

From 1:30 p.m. to 2 p.m. on Thursday March 10, 2011, the U.S. National Commission for UNESCO will meet in open session, with public participation by telephone. The open session will feature a discussion about the Commission's upcoming programmatic schedule, during which the Commission will accept brief oral comments or questions from the public or media. The public comment period will be limited to approximately 10 minutes in total, with 2 minutes allowed per speaker.

For more information or to arrange to participate in the open portion of the meeting, individuals should contact Eric Woodard, Executive Director of the U.S. National Commission for UNESCO, Washington, DC 20037. Telephone (202) 663–0026; Fax 202–663–0035; E-mail *DCUNESCO@state.gov.*

Dated: February 24, 2011.

Eric Woodard,

Executive Director, U.S. National Commission for UNESCO, Department of State.

[FR Doc. 2011–4715 Filed 3–2–11; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issue Area—Phase 2 of Low Speed Alerting Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: The FAA assigned the Aviation Rulemaking Advisory Committee (ARAC) a new task to identify and develop recommendations on additional requirements for low speed alerting. Phase 1 of the task addresses new standards for transport category airplanes. Phase 2 of the task addresses possible retrofit standards for existing transport category airplanes. This notice is to inform the public that the ARAC working group has completed activity for Phase 1 of the task and will begin activity for Phase 2.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, Airplane & Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Federal Aviation Administration, 1601 Lind Ave, SW., Renton, Washington 98057; telephone (425) 227–2011, facsimile (425) 227–1149; e-mail *joe.jacobsen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA established ARAC to provide advice and recommendations to the FAA Administrator on the FAA's rulemaking activities with respect to aviation-related issues. With respect to low speed alerting, the FAA previously revised regulations in the area of flight guidance (autopilot) and performance and handling qualities in icing conditions to improve transport airplane standards for low speed protection (in the case of icing, stall warning standards were enhanced). However, as a result of several recent loss-of-control accidents and incidents, the FAA has identified a need for additional low speed safeguards, in addition to the regulatory actions that have already been taken. The committee addressed the Phase 1 task—new part 25 standards under the existing Avionics System Harmonization Working Group within the Transport Airplane and Engine Issues Group. (The FAA published a notice of Phase 1 task assignment in the **Federal Register** (75 FR 16902) on April 2, 2010.) The committee will also address the Phase 2 task—parts 25/121/129 retrofit standards under the existing Avionics Systems Harmonization Working Group within the Transport Airplane and Engine Issues Group.

The Task

ARAC was initially tasked with providing information that will be used to develop standards and guidance material for low speed alerting systems. This information may result in standards that complement existing stall warning requirements. The working group provided a report that addressed several low speed alerting technical questions, relative to new aircraft designs (Phase 1 task—new part 25 standards), and provided the rationale for their responses.

Since the Phase 1 task is complete, ARAC is now tasked with providing information that will be used to develop possible retrofit standards and guidance material for low speed alerting systems. This information may result in standards that complement existing stall warning requirements. The working group will also be expected to provide a report that addresses the following low speed alerting technical questions, relative to existing aircraft designs (Phase 2 task—part 25/121/129 retrofit standards), and provide the rationale for their responses. If the recommendation for retrofit is the same as for new designs, the working group should state the rationale and not repeat the information previously reported. If there is disagreement within the working group, those items should be documented, including the rationale from each party and the reasons for the disagreement.

- How timely is the airplane in alerting the crew of flight below the intended operating speed?
- How timely relative to stall warning?
- Is alerting instantly recognizable, clear, and unambiguous to the flightcrew?
- How are nuisance alerts minimized?
- Does the alerting operate under all operating conditions, configurations, and phases of flight, including icing conditions?
- Does the alerting operate during manual and autoflight?
- After reviewing airworthiness, safety, cost, benefit, and other relevant factors, including recent certification and fleet experience, are there any additional considerations that should be taken into account?
- Is coordination necessary with other harmonization working groups (e.g., Human Factors, Flight Test)? (If yes, coordinate and report on that coordination.)
- If improvements are needed for low speed alerting in the existing fleet, should the FAA adopt a design approval holder (part 26) requirement to mandate development of design changes, or would an operational rule be sufficient? In responding, the working group should address the factors set forth in "FAA Policy Statement: Safety—A Shared Responsibility—New Direction for Addressing Airworthiness Issues for Transport Airplanes" (70 FR 40166, July 12, 2005). The ARAC working group should provide information that could lead to standards for low speed alerting that can be satisfied with practical design approaches.

Schedule

The required completion date for Phase 2 of the task is 15 months after the FAA publishes this notice in the **Federal Register**.

ARAC Acceptance of Task

ARAC accepted the task and assigned it to the existing Avionics Systems Harmonization Working Group in the Transport Airplane and Engine Issue Area. The working group serves as support to ARAC and assists in the analysis of assigned tasks. ARAC must review and approve the working group's recommendations. If ARAC accepts the working group's recommendations, it will forward them to the FAA.

Working Group Activity

The Avionics Systems Harmonization Working Group must comply with the procedures adopted by ARAC. As part of the procedures, the working group must:

1. Prepare a work plan on how to complete the task, including the rationale for this plan. Present the plan for consideration to the Transport Airplane and Engine Issues Group following publication of this notice.
2. Give a detailed conceptual presentation of the proposed recommendations prior to proceeding with the work stated in item 3 below.
3. Draft the appropriate documents and required analyses and/or any other related materials or documents.
4. Provide a status report at each meeting of the ARAC held to consider Transport Airplane and Engine Issues.

Participation in the Working Group

The Avionics Systems Harmonization Working Group is composed of technical experts having an interest in the assigned task. We recommend the existing working group be expanded to include individuals involved in current fleet operations so there is appropriate representation for the Phase 2 task. A

working group member need not be a representative or a member of the full committee.

If you have expertise in the subject matter and wish to become a member of the working group, write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire. Describe your interest in the task and state the expertise you would bring to the working group. We must receive all requests by March 17, 2011 for the meeting scheduled to start from March 15 to 17, 2011, located at the Cessna Conference Center, 6711 West 31st Street South, Wichita, Kansas 67215. The assistant chair, the assistant executive director, and the working group co-chairs will review the requests and advise you whether or not your request is approved.

If you are chosen for membership on the working group, you must represent your aviation community segment and actively participate in the working group by attending all meetings and providing written comments when requested to do so. You must devote the resources necessary to support the working group in meeting any assigned deadlines. You must keep your management chain and those you may represent advised of working group activities and decisions to ensure that the proposed technical solutions do not conflict with your sponsoring organization's position when the subject being negotiated is presented to ARAC for approval. Once the working group has begun deliberations, members will not be added or substituted without the approval of the assistant chair, the assistant executive director, and the working group co-chairs.

The Secretary of Transportation determined that the formation and use of the ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the ARAC are open to the public. Meetings of the Avionics Systems Harmonization Working Group will not be open to the public, except to the extent individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of working group meetings.

Issued in Washington, DC, on February 28, 2011.

Pamela Hamilton-Powell,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 2011–4761 Filed 3–2–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2011–0146]

Notice of Intent To Review Structure of the Aviation Rulemaking Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for public comment.

SUMMARY: The FAA is considering restructuring the Aviation Rulemaking Advisory Committee (ARAC). This notice is to inform the public of FAA's intent and invites the public to provide any ideas or thoughts it may have on this matter.

DATES: Send your comments on or before April 4, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–0146 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Aviation Rulemaking Advisory Committee (ARAC) was established in February 1991 to provide FAA's Administrator with industry and public input in the form of information, advice, and recommendations to be considered in the full range of FAA rulemaking activities. These factors are consistent with the dictates of the Administrative Procedures Act (APA). The exchange of ideas that occurs through the ARAC process affords the FAA additional opportunities to obtain firsthand information and insight from those parties who are most affected by existing and proposed regulations.

ARAC consists of approximately 55 member organizations selected by the FAA as most representative of the various viewpoints of those impacted by FAA regulations. The organizations provide a membership fairly balanced in terms of points of view of those represented and the functions to be performed by the committee. The committee is composed of organizations representing air carriers, airports, flight attendants, manufacturers, pilots, public interest and advocacy groups, repair stations, and consumer groups. Members serve in a representative capacity. In addition, an Executive Committee (ExCom) was formed to provide overall administrative oversight for committee activities. The ExCom consists of the ARAC Chair and Vice Chair, who serve as chairperson and vice chairperson, respectively for ExCom; assistant chairpersons representing aeronautical technical subject areas (presently, air carrier operations, maintenance, occupant safety, general aviation certification and operations, noise, aircraft certification, airport certification, transport airplane and engine, rotorcraft, and training and qualifications) with active projects only in transport airplane and engine, and air carrier operations.

The goal of ARAC is to assemble the strongest expertise possible to address particular issues facing the aviation industry and traveling public. The committee conducts its business in open deliberations in the form of public meetings (working groups are exempted). As an advisory body, ARAC has consistently exercised its independence and freedom to provide the FAA recommendations that are not influenced or predetermined by the government. Since 1998, ARAC has submitted more than 110 documented recommendations or products to the

FAA that have contributed significantly to the agency's ability to meet its regulatory obligations.

In recent years, the level of effort in ARAC has been reduced to the point that the FAA believes it may be appropriate to reorganize the committee in order to align the structure more closely with its current level of effort while maintaining its effectiveness. The FAA is considering reconstituting a new ARAC that reduces the over-arching layer of 55 members to a maximum of 25, eliminates the Executive Committee, while continuing to achieve balance across the broad spectrum of aviation stakeholders and interests. The FAA invites interested persons to participate in this request for comments by submitting written comments, data, or views. The most helpful comments clearly explain the reason for any position.

FOR FURTHER INFORMATION CONTACT: Renee Butner, Office of Rulemaking, ARM–24, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–5093, facsimile (202) 267–5075; e-mail *Renee.Butner@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 28, 2011.

Pamela Hamilton-Powell,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 2011–4749 Filed 3–2–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Seventy-second Meeting: RTCA Special Committee 147: Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 147 meeting: Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 147: Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment Agenda for the 72nd meeting.

DATES: The meeting will be held March 24, 2011, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036, telephone (202) 833–9339, fax (202) 833–9434, Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., and Appendix 2), notice is hereby given for a Special Committee 147, Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment Agenda for the 72nd meeting:

Agenda

March 24, 2011

- Open Plenary Session.
- SC–147 Co-Chairmen's Opening Remarks.
- Introductions.
- Approval of Agenda and Summary from 71st meeting of SC–147.
- EUROCAE WG–75: Status of Current Events.
- TCAS Program Office Activities.
- Monitoring Efforts/TRAMS/TOPA.
- AVS and other FAA Activities.
- TSOs, etc.
- ASIAS/CAST/CAS Steering Committee.
- JPDO Safety Working Group Activities.
- Working Group Status Reports.
- Requirement Working Group.
- Surveillance Working Group.
- Other Business.
- Action Items.
- Date, Time, and Place of Next meeting.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 25, 2011.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2011–4815 Filed 3–2–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

24th Meeting: RTCA Special Committee 206: EUROCAE WG 76 Plenary: AIS and MET Data Link Services

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 206: EUROCAE WG 76 Plenary: AIS and MET Data Link Services meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 206: EUROCAE WG 76 Plenary: AIS and MET Data Link Services.

DATES: The meeting will be held March 21–25, 2011 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Honeywell Aerospace, Phoenix (DV), 21111 North 19th Avenue, Phoenix, AZ 85027–2704.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a RTCA Special Committee 206: EUROCAE WG 76 Plenary: AIS and MET Data Link Services meeting. The agenda will include:

March 21—Monday

- 9 a.m.—Opening Plenary.
- Chairmen's remarks and Host's comments.
- Introductions.
- Approval of previous meeting minutes.
- Review and approve meeting agenda.
- Schedule for this week.
- Action Item Review.
- Working Group 1, Work Plan—WG1 Chairmen.
- Working Group 2, Work Plan—WG2 Chairmen.
- Working Group 3, Recommendations—WG3 Chairmen.
- Current status and deliverables of SESAR JU Project 08.03.03 (Identify and Develop Aeronautical (and Meteorological) ATM Information Services)—Roger Li.
- 1 p.m.—WG1, WG2, and WG3 Meetings.

March 22–24, Tuesday, Wednesday, and Thursday

- 9 a.m.—WG1, WG2, and WG3 Meetings.

March 25—Friday

- 9 a.m.—WG1, WG2, and WG3 Meetings.
- 10 a.m.—Plenary Session.
  - Working Group Reports.
  - Action Item Review.
  - Other Business.
  - Meeting plans and dates.
- 12 p.m.—Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 25, 2011.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2011–4814 Filed 3–2–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Thirteenth Meeting: Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS)

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

ACTION: Notice of Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/ Synthetic Vision Systems (EFVS/SVS).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS).

DATES: The meeting will be held March 29–31, from 8:30 a.m.–5 p.m.

ADDRESS: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036. Point of Contact is *Jiverson@rtca.org,* telephone (202) 833–9339, Fax (202) 833–9434.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/ Synthetic Vision Systems (EFVS/SVS) meeting.

The agenda will include:

Tuesday, March 29

- 8 a.m.–5 p.m. Plenary discussion.
  - Introductions and administrative items.
  - Review and approve minutes from last full plenary meeting.
  - Review Advanced Vision Systems performance objectives.
  - Review DO–315B FRAC Draft.

Wednesday, March 30

- 8 a.m.–5 p.m. Plenary Discussion 1 (SVS) and Working Group 2 (EFVS) discussion.

Thursday, March 31

- 8 a.m.–3 p.m. Plenary discussion.
  - Advanced Vision Systems Discussion.
  - Administrative items (meeting schedule).
  - Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, February 25, 2011.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2011–4766 Filed 3–2–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held March 17, 2011 from 8:30 a.m. to 1:30 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a RTCA Program Management Committee meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions).
- Review/Approve Summary of December 8, 2011 PMC meeting, RTCA Paper No. 025–11/PMC–861.
- Publication Consideration/Approval.
  - Final Draft, Revised DO–181–D, *Minimum Operational Performance Standards for Air Traffic Control Radar Beacon Systems/Mode Select (ACTRBS/Mode S) Airborne Equipment,* RTCA Paper No. 027–11/PMC–863, prepared by SC–209.
  - Final Draft, Change 1 to DO–306, *Safety and Performance Standard for Air Traffic Data Link Services in Oceanic and Remote Airspace (Oceanic SPR Standard),* RTCA Paper No. 034–11/PMC–865, prepared by SC–214.
- Integration and Coordination Committee (ICC)—Status Report.
- Action Item Review.
  - SC–216—Aeronautical Systems Security Discussion, Review, and Approve Revised Terms of Reference.
  - SC–217/WG–44, Terrain and Airport Databases, Discussion, Review, and Approve Revised Terms of Reference.
  - MASPS/MOPS/SPR/Concepts—Discussion.
- Discussion.
  - Aircraft Audio Systems and Equipment Discussion of Possible New Special Committee to Revise DO–214.
  - SC–222—Inmarsat AMS(R)S—Discussion, Review/Approve Revised Terms of Reference.
  - SC–203—Unmanned Aircraft Systems, Discussion MASPS and MOPS Schedules.
  - SC–159—Global Positioning Systems, Discussion and Potential Interference, 4 G Network.
  - SC–223—Airport Surface Wireless Communications Discussion and Status—
  - FAA Market Survey on Next Generation TCAS Discussion.
  - Special Committees Chairmen's

Reports and Meeting Management.
- Closing Plenary (Other Business, Document Production and PMC Meeting Schedule Meeting, Adjourned).

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, February 28, 2011.

Kathy Hitt,

RTCA Advisory Committee.

[FR Doc. 2011–4774 Filed 3–2–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on March 30, 2011, at 10 a.m.

ADDRESSES: The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, 10th floor, MacCracken Room.

FOR FURTHER INFORMATION CONTACT: Renee Butner, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–5093; fax (202) 267–5075; e-mail *Renee.Butner@faa.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee taking place on March 30, 2011, at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591. The Agenda includes:

1. Discussion of potential restructuring of ARAC.

2. Discussion of ARAC ExCom role in implementing Future of Aviation Advisory Committee (FAAC) recommendation #22.

3. Update on FAA response to Process Improvement Working Group (PIWG) recommendations.

4. Future work.

5. Issue Area Status Reports from Assistant Chairs.

6. Remarks from other EXCOM members.

Attendance is open to the interested public but limited to the space available. The FAA will arrange teleconference service for individuals wishing to join in by teleconference if we receive notice by March 23. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area are responsible for paying long-distance charges.

The public must arrange by March 23 to present oral statements at the meeting. The public may present written statements to the executive committee by providing 25 copies to the Executive Director, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on February 28, 2011.

Pamela Hamilton-Powell,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 2011–4750 Filed 3–2–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0001]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (NHTSA).

ACTION: Request for extension of a currently approved collection of information.

SUMMARY: This document solicits public comments on continuation of the requirements for the collection of information entitled "Consolidated Child Restraint System Registration, Labeling and Defect Notifications" (OMB Control Number: 2127–0576).

Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

DATES: You should submit your comments early enough to ensure that Docket Management receives them no later than May 2, 2011.

ADDRESSES: You may submit comments (identified by the DOT Docket ID Number above) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Regardless of how you submit your comments, you should mention the docket number of this document. You may call the Docket at (202) 366–9324. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that two copies of the comment be provided.

Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Cristina Echemendia, US. Department of

Transportation, NHTSA, 1200 New Jersey Avenue, SE., West Building Room W43–447, NVS–113, Washington, DC 20590. Mrs. Cristina Echemendia's telephone number is (202) 366–6345 and fax number is (202) 366–7002. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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) 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) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How 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, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: "Consolidated Child Restraint System Registration, Labeling and Defect Notifications."

OMB Control Number: 2127–0576.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: Extension of a currently approved collection.

Affected Public: Business, Individuals and Households.

Summary of the Collection of Information: Child restraint manufacturers are required to provide an owner's registration card for purchasers of child safety seats in accordance with title 49 of the Code of Federal Regulation (CFR), part 571–section 213, "Child Restraint Systems." The registration card is perforated into two-parts (see Figures 1 and 2). The top part contains a message and suitable instructions to be retained by the purchaser. The bottom part is to be returned to the manufacturer by the purchaser. The bottom part includes prepaid return postage, the pre-printed name/address of the manufacturer, the pre-printed model and date of manufacture, and spaces for the purchaser to fill in his/her name and address. Optionally, child restraint manufacturers are permitted to add to the registration form: (a) Specified statements informing CRS owners that they may register online; (b) the Internet address for registering with the company; (c) revisions to statements reflecting use of the Internet to register; and (d) a space for the consumer's e-mail address. For those CRS owners with access to the Internet, online registration may be a preferred method of registering a CRS.

In addition to the registration card supplied by the manufacturer, NHTSA has implemented a CRS registration system to assist those individuals who have either lost the registration card that came with the CRS or purchased a previously owned CRS. Upon the owner's request, NHTSA provides a substitute registration form that can be obtained either by mail or from the Internet [1] (*see* Figure 3). When the completed registration is returned to the agency, it is then submitted to the CRS manufacturers. In the absence of a substitute registration system, many owners of child passenger safety seats, especially any second-hand owners, might not be notified of safety defects and non compliances, and would not have the defects and noncompliances remedied.

Child seat owner registration information is retained in the event that owners need to be contacted for defect recalls or replacement campaigns. Chapter 301 of title 49 of the United States Code specifies that if either NHTSA or a manufacturer determines that motor vehicles or items of motor vehicle equipment contain a defect that relates to motor vehicle safety or fail to comply with an applicable Federal Motor Vehicle Safety Standard, the manufacturer must notify owners and purchasers of the defect or noncompliance and must provide a remedy without charge. In title 49 of the CFR, part 577, defect and noncompliance notification for equipment items, including child restraint systems, must be sent by first class mail to the most recent purchaser known to the manufacturer.

Child restraint manufacturers are also required to provide a printed instructions brochure with step-by-step information on how the restraint is to be used. Without proper use, the effectiveness of these systems is greatly diminished. Each child restraint system must also have a permanent label. A permanently attached label gives "quicklook" information on whether the restraint meets the safety requirements, recommended installation and use, and warnings against misuse.

Estimated Annual Burden: 39,247 hours.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques of other forms of information technology.

BILLION CODE 4910–59–P

[1] *http://www-odi.nhtsa.dot.gov/cars/problems/recalls/register/childseat/csregfrm.pdf.*

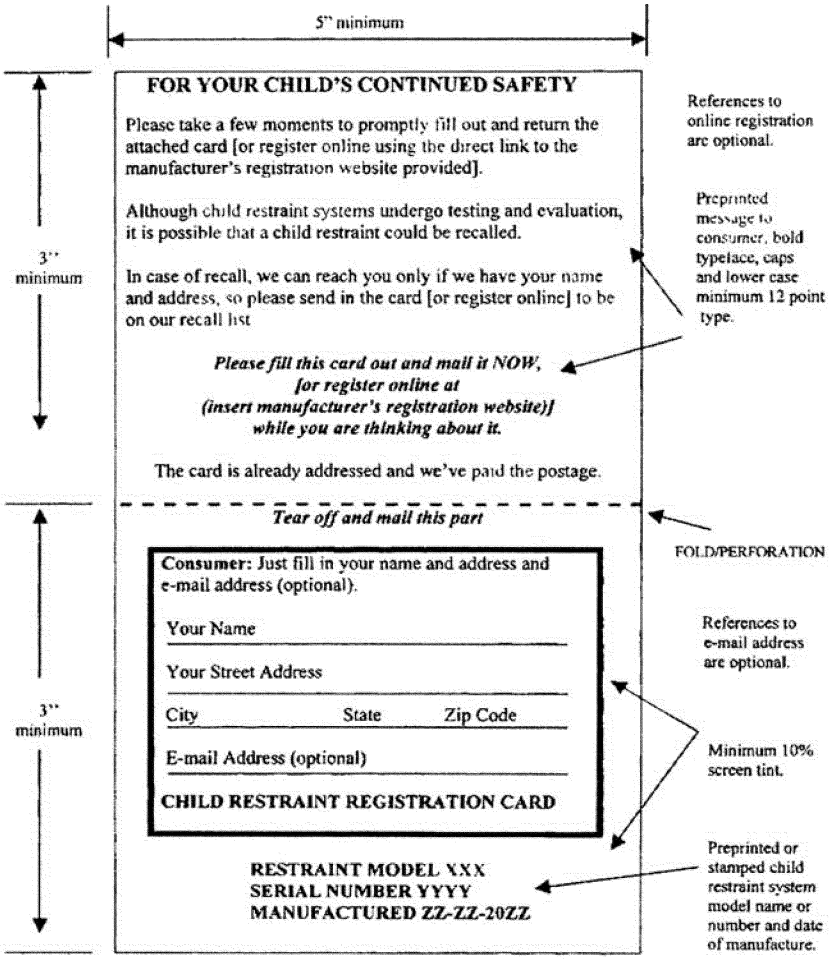

Figure 1 – Registration form for child restrain systems – product identification number and purchaser information side

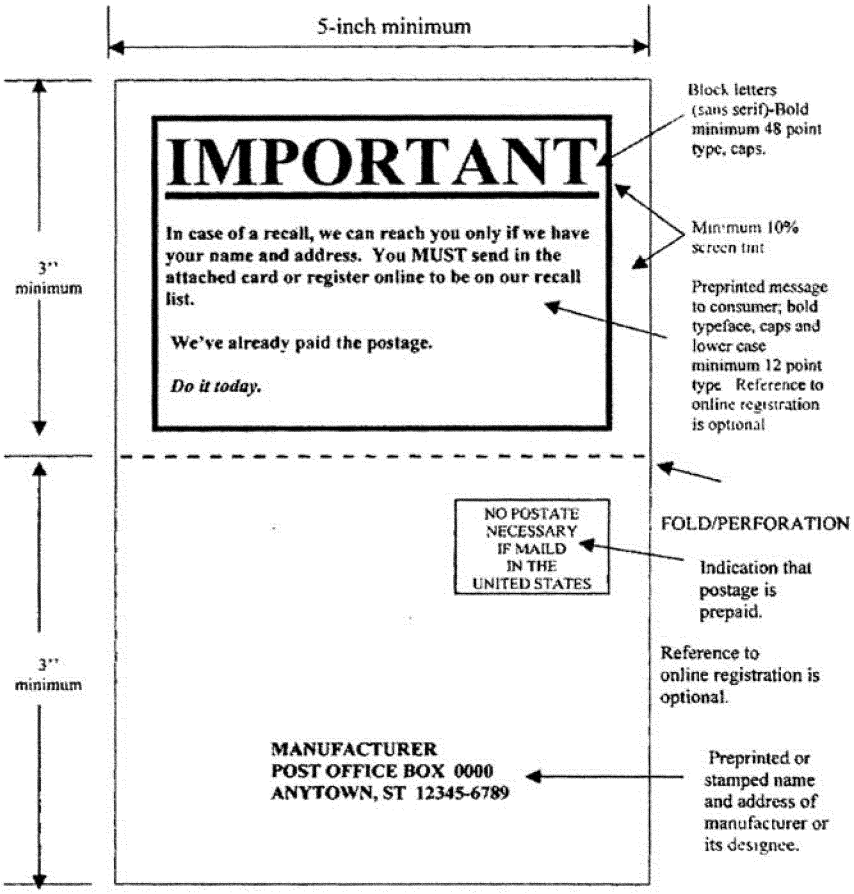

Figure 2 – Registration form for child restraints systems – address side

Form Approved: O.M.B. No. 2127-0576

CHILD SAFETY SEAT REGISTRATION FORM
FOR YOUR CHILD'S CONTINUED SAFETY

Although child safety seats undergo testing and evaluation, it is possible that your child seat could be recalled. In case of a recall it is important that the manufacturer be able to contact you as soon as possible so that your seat can be corrected.

All child safety seats manufactured since March 1993 have a registration form so that owners can provide their names/addresses to the manufacturer. In case of a safety recall, the manufacturer can use that information to send recall letters to owners. Also, child safety seat manufacturers have agreed to maintain owner names/addresses for child safety seats manufactured before March 1993, so they can notify those consumers in the event of a future safety recall. However, in order for the manufacturer to know which child safety seat you own, all of the information on the lower half of this page must be provided.

If you would like the National Highway Traffic Safety Administration (NHTSA) to give your name and address to the manufacturer of your child safety seat, so that you can be notified of any future safety recalls regarding your child safety seat, fill out this form. Please type or print clearly, sign and mail this postage-paid, pre-addressed form.

If you have any questions, or need help with any child safety seat or motor vehicle safety issue, call the U.S. Department of Transportation's toll-free Vehicle Safety Hotline at 1-888-424-9393 (Washington DC AREA RESIDENTS, 202-366-0123).

Your Name:_____ Telephone_____

Your Street Address_____

City:_____. State:_____ Zip Code:_____

IMPORTANT: The following information is essential and can be found on labels on your child seat.

Child Seat Manufacturer:_____

Child Seat Model Name & Number:_____

Child Seat Date of Manufacture:_____

I AUTHORIZE NHTSA TO PROVIDE A COPY OF THIS REPORT TO THE CHILD SAFETY SEAT MANUFACTURER.

SIGNATURE:_____ **DATE:**_____

Please mail to:
U.S. Department of Transportation
National Highway Traffic Safety Administration
DOT Vehicle Safety Hotline
400 7th Street, SW
Washington, DC 20590

The Privacy Act of 1974 - Public Law 93-579, As Amended: This information is requested pursuant to the authority vested in the National Highway Traffic Safety Act and subsequent amendments. You are under no obligation to respond to this questionnaire. Your response may be used to assist the NHTSA in determining whether a manufacturer should take appropriate action to correct a safety defect. If the NHTSA proceeds with administration enforcement or litigation against a manufacturer, your response, or statistical summary thereof, may be used in support of the agency's action.

Figure 3 – Illustration of Child Safety Seat Registration Form

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Issued on: February 28, 2011.

Joseph S. Carra,

Acting, Associate Administrator for Rulemaking.

[FR Doc. 2011–4785 Filed 3–2–11; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2011–0027]

Pipeline Safety: Request for Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: Pursuant to the Federal pipeline safety laws, PHMSA is publishing this notice of special permit requests we have received from several natural gas and hazardous liquid pipeline operators, seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. This notice seeks public comments on these requests, including comments on any safety or environmental impacts. At the conclusion of the 30-day comment period, PHMSA will evaluate the requests and determine whether to grant or deny a special permit.

DATES: Submit any comments regarding these special permit requests by April 4, 2011.

ADDRESSES: Comments should reference the docket numbers for the specific special permit request and may be submitted in the following ways:

- *E-Gov Web Site: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* DOT Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: Comments are posted without changes or edits to *http://www.Regulations.gov,* including any personal information provided. There is a privacy statement published on *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

General: Dana Register by telephone at 202–366–0490 or e-mail at *dana.register@dot.gov.*

Technical: Steve Nanney by telephone at 713–272–2855 or e-mail at *steve.nanney@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA has received requests for special permits from pipeline operators who seek relief from compliance with certain pipeline safety regulations. Each request includes a technical analysis provided by the respective operator. Each request is filed at *http://www.Regulations.gov,* and has been assigned a separate docket number. We invite interested persons to participate by reviewing these special permit requests at *http://www.Regulations.gov,* and by submitting written comments, data or other views. Please include any comments on potential environmental impacts that may result if these special permits are granted or denied.

Before acting on these special permit requests, PHMSA will evaluate all comments received on or before the comments closing date. Comments will be evaluated after this date if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our decision to grant or deny a request.

PHMSA has received the following special permit requests:

Docket No.	Requester	Regulation(s)	Nature of special permit
PHMSA–RSPA–2003–15733.	TransCanada Pipelines Limited (TCPL) (Operator of Portland Natural Gas Transmission System (PNGTS).	49 CFR 192.611(a)	TCPL petitions PHMSA for modification of an existing special permit, PHMSA–RSPA–2003–15733, issued to PNGTS on March 4, 2004. TCPL proposes modification of special permit conditions (1) through (6) with alternative special permit conditions. The special permit area of PHMSA–RSPA–2003–15733 is located in Coos County, New Hampshire and is a 24-inch mainline natural gas pipeline, 595 feet in length. The first segment of the special permit area is located at Survey Station 148+52 feet (Mile Post 2.81) to Survey Station 152+92 feet (Mile Post 2.90). The second special permit segment is located at Survey Station 174 + 25 feet (Mile Post 3.30) to Survey Station 175+80 feet (Mile Post 3.33). Both special permit segments are located in Coos County, New Hampshire. Proposed new special permit segment 3 (new segment application on June 9, 2010) is defined as the PNGTS 24-inch Mainline pipeline beginning at Survey Station 171+17 feet (Mile Post 3.24). The special permit segment extends for 308 feet along the PNGTS 24-inch Mainline and concludes at Survey Station 174 + 25 feet (Mile Post 3.30). The special permit segment 3 is located in Coos County, New Hampshire.

Docket No.	Requester	Regulation(s)	Nature of special permit
PHMSA–2010–0148	TCPL (Operator of PNGTS).	49 CFR 192.611(a)	To authorize TCPL to engage in an alternative approach to conduct risk control activities based on Integrity Management Program principles rather than lowering the Maximum Allowable Operating Pressure (MAOP) or replacing the subject pipe segment. This application is for one segment of the PNGTS natural gas mainline in Coos County, New Hampshire. This segment has changed from a Class 2 location (original Class 1 location) to a Class 3 location due to construction of new single family homes within 660 feet of the pipeline. The pipeline is 24 inches in diameter and has a MAOP of 1,440 psig. The segment that has changed class location is 114 feet in length and is located from Survey Station 3705 + 59 feet (Mile Post 70.18), to Survey Station 3706 + 73 feet (Mile Post 70.20).
PHMSA–2010–0261	Buckeye Partners, L.P. (Buckeye).	49 CFR 195.452(h)(4)(i)(D).	To authorize Buckeye a waiver from the Federal regulations to repair requirements for a dent on the top of pipe greater than 6% of the nominal pipe diameter. The 8.2 percent deep dent (5.3 inches long by 7 inches wide at the 12:45 o'clock position) is located 75 feet off the north bank of the Delaware River. The 8.625-inch diameter pipe is installed in a 12-inch casing pipe. This request is for the 2.64 miles long, 8-inch PY742PL pipeline that connects from the Paulsboro refinery in New Jersey to the Philadelphia Airport. The pipeline is operated to a MAOP of 274 psig. This 8.625-inch diameter by 0.322-inch pipeline transports jet fuel.
PHMSA–2010–0262	Wyoming Interstate Company (WIC).	49 CFR 192.11 (c)(1), 192.112(c) (2), 192.620(a)(2)(ii).	To authorize WIC to operate 60.23 miles of the 24-inch 123.9 miles Kanda Lateral at an alternate MAOP. The request is to operate 32.85 miles at 77.7% of specified maximum yield strength (SMYS) and to operate 27.38 miles at 75.2% SMYS. The entire length of the pipeline is in a Class 1 location with seven dwellings intended for human occupancy, located within 660 feet of the existing pipeline route. Presently, 49 CFR Part 192 limits this pipeline to an operating stress of 72% SMYS in Class 1 locations. The Kanda Lateral begins in Uintah County, Utah with a northerly route into Southwestern Wyoming and terminates in Sweetwater County, Wyoming. The pipeline was constructed and placed into service in 2007.
PHMSA–2010–0041	Williams Gas Pipeline (WGP), owner and operator of the Transcontinental Gas Pipeline (Transco).	49 CFR 192.150	WGP has petitioned PHMSA for relief from the Federal pipeline safety regulations in 49 CFR § 192.150 for one 2,100-foot 30-inch segment of the Transco natural gas system where a portion of Mainline "A" is currently unable to pass internal inspection devices. This is due to WGP's inability to replace the 2,100-foot 30-inch section of the Transco pipeline crossing the Brandywine Creek with 42-inch pipe. This 2,100-foot segment of 30-inch pipeline is part of the Downingtown Replacement Project and is located from Mile Post 1715.62 (Survey Station 2274 + 55) to Mile Post 1716.03 (Survey Station 2296+06) in Chester County, Pennsylvania. The Downingtown Replacement Project included the replacement of a total of approximately 7.15 miles of 30-inch pipe with 42-inch pipe on the Transco Mainline "A" from Mile Post 1715.09 (Downingtown Meter Station) to Mile Post 1722.24 (Compressor Station 200) located in Chester County, Pennsylvania. WGP proposes to use alternative integrity management methods to provide a level of safety equivalent to those provided by Federal safety regulations for this 2,100-foot section of 30-inch pipeline, until it can be replaced with 42-inch pipe. To confirm the integrity of the 30-inch pipeline, WGP has hydrostatically retested the existing 30-inch pipeline from Mile Post 1715.62 to Mile Post 1716.03 for eight hours at 910 psig.
PHMSA–2010–0192	TCPL–American Natural Resources (ANR).	49 CFR 192.611(a)	To authorize TCPL-ANR to engage in an alternative approach to conduct risk control activities based on Integrity Management Program principles rather than lowering the MAOP or replacing the subject pipe segment. This application is for one segment of the TCPL–ANR Lateral Loop 2–716 located in St. Martin Parish, Louisiana. This segment has changed from a Class 2 location (original Class 1 location) to a Class 3 location due to new single family dwellings built within 660 feet of the pipeline. The pipeline is 30 inches in diameter and has a MAOP of 1,050 psig. The segment that has changed class location is 3,149 feet in length and is located at Station 584 + 66 feet to Station 616+15 feet in St. Martin Parish, Louisiana.

Authority: 49 U.S.C. 60118 (c)(1) and 49 CFR 1.53.

Issued in Washington, DC, on February 24, 2011.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2011–4708 Filed 3–2–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on March 21–22, 2011, at the Saint Regis Hotel, 923 16th Street, NW., Washington, DC, from 8:30 a.m. to 3 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other VA benefits programs. Public comments will be received at 3 p.m. each day. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Dr. Corina Negrescu, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration, Compensation and Pension Service, Regulation Staff (211D), 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail at *Corina.Negrescu@va.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Dr. Negrescu at (202) 461–9752.

Dated: February 28, 2011.

By Direction of the Secretary.

William F. Russo,

Director of Regulations Management, Office of the General Counsel.

[FR Doc. 2011–4768 Filed 3–2–11; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 76 Thursday,
No. 42 March 3, 2011

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648
Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 45; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100923469–1002–02]

RIN 0648–BA27

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 45

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Framework Adjustment (FW) 45 to the NE Multispecies Fishery Management Plan (FMP). FW 45 was developed by the New England Fishery Management Council (Council) to prevent overfishing, rebuild overfished stocks, achieve optimum yield (OY), and minimize the economic impact of management measures on affected vessels, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action would revise the biological reference points and stock status for pollock, update annual catch limits (ACLs) for several stocks for fishing years (FYs) 2011–2012, adjust the rebuilding program for Georges Bank (GB) yellowtail flounder, increase scallop vessel access to the Great South Channel Exemption Area, approve five new sectors, modify the existing dockside and at-sea monitoring requirements, revise several sector administrative provisions, establish a Gulf of Maine (GOM) Cod Spawning Protection Area, and refine measures affecting the catch of limited access NE multispecies Handgear A vessels. This action would disapprove the Council's proposed catch limits for GB yellowtail flounder for FY 2011, and instead propose new catch limits for this stock through emergency action authority based on new flexibility provided by the International Fisheries Agreement Clarification Act. This action is necessary to ensure that the fishery is managed on the basis of the best available science, to comply with the acceptable biological catch (ABC) control rules adopted in Amendment 16 to the FMP, and to enhance the viability of the fishery following the transition to sector management in 2010.

DATES: Comments must be received by March 18, 2011.

ADDRESSES: You may submit comments, identified by 0648–BA27, by any of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Fax:* (978) 281–9135, Attn: Douglas Christel.
- *Mail:* Paper, disk, or CD–ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Proposed Rule for NE Multispecies Framework Adjustment 45."

Instructions: All comments received are a part of the public record and will generally be posted to *http://regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of FW 45, its Regulatory Impact Review (RIR), a draft of the environmental assessment (EA) prepared for this action, and the Initial Regulatory Flexibility Act (IRFA) analysis prepared by the Council are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The IRFA analysis assessing the impacts of the proposed measures on small entities and describing steps taken to minimize any significant economic impact on such entities is summarized in the Classification section of this proposed rule. The FW 45 EA/RIR/IRFA, as well as the relevant analyses for Amendment 16 and other recent actions, are also accessible via the Internet at *http://www.nefmc.org/nemulti/index.html* or *http://www.nero.noaa.gov.* Copies of recent stock assessments for stocks managed by the FMP are also accessible via the Internet at *http://www.nefsc.noaa.gov/groundfish.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to the Office of Management and Budget (OMB) by e-mail at *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, phone: 978–281–9141, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The FMP specifies management measures for 16 species in Federal waters off the New England and Mid-Atlantic coasts, including both large-mesh and small-mesh species. Small-mesh species include silver hake (whiting), red hake, offshore hake, and ocean pout; while large-mesh species include Atlantic cod, haddock, yellowtail flounder, pollock, American plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, redfish, and Atlantic wolffish. Large-mesh species are further divided into 19 individual stocks and are referred to as "regulated species," that, along with ocean pout, are collectively referred to as groundfish.

A major overhaul of the FMP occurred in 2004 with implementation of Amendment 13 on May 1, 2004 (April 27, 2004; 69 FR 22906), which included the establishment of rebuilding programs for stocks managed by the FMP and measures necessary to end overfishing, rebuild overfished stocks, and help mitigate the economic impacts of effort reductions in the fishery to the extent practicable. Amendment 13 also established a biennial adjustment process intended to update status determination criteria, adopt and update rebuilding programs, and revise management measures necessary to achieve the objectives of the FMP and the mandates of applicable law. A second substantial revision to the FMP came in 2010, with the implementation of Amendment 16 (April 9, 2010; 75 FR 18262). Amendment 16 updated status determination criteria for all regulated NE multispecies and ocean pout stocks based upon revised assessments for all stocks; adopted rebuilding programs for stocks newly classified as being overfished and subject to overfishing; and revised management measures to achieve the conservation objectives of the FMP and to minimize the economic impacts of such measures, including significant revisions to the sector management measures, reporting requirements, trip limits, and days-at-

sea (DAS) measures. Amendment 16 not only established a process for specifying ABCs and ACLs and distributing available catch among components of the fishery that catch regulated species and ocean pout, but it also specified accountability measures (AMs) necessary to prevent overfishing on these stocks and addressed overages of ACLs, as required by the Magnuson-Stevens Act. 16 U.S.C. 1801 *et seq*. In another action, FW 44 (April 9, 2010; 75 FR 18356), NMFS set the ACLs for FYs 2010 through 2012, and distributed such allocations among the various components of the fishery that catch these stocks. An April 9, 2010, final rule (75 FR 18113) implemented the approval of 17 new sectors in FY 2010, and specified their respective annual catch entitlements (ACEs, or sector quotas) for each stock allocated to sectors pursuant to Amendment 16.

The Council developed FW 45 as part of the established framework and biennial adjustment process to revise measures necessary to prevent overfishing and rebuild overfished stocks, while achieving OY in the fishery and minimizing economic impact to the extent practicable. Pursuant to the Magnuson-Stevens Act, the Council has proposed FW 45 to NMFS, which has reviewed the proposal and is presenting it for public review. If implemented, FW 45 would set and update ACLs for several stocks pursuant to the process established by Amendment 16 and FW 44. Updated stock assessments for pollock and GB yellowtail flounder conducted in 2010 require the ACLs originally established under FW 44 to be updated based upon revised stock status for pollock and a revised rebuilding program for GB yellowtail flounder proposed in FW 45. Further, following the transition to sectors under Amendment 16, the Council realized that several changes to existing measures are necessary to make the Amendment 16 measures work more effectively, as described below.

Proposed Measures

The following summarizes the measures proposed by the Council in FW 45, based on the order in which applicable provisions appear in the regulations at 50 CFR part 648. These measures build upon the provisions implemented by previous management actions, and are intended to either supplement or replace existing regulations, as described for each measure. This proposed rule also includes revisions to regulations that are not specifically identified in FW 45, but that are necessary to correct errors in, or clarify, existing provisions, as described further below. The proposed regulations implementing measures in FW 45 were deemed by the Council to be consistent with FW 45, and necessary to implement such provisions pursuant to section 303(c) of the Magnuson-Stevens Act through a January 11, 2011, letter from the Council Chairman to the Regional Administrator (RA).

1. Status Determination Criteria for Pollock

Amendment 16 updated the status determination criteria for existing NE multispecies regulated species and ocean pout stocks based upon the best available scientific information regarding stock status resulting from the Groundfish Assessment Review Meeting (GARM III), a comprehensive stock assessment for all species managed by the FMP, conducted in August 2008. GARM III originally characterized pollock as overfished and subject to overfishing. However, due to the high uncertainty of the determination of pollock stock status, as noted in the GARM III stock assessment conclusions, and on the advice from the Council's Scientific and Statistical Committee (SSC), the body charged by the Magnuson-Stevens Act with recommending an ABC to the Council for each stock, an updated pollock stock assessment was conducted in 2010. The pollock peer-reviewed benchmark stock assessment review (Stock Assessment Workshop, or SAW, 50) was completed in June 2010, with the final summary report completed on July 14, 2010. This assessment determined that pollock is not overfished or subject to overfishing. Thus, this species no longer requires the rebuilding program established in Amendment 16. Based upon this updated assessment, NMFS implemented an emergency action (July 20, 2010; 75 FR 41996) to incorporate the results of this assessment and update the status determination criteria and the associated FY 2010 ABC and ACL for this species. On December 1, 2010 (75 FR 74661), this emergency action was continued through the end of FY 2010 (April 30, 2011).

In FW 45, NMFS proposes to integrate the results of the 2010 pollock stock assessment into the FMP. Table 1 lists the proposed revised status determination criteria, with numerical estimates of these parameters listed in Table 2. The revised biomass target parameter for pollock, where spawning stock biomass is at maximum sustainable yield (SSB_{MSY}) or its proxy, is SSB at 40 percent maximum spawning potential (MSP). The maximum fishing mortality rate (F) threshold is the F_{MSY} proxy, or $F_{40\%MSP}$.

TABLE 1—DESCRIPTION OF THE PROPOSED POLLOCK STATUS DETERMINATION CRITERIA

Species	Biomass target (B_{target})	Minimum biomass threshold	Maximum fishing mortality threshold
Pollock	SSB_{MSY}: SSB/R (40%MSP)	½ B_{target}	$F_{40\%MSP}$

TABLE 2—NUMERICAL ESTIMATES FOR THE PROPOSED POLLOCK STATUS DETERMINATION CRITERIA

Species	Biomass target (SSB_{MSY} or proxy) in mt	Maximum fishing mortality threshold (F_{MSY} or proxy)	MSY in mt
Pollock	91,000	0.41	16,200

2. Rebuilding Program for GB Yellowtail Flounder

In 2004, GARM II concluded that the GB yellowtail flounder stock was overfished and subject to overfishing. In response, the Council developed a rebuilding program for this stock in FW 42 (October 23, 2006; 71 FR 62156). That rebuilding program incorporated an adaptive rebuilding strategy that was expected to rebuild the stock by 2014 with a 75-percent probability of success, and was anticipated to rebuild this stock in 8 years, 2 years ahead of the

maximum rebuilding period allowed by section 304(e)(4) of the Magnuson-Stevens Act. The intent of that rebuilding program was to rebuild the stock as quickly as possible, consistent with efforts to jointly manage this stock with Canada as part of the U.S./Canada Resource Sharing Understanding (Understanding).

More recent estimates of the status of this stock conducted by the Transboundary Resource Assessment Committee (TRAC) in July 2010 indicate that overfishing is not occurring, but that the stock is still in an overfished condition (TRAC 2010/05). This estimate is affected by updated estimates of the 2005 year class that suggest this year class is much smaller than previously thought. This report concludes that it is not possible to rebuild this stock by 2014, even at F = 0. Accordingly, as part of FW 45, the Council proposes to revise the GB yellowtail flounder rebuilding program to rebuild the stock by 2016, with a 50-percent probability of success to extend the rebuilding program to the maximum extent allowed by applicable law. This revision would extend the rebuilding program for this stock out to the maximum 10-year rebuilding period allowed by the Magnuson-Stevens Act and lower the probability of success from 75 percent to 50 percent in order to maximize the amount of GB yellowtail flounder that could be caught while the stock rebuilds.

3. Overfishing Levels and ABCs for Particular Stocks

NMFS also proposes in FW 45 to revise the overfishing levels (OFLs) and ABCs of particular stocks, including GB cod, GB haddock, GB yellowtail flounder, and pollock for FYs 2011 and 2012. Revisions to the OFLs and ABCs for pollock and GB yellowtail flounder are based upon the updated assessments and revised rebuilding strategies for these stocks, as described in Items 1 and 2 of this preamble, respectively, and by the 2010 International Fisheries Agreement Clarification Act for GB yellowtail flounder, as described in Item 5 of this preamble. Revisions to the OFLs and ABCs for the GB cod and GB haddock stocks are based upon updated TRAC assessments of the eastern components of the stock. It is anticipated that the FY 2012 values of the ABCs for GB cod, GB haddock, and GB yellowtail flounder will be revised during 2011, based on new transboundary stock assessments conducted by the TRAC, and will likely be specified again in conjunction with the FY 2012 U.S./Canada Management Area total allowable catch (TAC) levels, as further described in Item 5 of this preamble. Table 3 contains the OFLs and ABCs for FYs 2011 and 2012 proposed under FW 45 with the exception of GB yellowtail flounder, as noted below. The expected economic impacts of the proposed ABCs are summarized below.

For GB yellowtail flounder, the FY 2011 U.S. ABC shown in Table 3 represents a revised shared U.S./Canada Management Area TAC based upon, and consistent with, determinations and decisions about this stock by the Transboundary Management Guidance Committee (TMGC), pursuant to the Understanding in a February 9, 2011, conference call. This meeting of the TMGC was precipitated based on provisions of the recently enacted International Fisheries Agreement Clarification Act which provides increased flexibility to NMFS and the Council in setting higher fishing limits for those portions of stocks subject to the Understanding. This Act states that decisions made under that Understanding should be considered as "management measures under an international agreement" that "dictate otherwise" for purposes of section 304(e)(4)(A)(ii) of the Act (16 U.S.C. 1854(e)(4)(A)(ii)) and that the Council and the Secretary of Commerce may "establish catch levels for those portions of fish stocks within their respective geographic areas covered by the Understanding on the date of enactment of this Act that exceed the catch levels otherwise required under the Northeast Multispecies Fishery Management Plan if * * * overfishing is ended immediately." (Sec. 202(2) and (3) of the International Fisheries Agreement Act). Because the U.S./Canada Management Area represents the entire stock area for GB yellowtail flounder, the shared U.S./Canada Management Area TAC for this stock also represents the ABC for this stock. The revised ABC agreed to by the TMGC is being proposed consistent with the provisions of the International Fisheries Agreement Clarification Act and the harvest strategy of the Understanding that requires overfishing to be prevented and the facilitation of the rebuilding of overfished stocks.

The revised ABC recommended by the TMGC is higher than that approved by the Council's SSC and adopted by the Council in FW 45 (*i.e.,* a U.S. ABC of 1,099 mt for FY 2011 and 1,222 mt for FY 2012). Because this revised ABC was not considered by the Council in FW 45, NMFS proposes to implement the revised FY 2011 ABC and ACL for this stock as a separate but parallel action to FW 45 pursuant to its emergency action authority specified in section 305(c) of the Magnuson-Stevens Act. NMFS has determined that the adoption of the International Fisheries Agreement Clarification Act meets the criteria for proposing this emergency action, as explained further in Item 5 of this preamble. Because this proposed revision would be made under the authority to implement a Secretarial emergency action pursuant to section 305(c) of the Magnuson-Stevens Act instead of a Council action, the involvement of the SSC in the specification of the ABC for this stock is not specifically required, although the emergency rule must still be consistent with the best scientific information available. Although NMFS could wait for the SSC to consider the new assessment, the time necessary to complete such a process would unduly delay the possibility of increasing the TAC for this stock as quickly as possible and addressing the emergency exigencies of this matter. NMFS has determined that revising the ABC and ACL through this proposed emergency action is consistent with best scientific information available. The duration of this proposed revision to the GB yellowtail flounder ABC is limited by the Magnuson-Stevens Act to 180 days, but may be extended to make the revised ABC and ACL effective for the duration of FY 2011 (through April 30, 2012), consistent with the authority in the Magnuson-Stevens Act to extend emergency actions for up to an additional 186 days.

For FYs 2010–2012, the SSC recommended that the ABC for GOM winter flounder be specified based on 75 percent of recent catches of this stock as part of FW 44. For FY 2011, the Council tasked the SSC with reviewing the GOM winter flounder catches for FY 2009 and any additional survey information collected since GARM III to determine whether revisions to the FY 2011 and 2012 ABCs are necessary for this stock. The SSC considered available information at its August 2010 meeting, as well as an alternative approach to determine the ABC for GOM winter flounder by the Groundfish Plan Development Team (PDT) that utilized an area-swept survey approach to determine the ABC for this stock. However, the SSC was concerned that increased catch resulting from the PDT's alternative approach to specifying ABC for this stock could compromise stock status or rebuilding, given lingering uncertainty regarding the information necessary to evaluate the risks of jeopardizing stock status. Therefore, the SSC did not recommend any changes to the ABC for this stock, and the FW 44

values for FY 2011 and FY 2012 are maintained.

The OFL value for a stock is calculated using the estimated stock size for a particular year, and represents the amount of catch associated with F_{MSY}, *i.e.,* the F that, if applied over the long term, would result in MSY. The ABCs are those recommended to the Council's SSC following the SSC's August 25–26, 2010, meeting and its reports to the Council at the Council's September and November 2010 meetings. The ABCs recommended by the SSC are lower than the OFLs in order to take into account scientific uncertainty in setting catch limits. The ABC value for a stock is calculated using the estimated stock size for a particular year based upon the ABC control rules established by Amendment 16. The ABC represents the amount of catch associated with 75 percent of F_{MSY}, or the F rate required to rebuild the stock within the defined rebuilding time period ($F_{rebuild}$), whichever is lower, with the exception of GOM and Southern New England (SNE)/Mid-Atlantic (MA) winter flounder. For SNE/MA winter flounder, the ABC recommendations are based on estimates of discards that result from recent management measures. For GOM winter flounder, the ABC recommendation is based on 75 percent of recent catches.

TABLE 3—PROPOSED REVISIONS TO OVERFISHING LEVELS AND ACCEPTABLE BIOLOGICAL CATCHES

Stock	OFL (mt, live weight)				U.S. ABC (mt, live weight)			
	FY 2011	FY 2012	FY 2013	FY 2014	FY 2011	FY 2012	FY 2013	FY 2014
Georges Bank cod	7,311	*8,090	NA	NA	4,766	*5,364	NA	NA
Georges Bank haddock	59,948	*51,150	NA	NA	34,244	*29,016	NA	NA
Georges Bank yellowtail flounder	3,495	*4,335	NA	NA	**1,458	NA	NA	NA
White hake	4,805	5,306	NA	NA	3,295	3,638	NA	NA
Pollock	21,853	19,887	20,060	20,554	16,900	15,400	15,600	16,000

*Preliminary estimates that may be revised in 2012 based on TRAC and TMGC considerations.
**This value represents an increase from the U.S. ABC adopted by the Council in FW 45 based on the flexibility afforded by the International Fisheries Agreement Clarification Act and described further in Item 5 of this preamble.

4. ACLs

Similar to adjustments in the OFLs and ABCs described in Item 3 of this preamble, FW 45 proposes revisions to the ACLs for several stocks, including GB cod, GB haddock, GB yellowtail flounder, white hake, and pollock. Pursuant to Magnuson-Stevens Act requirements and Amendment 16, the Council recommended ACLs that are lower than the ABCs, in order to account for management uncertainty. The total ACL for a stock represents the catch limit for a particular FY, considering both biological and management uncertainty, and the limit includes all sources of catch (landed and discards) and all fisheries (commercial and recreational groundfish fishery, State-waters catch, and non-groundfish fisheries). The division of a single ABC value for each stock (for a particular FY) into sub-ACLs, and ACL-subcomponents, accomplishes three objectives: (1) The ABC is sub-divided to account for all components of the fishery and sources of fishing mortality; (2) allocations are made for certain fisheries; and (3) management uncertainty is taken into account, as described in Appendix II of FW 45.

For FW 45 the ABC was sub-divided into fishery components on a stock-specific manner, prior to the consideration of management uncertainty. The following components of the fishery are reflected in the total ABC: Canadian share/allowance (expected Canadian catch); U.S. ABC (available to the U.S. fishery after accounting for Canadian catch); State waters (portion of ABC expected to be caught from State waters outside Federal management); other sub-components (expected catch by other non-groundfish fisheries such as exempted fisheries); scallop fishery; mid-water trawl fishery; commercial groundfish fishery; and recreational groundfish fishery. The percentage of the ABC deducted for anticipated catch from State waters is between 1 and 10 percent for most stocks, but for Atlantic halibut and GOM winter flounder, 50 percent and 25 percent of the ABC of each stock is set aside for State waters catch, respectively. The amount deducted for anticipated catch of other regulated species and ocean pout in other sub-components of the fishery is between 4 to 6 percent of the ABC for each stock, with the exception of windowpane flounder stocks, in which 29 percent is set aside for such catch.

The allocation of yellowtail flounder to the scallop fishery is not changed by this framework. Under FW 44, the Council elected to allocate 100 percent of the estimated GB and SNE/MA yellowtail flounder bycatch associated with the projected scallop catch in FY 2010, and 90 percent of the yellowtail flounder bycatch projected for the scallop fishery in FYs 2011 and 2012. Based on doubts about accurately estimating expected bycatch in the scallop fishery and not wanting to unnecessarily constrain the scallop fishery, the Council voted to maintain the specific FW 44 allocations of yellowtail flounder to the scallop fishery under FW 45, rather than base yellowtail flounder allocations on current information about anticipated bycatch amounts in the scallop fishery. Thus, the SNE/MA yellowtail flounder allocations to the scallop fishery listed in Tables 5 and 6 are the same amounts implemented under FW 44 in 2010 (the allocation of SNE/MA yellowtail flounder remain at 82 and 127 mt, live weight, respectively during FYs 2011 and 2012), while the GB yellowtail flounder allocations to the scallop fishery listed in Tables 11 and 12 remain at 200.8 and 307.5 mt, live weight, respectively, during FYs 2011 and 2012. No specific allocation of Cape Cod (CC)/GOM yellowtail flounder would be made to the scallop fishery, because the incidental catches of this stock by the scallop fishery are relatively low. Catches of this stock will be considered part of the "other sub-component" of the ACL.

The FY 2011 and 2012 yellowtail flounder allocations to the scallop fishery are characterized as sub-ACLs to reflect the fact that the Council adopted AMs for the scallop fishery that would be responsive to yellowtail flounder catches in excess of these sub-ACLs, as part of Amendment 15 to the Atlantic Sea Scallop FMP at its November 2010 meeting. A proposed rule soliciting comment on that action is expected to

be published shortly, with a final decision to approve, partially approve, or disapprove such measures expected in spring 2011. Current regulations set a cap on the amount of yellowtail flounder that may be harvested from the scallop access areas from the SNE/MA and GB yellowtail flounder stock areas. Specifically, current regulations cap yellowtail flounder harvest from scallop access areas at 10 percent of the "total TAC" for each of the stock areas. In light of the proposed ACL components, "total TAC" means "total ACL." For FY 2011, this means 10 percent of 1,416 mt (141.6 mt) for GB yellowtail flounder, based on the proposed total ACL listed in Table 11 proposed based on the flexibility afforded by the International Fisheries Agreement Clarification Act, as further described in Item 4 of this preamble below. Because the U.S./Canada Management Area represents the entire stock area for GB yellowtail flounder, the U.S./Canada Management Area TAC for this stock that is available to the U.S. fishery also represents the ACL for this stock. The specification and distribution of the GB yellowtail flounder ACL is discussed further in Item 5 of this preamble and shown in Tables 11 and 12.

Under this action, the mid-water trawl fishery would be allocated 0.2 percent of the U.S. ABC for GB and GOM haddock. The values for the allocations to the mid-water trawl fishery listed in Table 5 are slightly less than 0.2 percent, due to the 7-percent reduction of these allocations to account for management uncertainty for this stock. For example, the FY 2011 ABC of 32,244 mt was multiplied by 0.002 (32,244 mt × .002 = 68.5 mt), and then reduced by 4.79 mt (68.5 mt × 0.07 = 4.79 mt) to arrive at the proposed allocation of 64 mt. Because the herring fishery already has AMs associated with this allocation that were developed as part of FW 43 (August 15, 2006; 71 FR 46871), all of the haddock allocations to the mid-water trawl fishery are characterized as sub-ACLs.

The concept of management uncertainty for the purpose of developing ACLs, as outlined in the process specified in Amendment 16 and described in detail in FW 44, was characterized as the likelihood that management measures will result in a level of catch that is greater than the catch objective. Consistent with that process, management uncertainty was evaluated for each stock, considering the following elements of the fishery and the FMP: Enforceability; monitoring adequacy; precision of management tools; latent effort; and catch of groundfish in non-groundfish fisheries. For most stocks and components of the fishery (ABC components), the default adjustment (reduction) to the catch level for a fishery component was 5 percent. For stocks with less management uncertainty, the adjustment was 3 percent, and for those stocks or components with more management uncertainty, the adjustment was 7 percent.

Tables 5 through 8 list the proposed distribution of the total ACL for stocks affected by measures in FW 45 to the groundfish fishery, the scallop fishery, the mid-water trawl herring fishery, State waters fisheries, and other fishery sub-components, such as exempted fisheries. A full list of the FY 2011 ACLs will be sent to NE multispecies permit holders and posted on the NMFS Northeast Regional Office Web site (*http://www.nero.noaa.gov*) once finalized. As noted in the FW 44 final rule, while ACLs are specified through FY 2012 for most stocks, it is likely that the Council will adopt ACLs for FYs 2012 through 2014 though a future Council action. Therefore, ACLs specified through FY 2012 in FW 44 and proposed in this action for FW 45 will only be implemented if the anticipated Council action is delayed. In contrast, the pollock ACLs are not expected to be revisited until FY 2013, with any changes effective for FY 2014. The proposed ACL listed in Table 5 for white hake corrects an error published in Table 4 of both the FW 44 proposed (February 1, 2010; 75 FR 5021) and final rules, respectively, that listed the commercial sub-ACL for white hake for FY 2011 as 2,566 mt (the FY 2010 value) instead of the correct value of 2,974 mt. For a detailed description of the process used to estimate management uncertainty and calculate ACLs as part of FW 45, refer to Appendix II of the FW 45 EA (*see* **ADDRESSES**).

TABLE 5—TOTAL ACL, SUB-ACL, AND ACL-SUBCOMPONENTS FOR FY 2011

[Mt, live weight]

Stock	Total ACL	Groundfish sub-ACL	Scallop fishery	Mid-water trawl herring fishery	State waters ACL sub-component	Other ACL sub-components
GB cod	4,540	4,301	0	0	48	191
GB haddock	32,616	30,840	0	64	342	1,370
SNE/MA yellowtail flounder	641	524	82	0	0	27
White hake	3,138	2,974	0	0	33	132
Pollock	16,166	13,952	0	0	769	1,445

TABLE 6—TOTAL ACL, SUB-ACL, AND ACL-SUBCOMPONENTS FOR FY 2012

[Mt, live weight]

Stock	Total ACL	Groundfish sub-ACL	Scallop fishery	Mid-water trawl herring fishery	State waters ACL sub-component	Other ACL sub-components
GB cod*	5,109	4,841	0	0	54	215
GB haddock*	27,637	26,132	0	54	290	1,161
SNE/MA Yellowtail flounder	936	759	127	0	0	40
White hake	3,465	3,283	0	0	36	146
Pollock	14,736	12,612	0	0	754	1,370

*Preliminary estimate that may be revised in 2012 based on Transboundary Resource Assessment Committee and Transboundary Resource Management Committee considerations.

TABLE 7—POLLOCK TOTAL ACL, SUB-ACL, AND ACL-SUBCOMPONENTS FOR FY 2013

[Mt, live weight]

Stock	Total ACL	Groundfish sub-ACL	Scallop fishery	Mid-water trawl herring fishery	State waters ACL sub-component	Other ACL sub-components
Pollock	14,927	12,791	0	0	756	1,380

TABLE 8—POLLOCK TOTAL ACL, SUB-ACL, AND ACL-SUBCOMPONENTS FOR FY 2014

[Mt, live weight]

Stock	Total ACL	Groundfish sub-ACL	Scallop fishery	Mid-water trawl herring fishery	State waters ACL sub-component	Other ACL sub-components
Pollock	15,308	13,148	0	0	760	1,400

The commercial groundfish sub-ACL is further divided into the non-sector (common pool vessels) sub-ACL and the sector sub-ACL, based on the total vessel enrollment in all sectors and the cumulative Potential Sector Contributions (PSCs) associated with those sectors. Table 9 lists the preliminary distribution of the groundfish sub-ACL between common pool and sectors based on rosters submitted to NMFS as of December 1, 2010. This distribution is different from the common pool and sector sub-ACLs listed in the EA for FW 45, as those were based upon preliminary sector roster information and do not reflect updated rosters submitted to NMFS. However, this distribution is the same as the sector sub-ACLs and ACE specified for each sector listed in the proposed rule to approve sector operations plans for FY 2011. That rule uses sector rosters submitted to NMFS as of December 1, 2010, to calculate each individual sector's ACE for FY 2011, and which are expected to publish soon. FY 2011 sector rosters will not be finalized until May 1, 2011, because the owners of individual permits signed up to participate in sectors have until April 30, 2011, to drop out of a sector and fish in the common pool. Therefore, it is possible that the FY 2011 sector sub-ACL listed in Table 9 and the proposed rule to approve the FY 2011 sector operations plans will be reduced at a later date, and the common pool sub-ACL will increase, due to vessels leaving sectors and entering the common pool after publication of the FW 45 final rule and specification of ACLs for FY 2011.

Despite such changes, the proposed groundfish sub-ACL (common pool sub-ACL plus the sector sub-ACL) listed in Tables 5 through 8 would not likely change. Based on the final rosters, NMFS intends to publish a rule in early May 2011 to modify these sub-ACLs, and notify the public if these numbers change. In addition, it is almost certain that all of the FY 2012 sub-ACLs for the common pool and sectors will change and be re-specified prior to FY 2012 due to annual changes to the sector rosters and changes to the ABCs for GB cod, GB haddock, and GB yellowtail flounder based on the specification of Canadian TACs for these stocks, as described above in Item 5 of this preamble.

TABLE 9—PRELIMINARY DISTRIBUTION OF GROUNDFISH SUB-ACL BETWEEN COMMON POOL AND SECTOR VESSELS

[Mt, live weight]

Stock	Groundfish sub-ACL		Common pool sub-ACL		Sector sub-ACL	
	FY 2011	FY 2012*	FY 2011	FY 2012*	FY 2011	FY 2012*
Georges Bank cod	4,301	4,841	99	111	4,202	4,730
Georges Bank haddock	30,840	26,132	129	109	30,711	26,023
Georges Bank yellowtail flounder**	1,142	1,142	17.4	17.4	1,124.6	1,124.6
White hake	2,974	3,283	35	39	2,939	3,244
Pollock	13,952	12,612	138	125	13,814	12,487

*Preliminary estimate that may be revised in 2012 based on updated sector rosters and Transboundary Resource Assessment Committee and Transboundary Resource Management Committee considerations.

**These values represent an increase from the ACLs adopted by the Council in FW 45 based on the flexibility afforded by the International Fisheries Agreement Clarification Act and described further in Item 5 of this preamble.

5. Annual Specifications for the U.S./Canada Management Area

The FMP specifies a procedure for setting annual hard TAC levels (*i.e.,* TACs that, when reached, will trigger a regulatory response in the form of area closures or other restrictions) for Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder in the U.S./Canada Management Area. The regulations governing the annual development of TACs were authorized by Amendment 13 to the FMP in order to be consistent with the Understanding, an informal agreement between the Northeast Region of NMFS and the Maritimes Region of the Department of Fisheries and Ocean of Canada (DFO) that outlines a process for the management of the shared GB groundfish resources. The Understanding specifies an allocation of TAC for these three stocks for each country, based on a formula that considers historical catch percentages and current resource distribution.

Annual TACs for these stocks are determined through a process involving the Council, the TMGC, and the U.S./Canada Transboundary Resources Steering Committee. In August 2010, the TMGC approved the 2010 Guidance

Documents for Eastern GB cod and Eastern GB haddock, which included recommended U.S. TACs for these stocks. The recommended FY 2011 TACs were based on the most recent stock assessments (TRAC Status Reports for 2010), and the fishing mortality strategy shared by NMFS, the Department of Fisheries and DFO. The shared strategy has two parts: (1) To maintain a low to neutral (less than 50-percent) risk of exceeding the F limit reference (Fref = 0.18, 0.26, and 0.25 for cod, haddock, and yellowtail flounder, respectively); and (2) when stock conditions are poor, F should be further reduced to promote rebuilding. The Council reviewed the recommendations of the TMGC and approved those recommendations at its September 2010 meeting, as detailed further below.

The TMGC concluded that the most appropriate combined U.S./Canada TAC for Eastern GB cod for FY 2011 is 1,050 mt. This TAC corresponds to the average of the pertinent two models for a low risk (less than 25-percent) of exceeding the Fref of 0.18 (*i.e.,* F_{MSY}) in FY 2011, and a greater than neutral probability of biomass growth of up to 10 percent. The annual allocation shares between countries for FY 2011 are based on a combination of historical catches (10-percent weighting) and resource distribution based on trawl surveys (90-percent weighting). Applying this formula results in the proposed allocations of 19 percent of the shared TAC to the U.S. and 81 percent for Canada, or a FY 2011 quota of 200 mt for the U.S. and 850 mt for Canada.

For Eastern GB haddock, the TMGC concluded that the most appropriate combined U.S./Canada Management Area TAC for FY 2011 is 22,000 mt. This corresponds to a 50-percent risk of exceeding Fref (*i.e.,* F_{MSY}) of 0.26, assuming the entire TAC will be caught in FY 2010. In reality, this TAC level represents a low risk level, because the anticipated catch in FY 2010 will likely be less than the FY 2010 TAC. The annual allocation share recommendations between countries for FY 2010 are based on a combination of historical catches (10-percent weighting) and resource distribution based on trawl surveys (90-percent weighting). Applying this formula results in proposed allocations of 43 percent of the shared TAC to the U.S. and 57 percent to Canada, or a FY 2011 quota of 9,640 mt for the U.S. and 12,540 mt for Canada.

For GB yellowtail flounder, the TMGC concluded that the most appropriate combined U.S./Canada Management Area TAC for FY 2011 is 1,900 mt. This TAC corresponds to a low probability (< 25 percent) of exceeding F_{ref} (*i.e.,* F_{MSY}) of 0.25, and an expected 10-percent increase in median biomass from 2011 to 2012. The TMGC noted that F was below 0.15 in 2008 and 2009. The annual allocation share recommendations between countries for FY 2011 are based on a combination of historical catches (10-percent weighting) and resource distribution based on trawl surveys (90-percent weighting). This weighting results in proposed allocations of 55 percent of the shared TAC to the United States and 45 percent to Canada, or a FY 2011 quota of 1,045 mt for the United States and 855 mt for Canada.

TABLE 10—2011 U.S./CANADA TACS (MT, LIVE WEIGHT) AND PERCENTAGE SHARES (IN PARENTHESES)

	Eastern GB cod	Eastern GB haddock	GB yellowtail flounder
Total Shared TAC	1,050	22,000	1,900
U.S. TAC	200 (19%)	9,640 (43%)	1,045 (55%)
Canada TAC	850 (81%)	12,540 (57%)	855 (45%)

This proposed rule notifies the public that a recent statute, the International Fisheries Agreement Clarification Act, signed by President Obama on January 4, 2011, affects the proposed FY 2011 U.S./Canada Management Area TAC and ACL for GB yellowtail flounder. Specifically, the new statute allows for additional flexibility under the Understanding regarding the range of catch levels that may be considered for GB yellowtail flounder, which allows for a higher yearly TAC for this species.

As described in Item 4 of this preamble, the catch limits for GB yellowtail flounder result from the annual recommendation of the TMGC, a group that consists of NMFS and United States fishing industry representatives and their counterparts in the DFO and the Canadian fishing industry. Based on the new flexibility provided by the International Fisheries Clarification Act, the TMGC held a conference call on February 9, 2011, to reconsider the FY 2011 shared GB yellowtail flounder TAC. During this conference call, the TMGC agreed to a revised shared GB yellowtail flounder TAC for FY 2011 of 2,650 mt (documentation of this call is available from NMFS, *see* **ADDRESSES**). This revised TAC represents a 39 percent increase compared to the FY 2011 TAC (*i.e.,* 1,900 mt) originally adopted by the Council as part of FW 45, and would increase the amount of GB yellowtail flounder allocated to the directed NE multispecies fishery (1,142 mt) by 44 percent compared to the amount of this stock originally allocated to this fishery under FW 45 (790.7 mt). NMFS is considering implementing this revised U.S./Canada Management Area TAC for this stock based upon Secretarial emergency authority specified in section 305(c) of the Magnuson-Stevens Act through the final rule that would implement approved measures under FW 45. To put this in the context of the Magnuson-Stevens Act, NMFS is proposing to disapprove the ABC, ACL, and U.S./Canada Management Area TAC for GB yellowtail flounder adopted by the Council in FW 45, and to replace them, through its emergency authority, with the revised ABC, ACL, and U.S./Canada Management Area TAC for this stock recommended by the TMGC following its February 9, 2011 conference call.

NMFS policy guidelines for the use of emergency rules (August 21, 1997; 62 FR 44421) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) if the emergency action is being implemented without prior public comment, the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. In this case, the third prong of these criteria is not directly involved because NMFS is providing opportunity for prior public comment. NMFS policy guidelines further provide that emergency action is justified for certain situations where

emergency action would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone. The 2010 International Fisheries Agreement Act, signed into law by President Obama on January 4, 2011, is considered to be a "recently discovered circumstance," because the Council was not aware if or when the legislation would be considered by Congress when it adopted final measures under FW 45 at its November 2010 meeting. The emergency presents serious management concerns because the low catch limits for GB yellowtail flounder dictated by Magnuson-Stevens Act requirements in force before the International Fisheries Agreement Act was enacted could result in substantially reduced fishing effort and decreased catch and revenue compared to the higher catch limits that would be available if action is taken pursuant to the International Fisheries Agreement Act. For the common pool fishery, when the projected catch of GB yellowtail flounder is equal to the common pool GB yellowtail flounder sub-ACL, such vessels may no longer fish in the Eastern U.S./Canada Area, and may not possess yellowtail flounder caught in the Western U.S./Canada Area. For vessels fishing in sectors, when an individual sector's GB yellowtail flounder ACE is caught, participating vessels may no longer fish in the U.S./Canada Management Area. As a result of the loss of access to the Eastern U.S./Canada Area (for common pool vessels) or the whole U.S./Canada Management Area (for sector vessels), not only do vessels lose revenue associated with GB yellowtail flounder, but they lose revenue associated with multiple other stocks that are caught concurrently, such as GB winter flounder. Emergency action to increase the GB yellowtail flounder ACL and U.S./Canada Management Area TAC would enable additional economic opportunity that could otherwise be forgone and, therefore, likely avoid economic impacts from an unnecessarily low ACL for this stock, based upon applicable law. Therefore, NMFS has determined that the current situation meets the criteria for emergency action.

Because the U.S./Canada Management Area represents the entire stock area for GB yellowtail flounder, the U.S./Canada Management Area TAC for this stock that is available to the U.S. fishery also represents the ACL for this stock. Thus, the revised GB yellowtail flounder TAC proposed in this action also requires applicable changes to the ACL, and how the ACL for this stock is distributed to the various components of the fishery that catch this stock, that were adopted by the Council in FW 45. The proposed revised GB yellowtail flounder ACL, sub-ACL, and ACL sub-components are specified in Tables 11 and 12 for FYs 2011 and 2012, respectively. A revised U.S./Canada TAC for GB yellowtail flounder would not affect the sub-ACL for the scallop fishery, specified by FW 45 as 200.8 mt.

TABLE 11—REVISED GB YELLOWTAIL FLOUNDER TOTAL ACL, SUB-ACL, AND ACL-SUBCOMPONENTS FOR FY 2011

[Mt, live weight]

Total ACL	Groundfish sub-ACL	Scallop fishery	Mid-Water trawl herring fishery	State waters ACL sub-component	Other ACL sub-components
1,416	1,142	200.8	0	0	73

TABLE 12—REVISED GB YELLOWTAIL FLOUNDER TOTAL ACL, SUB-ACL, AND ACL-SUBCOMPONENTS FOR FY 2012

[Mt, live weight]

Total ACL*	Groundfish sub-ACL	Scallop fishery	Mid-water trawl herring fishery	State waters ACL sub-component	Other ACL sub-components
1,426	1,046	307.5	0	0	77

* Preliminary estimate that may be revised in 2011 based on TRAC and TMGC considerations.

The regulations related to the Understanding, promulgated by the final rule implementing Amendment 13, state that "any overages of the GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year." Therefore, if an analysis of the catch of the shared stocks by U.S. vessels indicates that an over-harvest occurred during FY 2010, the pertinent components of the ACL would be adjusted downward in order to be consistent with the FMP and Understanding. If an adjustment to one of the FY 2011 TACs of cod, haddock, or yellowtail flounder is necessary, it will be done consistent with the Administrative Procedure Act, and the fishing industry will also be notified.

6. Incidental Catch TACs and Allocations to Special Management Programs

This proposed rule specifies incidental catch TACs applicable to the NE multispecies special management programs (*i.e.,* special access programs (SAPs) and the Regular B DAS Program) for FYs 2011 and 2012, based on the proposed common pool sub-ACLs listed in Item 4 of this preamble. As noted above, FY 2011 sector rosters will not be finalized until May 1, 2011, because permits currently enrolled in sectors have until April 30, 2011, to drop out of a sector and fish in the common pool. Therefore, the amount of the common pool sub-ACL may change based upon changes to the number of vessels participating in the common pool during FY 2011. Based on the final rosters, NMFS will publish a rule in early May 2011 to modify these sub-ACLs, and notify the public if these numbers change.

Incidental catch TACs are specified for certain stocks of concern (*i.e.,* stocks that are overfished or subject to overfishing) for common pool vessels fishing in the special management programs, in order to limit the amount of catch of stocks of concern that can be caught under such programs. The Incidental Catch TACs proposed below are consistent with the allocation of incidental catch TACs among special management programs in the FMP. However, because pollock is no longer considered overfished or subject to overfishing, FW 45 proposes to remove this species from the list of stocks of concern, and eliminate the incidental catch TAC for this stock.

The incidental catch TACs apply to catch (landings and discards) that end on a Category B DAS (either Regular or Reserve B DAS). The catch of stocks for which incidental catch TACs are specified on trips that start under a Category B DAS and then flip to a Category A DAS do not accrue toward such TACs, but rather the overall common pool sub-ACL for that stock. The incidental catch TACs by stock based on the common pool sub-ACL are shown in Table 13, while Tables 14 and 15 list the distribution of these TACs among existing special management programs.

TABLE 13—PRELIMINARY COMMON POOL INCIDENTAL CATCH TACS BY STOCK FOR FY 2011–2012

[Mt, live weight]

Stock	Percentage of sub-ACL	2011 Incidental catch TAC	2012 Incidental catch TAC
GB cod	2	2.0	2.2
GOM cod	1	1.3	1.3
GB yellowtail flounder	2	0.3	0.3
CC/GOM yellowtail flounder	1	0.3	0.4
SNE/MA yellowtail flounder	1	1.1	1.7
American plaice	5	3.9	4.1
Witch flounder	5	1.2	1.2
SNE/MA winter flounder	1	7.3	7.6
GB winter flounder	2	0.3	0.3
White hake	2	0.7	0.8

TABLE 14—DISTRIBUTION OF INCIDENTAL CATCH TACS AMONG SPECIAL MANAGEMENT PROGRAMS

[Mt, live weight]

Stock	Regular B DAS program (percent)	Closed area I hook gear haddock SAP (percent)	Eastern U.S./Canada haddock SAP (percent)
GB cod	50	16	34
GOM cod	100	na	na
GB yellowtail flounder	50	na	50
CC/GOM yellowtail flounder	100	na	na
SNE/MA yellowtail flounder	100	na	na
Plaice	100	na	na
Witch flounder	100	na	na
SNE/MA winter flounder	100	na	na
GB winter flounder	50	na	50
White hake	100	na	na
Pollock	50	16	34

TABLE 15—INCIDENTAL CATCH TACS FOR SPECIAL MANAGEMENT PROGRAMS BY STOCK FOR FY 2011–2012

[Mt, live weight]

Stock	Regular B DAS program		Closed area I hook gear haddock SAP		Eastern U.S./Canada haddock SAP	
	FY 2011	FY 2012	FY 2011	FY 2012	FY 2011	FY 2012
GB cod	1.0	1.1	0.3	0.4	0.7	0.8
GOM cod	1.3	1.3	na	na	na	na
GB yellowtail flounder	0.15	0.15	na	na	0.1	0.1
CC/GOM yellowtail flounder	0.3	0.4	na	na	na	na
SNE/MA yellowtail flounder	1.1	1.7	na	na	na	na
American plaice	3.9	4.1	na	na	na	na
Witch flounder	1.2	1.2	na	na	na	na
SNE/MA winter flounder	7.3	7.6	na	na	na	na
GB winter flounder	0.1	0.2	na	na	0.1	0.2
White hake	0.7	0.8	na	na	na	na

7. Great South Channel Exemption Area

The current regulations at § 648.80 state that a vessel may not fish in either the GOM or GB Exemption Areas unless it is fishing under a NE multispecies or a scallop DAS, is fishing with exempted gear, or is fishing in an exempted fishery, among other restrictions. Several exempted fisheries were created by previous adjustments to the FMP based on a procedure for adding, modifying, or deleting fisheries from the list of exempted fisheries originally established by FW 9 to the FMP on April 15, 1995 (60 FR 19364), and expanded in Amendment 7 on May 31, 1996 (61 FR 27710). A fishery may be exempted by the NMFS NE RA after consultation with the Council, if the RA determines, based on available data or information, that the bycatch of

regulated species of groundfish is, or can be reduced to, less than 5 percent by weight of the total catch, and that such exemption will not jeopardize the fishing mortality objectives of the FMP.

On October 25, 2005, a request was submitted on behalf of the General Category scallop fleet to establish an additional exempted scallop dredge fishery in the GOM/GB Exemption Area, in the vicinity of traditional scalloping grounds within the area known as the Great South Channel, off Cape Cod, MA. This request was approved, and the Great South Channel Exemption Area was created, on August 31, 2006 (71 FR 51779). That rule allowed vessels issued a general category scallop permit, then an open access permit, and vessels with limited access scallop permits not fishing under a scallop DAS allocation, to use small dredges with a combined width not greater than 10.5 ft (3.2 m) in portions of the Great South Channel. Two large portions of the exemption area were closed seasonally to General Category scallop vessels to protect spawning populations of yellowtail flounder during peak spawning periods, including a southern closure from April 1 through June 30 of each year, and a northern closure from June 1 through June 30. However, limited access scallop vessels fishing under a scallop DAS could still fish within the Great South Channel Exemption Area during those peak spawning periods because their catch of scallops, and, therefore, yellowtail flounder, was limited by the DAS effort controls in the scallop fishery.

Since the 2006 rulemaking that created the Great South Channel Exemption Area, the general category scallop permits have become limited access permits subject to an individual fishing quota (IFQ) system under Amendment 11 to the Atlantic Sea Scallop FMP (April 14, 2008; 72 FR 20090). Amendment 11 redefined the general category permits as "limited access general category," or "LAGC" permits, and imposed limits on the amount of scallop catch from each LAGC IFQ vessels. Because of the catch limits of the IFQs, the amount of regulated species and ocean pout, particularly yellowtail flounder, caught by these vessels is also limited. Thus, the main justification for the spawning protection areas for general category scallop vessels—to minimize the impact on spawning yellowtail flounder—has been significantly mitigated through these catch limits. Further evaluation of the catch of limited access scallop vessels fishing on a DAS during these spawning periods reveals that the bycatch of yellowtail flounder in these areas during the peak spawning periods is below the 5-percent bycatch threshold established for exempted fisheries under Amendment 7. Therefore, based upon an industry request to reevaluate the necessity of these spawning closures, FW 45 proposes to eliminate the yellowtail spawning closure areas within the Great South Channel Exemption Area and allow all scallop vessels, including LAGC scallop vessels, to fish within this area throughout the entire year in accordance with applicable scallop regulations. To clarify that scallop vessels operating in the Great South Channel Exemption Area are still subject to the applicable scallop regulations, a reference to the scallop regulations at subpart D of 50 CFR part 648 was included in the proposed regulations.

8. GOM Cod Spawning Protection Area

During the solicitation of public comment on measures proposed under Amendment 16, several individuals expressed concern regarding the impact of fishing activity on known spawning aggregations of GOM cod. Similar concerns were identified by the Massachusetts Division of Marine Fisheries during the early development of FW 45. In response, FW 45 proposes to create a GOM Cod Spawning Protection Area that would be effective from April through June of each year to protect spawning aggregations of GOM cod.

The proposed GOM Cod Spawning Protection Area is rectangular in shape and would be located just south of the Isle of Shoals off the New Hampshire coastline, with its long axis oriented in a northwest to southeast direction. The exact coordinates for this proposed area are specified in section 4.3.2 of FW 45 and in this proposed rule. This area was identified by researchers at the University of New Hampshire, working in conjunction with several commercial fishing vessels, and corresponds to areas and times when large spawning cod congregate during peak spawning months. The proposed area is intended to prevent fishing from interfering with spawning activity and reducing future recruitment in the fishery.

As proposed, all commercial fishing vessels using gear capable of catching groundfish would be prohibited from fishing within the proposed area from June 1 through June 30 of each year, while all recreational vessels would be prohibited from using gear capable of catching groundfish in the area from April 1 through June 30 of each year. For commercial vessels, only vessels fishing with "exempted gear," as defined in the current regulations, would be allowed into this area during the closure periods. Exempted gear includes pelagic hook and line gear, pelagic longline gear, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, shrimp trawls with a properly configured grate, and surfclam and ocean quahog dredges. Pelagic gillnet gear is currently further defined as a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), that is attached to the boat and fished in the upper two-thirds of the water column. Only pelagic hook-and-line gear, as defined in the current regulations, would be allowed to be used in the area by recreational vessels. For both recreational and commercial vessels, "pelagic hook and line gear" is defined as handline or rod and reel gear that is designed to fish for, or that is being used to fish for, pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time. The catch or possession of any regulated species or ocean pout by vessels using the exempted gear described above from April 1 through June 30 of each year would be prohibited. Both recreational and commercial vessels would be allowed to transit the proposed area, provided all gear is stowed according to existing regulations.

During the development of FW 45, draft measures and discussions at Council and Groundfish Oversight Committee meetings made it clear that the Council did not intend to allow vessels using midwater trawl gear to fish in the proposed GOM Cod Spawning Protection Area from April 1 through June 30. However, it is less clear whether the Council intended this prohibition to also apply to vessels employing purse seine gear. The proposed regulations to implement FW 45 that were submitted by the RA to the Council for deeming consistent with section 303(c) the Magnuson-Stevens Act reflected the current text in the FW 45 document, as described above. Therefore, because midwater trawl gear and purse seine gear are not included in the current list of exempted gear, this action would not allow commercial vessels fishing with either midwater trawl gear or purse seines into this area during June of each year. These regulations were deemed consistent with FW 45 and the FMP by the Council Chairman through a letter dated January 11, 2011. Accordingly, NMFS considers the proposed regulations to be consistent with Council intent for FW 45.

9. Handgear A and B Measures

Cod Trip Limit

Amendment 13 originally created the limited access NE multispecies Handgear A permit and open access NE multispecies Handgear B permit, and specified the existing effort controls for such permits, including trip limits. The cod trip limit for Handgear A and B vessels implemented under Amendment 13 was set at 300 lb (135 kg) and 75 lb (90.7 kg) per trip, respectively, and did not differentiate between the GOM and GB cod stocks. In addition, Amendment 13 implemented measures that adjusted these cod trip limits proportionally to any changes to the GOM cod limit specified for NE multispecies DAS vessels in § 648.86(b), rounded up to the nearest 50 lb (22.7 kg) for Handgear A vessels and 25 lb (11.3 kg) for Handgear B vessels. Further, Amendment 13 did not differentiate between the GOM and GB cod stocks regarding adjustments to the cod trip limits. Thus, under Amendment 13, if the GOM cod limit specified for DAS vessels was reduced, the cod limit for Handgear A and B vessels would be reduced as well, regardless of whether such vessels fished in either the GOM or GB cod stock area, as demonstrated in an adjustment to such trip limits on July 30, 2010 (75 FR 44924).

FW 45 proposes to rectify these two issues by clarifying that the cod trip limits applicable to Handgear A and B vessels are stock-specific to the GOM or GB cod stock, including any adjustments to such trip limits. Handgear A vessels would be subject to an initial cod limit of 300 lb (135 kg) per trip for both the GOM and GB cod stocks, until NMFS adjusts the cod trip limit applicable to common pool vessels fishing under a NE multispecies DAS for either of these stocks below 300 lb (135 kg) per trip. Once either the GOM or the GB cod trip limit for common pool DAS vessels is reduced below 300 lb (135 kg) per DAS, the applicable cod trip limit for Handgear A vessels would be adjusted to be the same as the daily limit for common pool DAS vessels. For example, if only the GOM cod trip limit for NE multispecies DAS vessels was reduced to 250 lb (113.4 kg) per DAS, then the cod trip limit for a vessel issued a Handgear A category permit that is fishing in the GOM Regulated Mesh Area (*i.e.,* the area specified for the GOM cod trip limit) would also be reduced to 250 lb (113.4 kg); however, the cod trip limit for a Handgear A vessel fishing for GB cod south of the GOM Regulated Mesh Area (the GB cod stock area is considered the GB, SNE, and MA Regulated Mesh Areas) would be maintained at 300 lb (135 kg) per trip. The initial Handgear B cod limit for both the GOM and GB stocks would be maintained at 75 lb (90.7 kg) per trip, but would be adjusted proportional (rounded up to the nearest 25 lb (11.4 kg)) to any changes in the daily GOM or GB cod trip limits for DAS vessels in the future, as necessary. For example, if the GOM cod trip limit was reduced by 50 percent from 800 lb (362.9 kg) per DAS to 400 lb (181.4 kg) per DAS, then the cod trip limit for a Handgear B vessel fishing in the GOM Regulated Mesh Area would also be reduced by 50 percent to 37.5 lb (17 kg), rounded to the nearest 25 lb (11.3 kg), or 50 lb (22.7 kg) per trip. In this example, the cod trip limit for a Handgear B vessel fishing for GB cod south of the GOM Regulated Mesh Area would be maintained at 75 lb (90.7 kg) per trip.

FW 45 explicitly provides NMFS with the ability to propose administrative measures necessary to implement the stock-specific cod trip limits, including a letter of authorization (LOA) to fish in defined stock areas. Consistent with existing provisions to administer different cod trip limits for DAS vessels that were first established by FW 20 (April 1, 1997; 62 FR 15381), NMFS proposes to require the owner or operator of a Handgear A or B vessel to declare his or her intent to fish for GB cod by obtaining and retaining on board a paper LOA from the RA. Alternatively, the owner or operator of a Handgear A permitted vessel may declare his or her intent to fish for GB cod south of the GOM Regulated Mesh Area prior to each trip via a vessel monitoring system (VMS), if the vessel elects, or is required (*i.e.,* when fishing in multiple broad stock areas on the same trip), to use VMS under the current regulations. These declarations enable at-sea enforcement personnel to identify the applicable cod trip limits and effectively enforce the appropriate regulations during boarding operations. The minimum participation period for this LOA would be 7 consecutive days to minimize the administrative burden of this provision, consistent with existing practice for LOAs issued to DAS vessels. If a vessel declares via VMS, this would be required on a trip-by-trip basis, and no minimum participation period is necessary.

Because the current cod trip limits are based upon Regulated Mesh Area, not stock area, the owner or operator of a Handgear A or B vessel that intends to fish for GB cod would commit to fishing south of the GOM Regulated Mesh Area. Consistent with the existing cod LOA for DAS vessels, this action proposes to restrict vessels issued the cod LOA described above to fishing south of the GOM Regulated Mesh Area for the duration of the LOA to more effectively enforce this measure. NMFS is particularly interested in soliciting public comment regarding this restriction, as neither FW 45, nor Council or Groundfish Oversight Committee discussion of this measure explicitly considered this restriction.

Access to Seasonal Closure Areas

The catch of regulated species and ocean pout by vessels issued either a Handgear A or B permit participating in the common pool is limited not only by the cod trip limits described above, but also by seasonal closure areas, and the common pool sub-ACL for each stock. The current seasonal closure areas in the GOM and on GB run from March through June, and October and November, and include large portions of inshore waters most frequently fished by the predominantly smaller handgear vessels. Accordingly, many of these vessels are unable to fish during these months, because it would be unsafe for them to venture farther offshore and fish in open areas.

Existing regulations implementing FW 44 allow the RA to adjust the trip limits applicable to common pool vessels, including those issued a Handgear A or B permit, to ensure the common pool sub-ACLs are not exceeded before the end of the FY. This authority was utilized during FY 2010 to reduce trip limits for stocks caught by Handgear A and B vessels, including cod and haddock, as early as May 27, 2010 (75 FR 29678). Thus, handgear vessels are competing against often larger trawl, gillnet, and hook vessels to catch the available sub-ACL of each stock. However, due to the operational limitations caused by the seasonal closure areas, handgear vessels are often precluded from fishing, particularly in the GOM, until June or July of each year. If common pool trip limits are reduced before June to prevent a sub-ACL from being exceeded, the trip limits might be reduced so low as to make it economically unviable for handgear vessels to fish at all during a particular FY.

To ensure that handgear vessels are provided an opportunity to fish during at least the early part of the FY, FW 45 proposes to exempt both Handgear A and B vessels from the GB Seasonal Closure Area defined in § 648.81(g), and to allow Handgear A vessels to also fish in the Sector Rolling Closure Areas defined in § 648.81(f)(2)(vi)(A) through (C), and depicted in section 4.3.3 of FW 45. These latter areas represent smaller portions of the GOM Rolling Closure

Areas, and would enable Handgear A vessels fishing in the GOM a greater chance at catching some of the available sub-ACLs for cod and haddock during a particular FY before such trip limits are reduced to prevent the ACL from being exceeded. It is unlikely that this measure would increase F or jeopardize rebuilding requirements for overfished stocks, as the sub-ACLs and associated AMs established for the common pool are sufficient to prevent overfishing and to continue to rebuild overfished stocks.

10. Dockside/Roving Monitor Requirements

FW 45 proposes several revisions to the existing dockside/roving monitor requirements originally established in 2010 under Amendment 16. Each of these revisions is considered a separate provision and is discussed in further detail below.

Delay in Requirement for Industry To Fund Dockside/Roving Monitors

One of the primary objections to the dockside/roving monitoring program expressed by the public during the development and implementation of Amendment 16 and the development of FW 45 was the high cost of providing sufficient coverage to monitor offloads. As a result, NMFS made sufficient funding available to pay for 100 percent of the costs associated with dockside/roving monitoring coverage in FY 2010, and pledged to do the same in FY 2011 to help alleviate the economic impacts of monitoring costs and smooth the transition to a quota-based management regime in the FMP.

To address lingering concerns regarding the ability of the fishing industry to pay for future costs of a dockside/roving monitoring program, particularly while stocks continue to rebuild, NFMS proposes to delay the industry's responsibility for paying for dockside/roving monitoring coverage until FY 2013. Instead, NMFS would specify coverage levels during FYs 2011 and 2012 based upon available NMFS funding. None of the costs associated with dockside/roving monitors during FYs 2011 and 2012 would be imposed upon the owner or operator of a NE multispecies vessel. NMFS would endeavor to provide dockside/roving monitoring coverage to observe the offloads of up to 100 percent of sector and, for FY 2012, common pool trips, if funds are available. If funds are not available for monitoring 100 percent of groundfish trips, NMFS would first provide dockside/roving monitor coverage to trips that do not have an observer, at-sea monitor, or approved electronic monitoring equipment.

Dockside/Roving Monitoring Program Requirements Beginning in FY 2013

Neither the Council motion approving the delayed industry funding of dockside/roving monitor coverage discussed above, nor FW 45 explicitly describes the Council's intent regarding dockside/roving monitoring requirements beginning in FY 2013. Amendment 16 clearly indicated the Council's intention to monitor landings of regulated species and ocean pout by all limited access NE multispecies vessels beginning in FY 2012, and that the industry would eventually be responsible for the costs of dockside/roving monitoring requirements. Based upon the intention expressed in Amendment 16, NMFS interprets the language describing the measures in the FW 45 EA to reinstate the dockside/roving monitoring requirements originally implemented under Amendment 16 beginning in FY 2013. Thus, proposed regulations to implement FW 45 that were submitted by the RA to the Council for deeming included, starting again in 2013, the requirement for sectors to develop and pay for a dockside/roving monitoring program as part of their annual operations plans, the requirement for common pool vessels to be subject to dockside/roving monitoring upon the transition to a trimester TAC AM, the trip-start and trip-end hail reporting requirements associated with such provisions, and the requirement for dockside/roving monitors to observe the landings of 20 percent of all common pool and sector trips determined in a statistically random manner. These regulations were deemed consistent with FW 45 and the FMP by the Council Chairman through a letter dated January 11, 2011. Accordingly, NMFS considers the proposed regulations to be consistent with Council intent for FW 45.

As noted above, the regulations implementing Amendment 16 currently require common pool vessels to comply with dockside/roving monitoring requirements beginning in FY 2012. To facilitate administration and compliance with the dockside/roving monitoring operational standards specified at § 648.87(b)(5), the regulations at § 648.82(n)(2)(iv) indicate that such vessels may only use one dockside/roving monitor service provider per FY. Further clarification of this requirement was provided in the March 30, 2010, permit holder letter explaining the Amendment 16 regulations. That letter indicated that the owner of each common pool vessel must contract with a dockside/roving monitoring service provider approved by NMFS beginning in FY 2012. Because this action proposes to require most common pool vessels to comply with the dockside/roving monitoring provisions originally implemented under Amendment 16 beginning in FY 2013, this action would revise the regulations at § 648.82(n)(2)(iv) to clearly state that the owner or operator of each common pool vessel subject to dockside/roving monitoring requirements must contract for such services with a service provider approved by NMFS by 2013. The need for vessel owners to contract with a specific service provider is necessary in the absence of any NMFS-controlled dockside/roving monitoring program in which NMFS can act as a mediator between the fishing industry and approved service providers. Further, because each individual permit is considered a separate legal entity, NMFS is not inclined to mandate that common pool vessels use a particular service provider in a particular FY in order to increase competition among service providers and potentially decrease costs to the affected vessel owners. Groups of vessel owners, however, may elect to contract with the same service provider to help lower the costs associated with such requirements.

Exemption of the Dockside/Roving Monitor Requirements for Certain Permit Categories

Vessels issued a limited access NE multispecies Handgear A or Small Vessel Category permit, and vessels issued an open access NE multispecies Handgear B permit, land very small amounts of regulated species and ocean pout compared to vessels issued limited access NE multispecies DAS permits. Thus, dockside/roving monitoring costs would represent a greater proportion of their operational costs compared to NE multispecies vessels operating under a NE multispecies DAS. Based on public input, there is the potential that such costs would be more than the value of fish landed on a particular trip. Accordingly, FW 45 proposes to exempt Handgear A, Handgear B, and Small Vessel category permits from any dockside/roving monitoring requirements when operating in the common pool. Under such an exemption, it would not be possible for dockside/roving monitor service providers to provide statistically random coverage of all common pool trips, as required under Amendment 16. Therefore, the proposed regulations would also revise the Amendment 16 dockside/roving monitoring coverage provisions to accommodate this

exemption, and specify that service providers must provide random coverage of all trips subject to the dockside/roving monitoring requirements.

Trip-End Hail Requirement

Based upon a pilot dockside/roving monitoring program, the dockside/roving monitor provisions implemented under Amendment 16 currently require that vessels submit both a trip-start and trip-end hail report. The trip-start hail report was intended to provide the basic trip information necessary for dockside/roving service providers to coordinate the deployment of dockside/roving monitors, including the date, time, and port of intended landing and offloading. The trip-end hail report provides more detailed information that confirmed or revised information submitted in the trip-start hail report. This latter report is also used by both State and Federal enforcement personnel to facilitate dockside intercepts.

As described above, the Council considered, but did not approve, a motion that would have eliminated the dockside/roving monitoring requirements of Amendment 16. Instead, in FW 45, NMFS proposes to rely upon its available funding to determine the amount of dockside/roving monitoring coverage in FYs 2011 and 2012. If the Council had elected to eliminate completely the dockside/roving monitor requirements, the trip-end hail report would have also been eliminated. Because the recent transition to quota-based management under ACLs and AMs increases incentives to misreport or underreport landings of regulated species and ocean pout, the Council considered it important to ensure that the trip-end hail report in FW 45 was retained, even if there was insufficient NMFS funding to support dockside/roving monitoring coverage in FYs 2011 or 2012. This measure is expected to increase the chances that a particular trip would be subject to dockside inspection by enforcement personnel and may, in turn, increase compliance with applicable measures and the accuracy of landings data used to monitor the fishery.

Beginning in FY 2011, if implemented, FW 45 would require all sector vessels and common pool vessels fishing under a DAS to submit trip-hail report via VMS prior to returning to port. If there is sufficient NMFS funding to provide for some level of dockside/roving monitor coverage, vessels assigned a dockside/roving monitor for a particular trip would be required to submit both a trip-start and a trip-end hail report for that trip, however, consistent with current practice. The trip-end hail report would contain the same information as the trip-end hail report implemented by Amendment 16, including the vessel permit number; vessel trip report (VTR) serial number of the first VTR page for that trip; intended offloading location(s), including the dealer name/offload location, port/harbor, and State for the first dealer/facility where the vessel intends to offload catch and the port/harbor and State for the second dealer/facility where the vessel intends to offload catch; estimated date/time of arrival; estimated date/time of offload; and the estimated total amount of all species retained, including species managed by other FMPs (in pounds, landed weight) on board at the time the vessel first offloads its catch from a particular trip. This report, if submitted when there is insufficient funding to provide for a NMFS-controlled dockside/roving monitoring program, would only be submitted to NMFS' Office of Law Enforcement rather than also to a dockside/roving monitor service provider.

Inspection of Fish Holds

Amendment 16 established approval requirements for entities providing dockside/roving monitoring services. These standards included hiring individual dockside monitors that were capable of climbing ladders and inspecting fish holds. For FY 2010, NMFS developed operational standards necessary to implement the Amendment 16 dockside monitoring provisions, based on a pilot dockside/roving monitoring program conducted during the summer of 2009. These standards did not require dockside monitors to inspect fish holds for FY 2010. However, based on further evaluation of the performance of the dockside monitoring program and consideration of concerns expressed by enforcement personnel, NMFS is proposing to require dockside monitors to inspect the fish holds for any trip that is assigned a dockside/roving monitor beginning in FY 2011. This requirement would enhance the enforceability of existing provisions and minimize the incentives to under-report/misreport the amount of regulated species landed.

11. Sector Measures

Distribution of the PSC From Cancelled Permits

As described in Amendment 16, a PSC represents an individual permit's portion of the total historical landings of each regulated species or ocean pout stock during FYs 1996–2006 by all permits, including those in confirmation of permit history (CPH), that were eligible to participate in the NE multispecies fishery as of May 1, 2008. This date was selected to provide a recent baseline of eligible permits so that the PSCs of each permit could be calculated only once, and then become fixed. Accordingly, if a permit is cancelled after May 1, 2008, its historic landings between FYs 1996–2006 are still used to calculate the total landings by eligible permits, and continue to effectively reduce the PSC of all remaining permits.

As noted above, the current regulations calculate the ACL available to sector and common pool vessels based on the cumulative PSCs of each permit participating in each sector. By default, if the owner of a particular permit has not elected to participate in a sector, that permit is considered to be participating in the common pool, and its PSC contributes to the sub-ACL available to the common pool at large. Similarly, if a permit or CPH is cancelled for any reason, that permit or CPH cannot participate in sectors, or any fishery, and the PSC is used to contribute to the sub-ACL available to the common pool. Thus, the PSCs of cancelled permits artificially inflate the PSCs of those permits operating in the common pool and are not equitably distributed among the permits remaining in the fishery.

Under FW 45, the PSC calculations adopted under Amendment 16 would be performed yearly based upon valid permits, including those held in CPH, that are eligible to participate in the fishery as of a certain date. To do so, the PSCs for each stock calculated pursuant to the process specified in Amendment 16 would be multiplied by a factor of "1/PSC of the remaining permits." The Council provided NMFS with the authority to specify the date on which PSCs are calculated each year. To reflect permits that are renewed by the beginning of each FY (May 1), and allow NMFS time to process such renewals, this action proposes to recalculate PSCs on June 1 of each year, unless another date is specified by the RA. These recalculated PSCs would be used to calculate ACEs for each sector during the following FY. For example, if a PSC is calculated on June 1, 2011, that PSC will affect sector ACE for the 2012 FY that begins on May 1, 2012. This provision would mean that each permit's PSC may increase on a yearly basis to reflect its higher portion of the historic landings of each regulated species and ocean pout stock due to the removal of the landings histories of any

permits that were cancelled by June 1 of each year. On or about July 1 of each year, NMFS would inform permit holders of updated PSCs. If this measure is approved, the RA would recalculate PSCs for each permit using valid permits as of May 1, 2011, to update PSCs for FY 2011 and reflect permits cancelled through FY 2010.

Operations Plan Requirements

Amendment 16 specified that sectors must submit final rosters, proposed operations plans, and associated environmental analyses by September 1, so that NMFS could review such documents as part of the process to approve sector operations for the following FY. NMFS extended this deadline in 2009 to provide more time for vessel owners to decide whether to join sectors for FY 2010. Based on industry input, NMFS requested that the Council formally integrate such flexibility into the current regulations as part of FW 45. Thus, NMFS proposes to require sectors to provide preliminary rosters and proposed operations plans by September 1, but to submit final rosters by December 1. Draft rosters by September 1, and final rosters by December 1, provide NMFS with the information it needs to review or conduct environmental analyses associated with draft sector operations plans, while allowing vessel owners additional time to decide whether to participate in sectors, or which sector to join during the following FY.

Sector Exemptions

Amendment 16 defined several measures for which sectors cannot request an exemption. These include year-round closure areas, permitting restrictions, gear restrictions designed to reduce impacts to habitat, and reporting requirements. Amendment 16 specifically noted that sectors could request an exemption from the DAS reporting requirements, as sectors were universally exempted from the NE multispecies DAS restrictions. As part of public comments received on the proposed rule to implement Amendment 16 (December 31, 2009; 74 FR 69382), several members of the public requested that NMFS exempt sector vessels operating west of 72° 30′ W. long. (*i.e.,* Shinnecock Inlet, NY) and using larger mesh in the monkfish fishery from the Amendment 16 dockside/roving monitoring requirements. This requirement was based on the argument that regulated species are rarely encountered in waters south of New York, particularly when using the large mesh required in the monkfish fishery. NMFS disapproved this request based on the Amendment 16 requirements to monitor all sector trips.

Similar concerns were raised during the final meeting to approve measures for FW 45. To reduce dockside/roving monitoring costs, especially due to infrequent landings of regulated species in more southerly ports, some individuals sought to limit the geographic scope of dockside/roving monitoring requirements, or exempt vessels landing in particular ports from the dockside/roving monitoring requirements. FW 45 proposes to address these concerns by specifically removing dockside/roving monitoring requirements from the list of reporting requirements at § 648.87(c)(2)(i). This would enable sectors to request exemptions, or at least partial exemptions, from the dockside/roving monitoring requirements to minimize monitoring costs for sector trips targeting monkfish in southern waters, for example.

At-Sea or Electronic Monitoring Requirements

Amendment 16 currently requires that sectors develop and pay for an at-sea or electronic monitoring program starting in FY 2012. This requirement was intended to provide sufficient information to accurately monitor landings and discards of regulated species and ocean pout by sector vessels, while allowing sectors 2 years to develop such a program on their own. As noted above, members of the fishing industry and the Council are concerned about the high cost of at-sea and electronic monitoring requirements. Because of the costs associated with sectors, including costs to join a sector, the Council was concerned that imposing additional monitoring costs on the industry, particular shortly after the transition to sector management and before many of the currently overfished stocks rebuild enable higher ACLs to be specified, would reduce profitability and result in making the sector system an economic failure. Therefore, FW 45 would delay the industry's responsibility for developing and paying for an at-sea or electronic monitoring program by 1 year. Unless the Council further revises this provision, sectors would be responsible for developing and paying for such a program beginning in FY 2013.

During the deliberation of this provision, NMFS expressed concern about the Council's reliance upon NMFS funding to fully support a provision required by the FMP, particularly the specific at-sea or electronic monitoring coverage levels in Amendment 16. Because NMFS' funding is not guaranteed, and depends upon Congressional appropriations, it is likely that funding levels will fluctuate on a yearly basis and may not be sufficient to fully fund the dockside/roving monitoring coverage requirements in the FMP. Thus, NMFS indicated that this measure may not be approvable as part of FW 45.

12. Authorization of New Sectors

FW 45 would authorize five new sectors. These sectors are described in Section 4.2.1 of the FW 45 EA, and include the State of Maine Permit Banking Sector, the State of Rhode Island Permit Bank Sector, the State of New Hampshire Permit Bank Sector, the Commonwealth of Massachusetts Permit Bank Sector, and the Sustainable Harvest Sector III. All operational aspects of these sectors would be specified in their annual operations plans, as submitted to NMFS. Most of these sectors are proposed to be used for the primary purpose of leasing ACE to other sectors. Details of these operations plans are expected to be proposed in a parallel rulemaking to be published in the **Federal Register** soon, as noted above. If approved, each of these sectors must comply with the existing sector provisions, unless otherwise exempted by a future action. The Council is currently considering specifically exempting State-funded and -operated permit banks from several of the existing sector provisions, including the minimum size requirement for sectors originally established under Amendment 16, through a separate rulemaking being developed by the Council. Public comment will be solicited separately on that action.

13. Measures for FY 2011 Under RA Authority

The FMP provides authority for the RA to implement certain types of management measures for the common pool fishery, the U.S./Canada Management Area, and Special Management Programs, as described further below. This proposed rule includes a description of measures that may be considered by the RA for implementation in FY 2011 for these components of the groundfish fishery, in order to provide an opportunity for the public to comment on whether such measures are appropriate. Although these measures are not proposed by the Council for implementation through FW 45, this proposed rule makes the public aware of measures under consideration by the RA, under the authority of the FMP. It also enables the public to comment on such measures in the

context of the measures proposed in FW 45, that, if approved, would also be implemented for FY 2011. The RA may implement measures that differ from the measures described below if, based on current information, such measures are necessary to conform to the requirements of the FMP. However, NMFS does not anticipate the measures that would be implemented will be substantially different than those described below. The measures implemented through RA authority for FY 2011 will be implemented through the FW 45 final rule, or through a separate final rule, if necessary, due to the availability of relevant data or the timing of FW 45.

The FW 44 final rule implemented RA authority to alter common pool trip limits at § 648.86(o). If the RA projects that the catch of any NE multispecies stock allocated to common pool vessels will exceed the pertinent sub-ACL, NMFS may implement or adjust possession and trip limits in order to prevent exceeding the common pool sub-ACL. Table 16 provides a summary of the trip limits that are the default trip limits in effect if the RA takes no action to modify such limits, as well as a summary of trip limit modifications that occurred during FY 2010, and potential starting trip limits that would be in effect for FY 2011. These potential trip limits were developed after considering changes to the 2011 common pool sub-ACLs and sector rosters, catch rates of these stocks during FY 2010, price of fish during FY 2010, bycatch considerations, the potential for differential DAS counting during FY 2011, and other available information. Specifically, compared to the FY 2010 sub-ACLs, FY 2011 sub-ACLs (*see* Table 5) would increase for SNE/MA yellowtail flounder (69 percent), GB cod (25 percent), CC/GOM yellowtail flounder (21 percent), white hake (16 percent), GOM cod (6 percent), American plaice (9 percent), witch flounder (45 percent), GB winter flounder (8 percent), redfish (10 percent), and Atlantic halibut (10 percent). Decreased catch limits compared to FY 2010 are expected for GB haddock (−24 percent), GB yellowtail flounder (−18 percent), pollock (−16 percent), and GOM haddock (−5 percent). Although the slow catch rate of SNE/MA yellowtail flounder by common pool vessels in FY 2010 suggests that trip limits could be increased substantially to increase the catch of this stock in FY 2011, due to concerns over the potential of increased SNE/MA yellowtail flounder trip limits to increase the bycatch and discard of SNE/MA winter flounder (a stock that cannot be possessed by any vessel to help ensure this stock rebuilds according to the approved rebuilding program), only a small increase in the trip limit for this stock is proposed at this time. For stocks that include a range of potential trip limits in Table 16, a final trip limit would be specified in the final rule for this action based upon public comment. NMFS is requesting public input on common pool trip limits for FY 2011.

TABLE 16—DEFAULT, FY 2010, AND POTENTIAL FY 2011 TRIP LIMITS FOR THE COMMON POOL

Stock	Default limit in regulations	FY 2010 limit implemented	Potential FY 2011 limit
GOM cod	800 lb (362.9 kg) per DAS, up to 4,000 lb (1,818.2 kg) per trip.	200 lb (90.7 kg) per DAS, up to 1,000 lb (453.6 kg) per trip; reduced to 100 lb (45.4 kg) per DAS, up to 1,000 lb (453.6 kg) per trip.	500 lb (226.8 kg) per DAS, up to 2,000 lb (907.2 kg) per trip.
GB cod	2,000 lb (907.2 kg) per DAS, up to 20,000 lb (9,072 kg) per trip.	no change to default limit	2,000 lb (907.2 kg) per DAS, up to 20,000 lb (9,072 kg) per trip.
GOM haddock	unrestricted	1,000 lb (453.6 kg) per trip	750 lb (340.2 kg)—1,000 lb (453.6 kg) per trip.
GB haddock	unrestricted	10,000 lb (4,535.9 kg) per trip	7,500 lb (3,402 kg)—10,000 lb (4,535.9 kg) per trip.
GOM winter flounder	unrestricted	250 lb (113.4 kg) per trip	250 lb (113.4 kg) per trip.
GB winter flounder	unrestricted	started at 5,000 lb (2,268 kg); reduced to 1,000 lb (453.6 kg) per trip.	1,000 lb (453.6 kg) per trip.
CC/GOM yellowtail flounder.	250 lb (113.4 kg) per DAS, up to 1,500 (680.4 kg) per trip.	250 lb (113.4 kg) per DAS, up to 1,500 (680.4 kg) per trip.	250 lb (113.4 kg) per DAS, up to 1,500 (680.4 kg) per trip.
GB yellowtail flounder.	unrestricted	started at 2,500 lb (1,134 kg) per trip; reduced to 1,000 lb (453.6 kg) per trip; reduced again to 100 lb (45.4 kg) per trip.	1,000 (453.6 kg)—1,500 (680.4 kg) per trip.
SNE/MA yellowtail flounder.	250 lb (113.4 kg) per DAS, up to 1,500 (680.4 kg) per trip.	250 lb (113.4 kg) per DAS, up to 1,500 (680.4 kg) per trip.	250 lb (113.4 kg) per DAS, up to 1,500 (680.4 kg) per trip—500 lb (226.8 kg), up to 2,000 (907.2 kg) per trip.
American plaice	unrestricted	unrestricted	unrestricted.
Pollock	1,000 lb (450 kg) per DAS; up to 10,000 lb (4,500 kg) per trip.	unrestricted	unrestricted.
Witch flounder	unrestricted	130 lb (59 kg) per trip; reduced to possession prohibition.	250 lb (113.4 kg) per trip.
White hake	unrestricted	Started at 2,000 lb (907.2 kg) per DAS; up to 10,000 lb (4,500 kg) per trip; reduced to 100 lb (45.4 kg) per DAS; up to 500 lb (226.8 kg) per trip.	1,000 lb (453.6 kg)—1,500 lb (680.4 kg) per trip.
Redfish	unrestricted	unrestricted	unrestricted.

Amendment 16 implemented a provision that AMs for the common pool fishery will be triggered for FY 2011 if the catch in FY 2010 exceeds the pertinent common pool sub-ACL (§§ 648.90(a)(5)(i)(A) and 648.82(n)). Specifically, the FMP requires that the DAS counting rate during FY 2011 be adjusted if the catch of the relevant stocks by common pool vessels exceeds the pertinent common pool groundfish sub-ACLs during FY 2010. Based on current information, the common pool catch of witch flounder during FY 2010 will exceed the witch flounder sub-ACL

specified for the common pool (25 mt) by 20 percent or more. As an example, if the percent of the common pool sub-ACL for witch flounder caught at the end of FY 2010 is determined to be 124 percent, the required differential DAS rate would be 1.2 where historically witch flounder are caught. The geographic areas for which the differential DAS rate would apply are defined for witch flounder by the FMP as the Offshore GOM Differential DAS Area, the Offshore GB Differential DAS Area, and the Inshore GB Differential DAS Area, with coordinates specified at § 648.82(n)(1)(i). The differential DAS rate would not apply to the Inshore GOM Differential DAS Area or the SNE/MA Differential DAS Area, provided only the witch flounder ACL is exceeded, and AMs are not required for a stock with predominantly inshore catch. The differential DAS would apply to all Category A trips taken by common pool vessels in the applicable areas. Category A DAS would be charged at a rate of 28.8 hr for every 24 hr fished (1.2 times 24-hr DAS counting), for the time spent fishing in the applicable DAS counting area (noted above) based upon the first VMS position into the applicable differential DAS counting area, and the first VMS position outside of the applicable differential DAS counting area. If the catch of other stocks such as GOM cod exceed their respective sub-ACLs, additional differential DAS restrictions or an adjustment to the DAS allocation may be required. NMFS provides an estimate of the status of the common pool catch to the public through the following Internet address: *http://www.nero.noaa.gov/ro/fso/reports/common_pool/Common_Pool_Summary.html.*

Under authority granted by the FMP (§ 648.85(a)(3)(iv)(D)), the RA may implement rules to optimize the harvest of the transboundary stocks managed under the Understanding. Pursuant to this authority, NMFS is considering postponing the opening of the Eastern U.S./Canada Area for non-sector (common pool) vessels fishing with trawl gear in FY 2011 from May 1, 2011, to August 1, 2011. This action would prevent trawl fishing in the Eastern U.S./Canada Area during the time when cod bycatch is likely to be very high, and prolong access to this area in order to maximize the catch of available cod, haddock, and yellowtail flounder, as well as other valuable stocks such as winter flounder. This action would not affect valid members of sectors fishing with trawl gear in the Eastern U.S./Canada Area, because such vessels are subject to additional restrictions on catch as members of a sector. Industry members believe that sector restrictions provide sufficient incentives for vessels to fish in a manner that optimizes catch, and that such incentives are not existent under common pool regulations. To further constrain fishing mortality on GB cod, NMFS may limit the common pool vessels fishing with non-trawl gear in the Eastern U.S./Canada Area prior to August 1, 2011, to a cod catch of 5 percent of the Eastern GB cod TAC, or 10 mt of cod.

The RA has the authority to determine the allocation of the total number of trips into the Closed Area II Yellowtail Flounder/Haddock SAP based on several criteria, including the GB yellowtail flounder TAC and the amount of GB yellowtail flounder caught outside of the SAP. As implemented in 2005 by FW 40B (June 1, 2005; 70 FR 31323), zero trips to this SAP should be allocated if the available GB yellowtail flounder catch is insufficient to support at least 150 trips with a 15,000-lb (6,804-kg) trip limit (*i.e.,* 150 trips of 15,000 lb (6,804 kg)/trip, or 2,250,000 lb (1,020,600 kg) total. This calculation takes into account the projected catch from the area outside the SAP. Based on the groundfish sub-ACL of 2,125,256 lb (964,016 kg), even if the projected catch from outside the SAP area is zero, there is still insufficient GB yellowtail flounder available to allow the SAP to proceed (*i.e.,* 2,125,256 lb (964,016 kg) available < 2,250,000 (1,020,600 kg) needed). Therefore, based on existing authority, this proposed rule would allocate zero trips to the CA II Yellowtail Flounder SAP for FY 2010, based on a determination that the available TAC of GB yellowtail flounder is insufficient to support a minimum level of fishing activity within the Closed Area II Yellowtail Flounder/Haddock SAP. This means that vessels could fish in this SAP, but would not be allowed to fish any trips using flounder nets, as defined in the regulations at § 648.85(a)(3)(iii)(B), and would instead need to fish with a haddock separator trawl, a Ruhle trawl, or hook gear.

14. Corrections and Clarifications

This proposed rule would also correct a number of inadvertent errors, omissions, and ambiguities in existing regulations in order to ensure consistency with, and accurately reflect the intent of previous actions under the FMP, or to more effectively administer and enforce existing provisions pursuant to the authority provided to the Secretary of Commerce in section 305(d) of the Magnuson-Stevens Act. The following proposed measures are listed in the order in which they appear in the regulations, and indicate the genesis of the regulation and/or the cause of the regulatory error.

Amendment 16 requires the owner or operator of any vessel issued a limited access NE multispecies permit fishing on either a common pool (*i.e.,* non-sector) or a sector trip to declare its intent to fish within one or more of the NE multispecies broad stock areas (BSAs) and provide the vessel trip report (VTR) serial number for the first page of the VTR for that particular trip via VMS prior to leaving port at the start of a fishing trip. In addition, a vessel fishing in more than one BSA per trip must submit a VMS catch report detailing the amount of each species retained from each BSA fished prior to crossing the VMS demarcation line upon its return to port. Because the VTR serial number can only be submitted by a VMS catch report, for trips into more than one BSA, these regulations require duplicative reporting requirements. This action would modify the timing requirements for the submission of the VMS catch report in § 648.10(k)(1) to require all NE multispecies limited access vessels, regardless number of broad stock areas fished, to submit the VMS catch report listing the VTR serial number applicable for that trip prior to crossing the VMS demarcation line upon its return to port following each fishing trip on which regulated species were caught.

To further clarify the administration and enforcement of dockside/roving monitoring provisions originally implemented under Amendment 16 and revised by this action, NMFS is proposing to add a prohibition at § 648.14(k)(18)(i)(D) to state that, if the offloads of a particular trip are assigned to be monitored by a dockside/roving monitor, the vessel cannot offload its catch until the assigned dockside/roving monitor arrives at the designated offloading site specified by the vessel owner or operator.

The regulations at § 648.82(a)(2) currently state that a vessel issued a NE multispecies limited access permit may not call into the DAS program or fish under a DAS, if such vessel carries passengers for hire for any portion of a fishing trip. This provision was first implemented under FW 33 (April 24, 2000; 65 FR 21658) to close a perceived loophole that could have allowed a vessel fishing under a NE multispecies DAS to possess and land fish smaller than the minimum fish size specified for commercial vessels and to sell their catch from such operations. In a similar manner, this action proposes to expand

this provision to apply to vessels fishing on a sector trip or under the limited access NE multispecies Small Vessel Category or Handgear A permits.

In §§ 648.87(b)(1)(i)(A) and 648.90(a)(4)(iii)(E)(*2*), the proposed regulations would add the term "permits" to the phrase "vessels participating in sectors" to reflect that vessels issued permits, including those held in CPH, can participate in sectors.

To provide more flexibility to sectors, Amendment 16 allowed the transfer of ACE between sectors, and also permitted carrying over ACE from one FY to the next. With the exception of GB yellowtail flounder, a sector may carry-over up to 10 percent of its unused ACE for each stock into the following FY. The final rule implementing Amendment 16 did not specify whether the 10 percent carry-over for each stock is to be derived from the unused portion of a sector's total available ACE, including ACE acquired from another sector through an ACE transfer, or from the unused amount of the sector's originally allocated ACE based upon the PSCs of vessels participating in that sector.

The Council did not intend these provisions to allow a sector to exceed its ACE. To clarify how the ACE carry-over provision will be applied, this action proposes to refine the regulations at § 648.87(b)(1)(i)(C) to state that a NE multispecies sector may carry-over up to 10 percent of its allocated ACE for each stock, with the exception of GB yellowtail flounder, into the following FY, provided the sector has not harvested more than 90 percent of its original ACE allocation for that stock by the end of the FY. This provision is intended to limit the applicability of ACE carry-over to only the ACE allocated to a sector and not the ACE acquired from another sector, as part of an ACE transfer. Because the Council did not specifically state whether the ACE carry-over provision applies to allocated or total available ACE, NMFS is specifically seeking public input on this measure.

In addition to the proposed revisions to the calculation of PSCs noted above, this proposed rule would revise the regulatory text describing the calculation of PSCs at § 648.87(b)(1)(i)(E)(*1*) and (b)(1)(i)(E)(*2*). These revisions would not revise the manner in which the PSCs are calculated, as adopted in Amendment 16, but rather they would clarify and more accurately reflect the processes that were, and continue to be, applied to implement such calculations. Specifically, this rule would clarify that the landings histories of any limited access NE multispecies permit, including those that were put into CPH, and those of an open access NE multispecies handgear permit that eventually qualified for, and resulted in, the issuance of a limited access NE multispecies Handgear A permit during FYs 1996 through 2006 would be used to calculate the PSCs for each valid permit as of June 1 each year. In addition, these revisions would provide an example of the landings of regulated species and ocean pout that would not be used to calculate PSC; namely, any landings of yellowtail flounder by scallop vessels operating under a scallop DAS. Finally, the PSC that results from such a calculation would be specified as the PSC for each stock.

This proposed rule includes revisions to the regulatory text at §§ 648.87(b)(1)(iii)(C) and (viii) that provide for the transfer of a sector's ACE for up to 2 weeks into the subsequent FY, and the processing of such ACE transfers by NMFS for up to 61 days. These provisions were originally included in Amendment 16 to provide an opportunity for sectors to participate in the ACE Transfer Program to cover any ACE overages that the sector accrued at the end of the FY. These regulatory provisions are dependent upon the completion of NMFS' evaluation of year-end sector catch, including sector ACE overages, and may not account for the timing of NMFS' year-end evaluation process. Therefore, to account for additional time for this process, if necessary, the phrase "unless otherwise instructed by NMFS" is being added to reference to the 2-week and 61-day deadlines in the regulatory text.

Request for Comments

The public is invited to comment on any of the measures proposed in this rule. NMFS is especially interested in receiving comments on several proposed measures for which the agency has concern, particularly the proposed measure to restrict vessels issued either a Handgear A or Handgear B permit that are issued a LOA to fish south of the GOM Regulated Mesh Area from fishing within the GOM Regulated Mesh Area for the duration of the LOA; the proposed August 1, 2011, delayed opening of the Eastern U.S./Canada Area for common pool vessels fishing with trawl gear; and the proposed initial FY 2011 common pool trip limits for certain stocks.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with FW 45 to the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. Further, pursuant to section 303(c) of the Magnuson-Stevens Act, the Council has deemed this proposed rule as necessary and appropriate to implement FW 45.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA, consistent with the Regulatory Flexibility Act (RFA) analysis contained in FW 45 and the preamble to this proposed rule, has been prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in FW 45, and in the preamble to this rule. A summary of the analysis contained in FW 45 follows. In this analysis, the baseline (no-action alternative) is the set of measures that were in place during FY 2010 (*i.e.,* the measures implemented under Amendment 16 and FW 44). Tables and sections that are referenced in this IRFA refer to those contained in the EA developed for FW 45. A copy of FW 45 is available from the Council (*see* **ADDRESSES**).

Description of and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The measures proposed in FW 45 would affect recreational anglers and any vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit (Handgear B permit) or charter/party permit, or a LAGC scallop permit. In addition, because this action would affect the dockside/roving and at-sea or electronic monitoring program requirements and require dockside monitors to inspect fish holds, this action would also affect any entity intending to provide dockside/roving or at-sea or electronic monitoring services. As of December 20, 2010, the maximum number of small fishing entities (as defined by the Small Business Administration (SBA)) that may be affected by this action would be 3,935 entities. The potentially affected entities include 1,144 limited access NE multispecies DAS permit holders; 133 limited access NE multispecies Handgear A (Handgear A) permit holders; 11 limited access NE multispecies Small Vessel Exemption (Category C) permit holders; 1,156 open access NE multispecies Handgear B (Handgear B) permit holders; 824 open

access NE multispecies charter/party permits; and 667 Atlantic sea scallop LAGC permits. In addition, it is expected that the five entities currently providing dockside/roving monitoring and at-sea or electronic monitoring services would continue to do so in FYs 2011 and 2012, and would be affected by this action. It is likely that the actual number of small fishing entities affected by this action would be much smaller. For instance, information contained in Section 10.11.2 of the FW 45 EA indicates that only 397 vessels had reported any sales of regulated species and ocean pout as of December 2010, including 18 Handgear A vessels, 50 Handgear B vessels, and 329 other vessels issued limited access NE multispecies DAS permits. Further, only 18 entities conducted party/charter operations in the proposed GOM Cod Spawning Protection Area proposed in this action, according to that analysis. Finally, it is difficult to estimate the number of private recreational anglers that may be affected by this action, as the proposed GOM Cod Spawning Protection Area is too small to accurately determine the number of anglers that fish in this area based on available data.

It is important to note that past fishing activity and enrollment in sectors may not be an accurate predictor of future fishing activity. In particular, it is possible that revisions to measures affecting both the Handgear A and Handgear B fisheries may increase participation by vessels issued such permits. In addition, as of December 1, 2010, 835 permits had elected to join a sector during FY 2011, as determined through the submission of sector rosters to NMFS, indicating that 453 permits would be enrolled in the common pool. However, vessels may withdraw from sectors until the beginning of FY 2011 on May 1, 2011. Therefore, because participation in sectors is voluntary, the number of vessels that will actually participate in sectors during FY 2011 and future years is likely to fluctuate based upon whether joining a sector or fishing under common pool measures offers the greater economic advantage to each individual vessel.

The SBA considers commercial fishing entities (NAICS code 114111) to be small entities if they have no more than $4 million in annual sales, while the size standard for charter/party operators (part of NAICS cod 487210) is $7 million in sales. Based on 2005–2007 average conditions, median gross sales by commercial fishing vessels were just over $200,000, and no single fishing entity earned more than $2 million. For regulated charter/party operators, the median value of gross receipts from passengers was just over $9,000, and did not exceed $500,000 in any year during 2001 to 2007. Although multiple vessels may be owned by a single owner, available tracking of ownership is not readily available to reliably ascertain affiliated entities. Therefore, for the purposes of this analysis, each permitted vessel is treated as a single small entity and is determined to be a small entity under the RFA. Accordingly, there are no differential impacts between large and small entities under this proposed rule.

Economic Impacts of the Proposed Action

The economic impacts of each proposed measure is discussed in more detail in Sections 8.4, 9.4, and 10.11 of the FW 45 EA. The following summarizes the economic impacts contained in those sections for each proposed measure.

Revised Status Determination Criteria and Rebuilding Programs

Economic impacts resulting from the proposed revisions to status determination criteria for pollock and the rebuilding period for GB yellowtail flounder are primarily reflected in the ACLs specified for these stocks during future years, as discussed further below. However, an estimate of the present value of the potential revenues of each rebuilding strategy considered for GB yellowtail flounder under FW 45 was developed. This analysis indicates that the proposed rebuilding strategy would result in a U.S. catch that is expected to achieve a present value of about $70.8 million, assuming a 5-percent yearly discount rate over the course of a 10-year period (*i.e.,* through 2020).

ACLs

The total potential revenue of the proposed FY 2011 and 2012 ACLs was estimated to be approximately $187.8 million and $181 million using FY 2010 prices, respectively. However, this estimate assumes that the entire ACL for each stock will be caught, meaning there are no discards and the fishery is using gear that is perfectly selective. To more accurately evaluate the expected economic impacts of ACLs proposed in this action, the catch rate for each stock as of October 16, 2010, was calculated and projected forward for the rest of the FY (*i.e.,* through April 30, 2011) and through FY 2012. Resulting revenues were calculated, after first deducting an estimate of discards. This estimate produced expected commercial revenues of $79.8 million in FY 2011 and $72.5 million in FY 2012. Compared to the no action alternative (*i.e.,* maintaining the FY 2011 and 2012 ACLs implemented under FW 44), the proposed ACLs would reduce revenues by $0.4 million in FY 2011 and by $9.4 million in FY 2012. Assuming the current trend in fishing revenues observed during the first half of FY 2010 continues, expected groundfish revenues would be about $83.7 million in FY 2010. Therefore, the proposed FY 2011 revenues would be about $4 million lower than projected FY 2010 revenues (about 5 percent of groundfish sales, or $12,000 per vessel), while proposed FY 2012 ACLs would produce revenues that are about $11.2 million lower than those expected in FY 2010. These estimates suggest that sectors may be able to obtain higher use rates and, therefore, landings of several stocks compared to landings from previous FYs.

This evaluation incorporates the potential impacts associated with the U.S./Canada Management Area TACs, incidental catch TACs, and the proposed allocation of yellowtail flounder to the scallop fishery, as each of these components is part of the available ACL for applicable stocks. As a result, no additional impacts beyond those described above are expected for these provisions. However, separate analysis was conducted to provide more detailed information regarding the potential specific impacts of these provisions, as detailed further below.

The primary reason for the difference in the expected revenue under this proposed action and the no action alternative or the expected FY 2010 revenues is the lower ACLs of GB haddock and GB yellowtail that result from the aging of the very large 2003 year class of GB haddock and the reduced ACL for GB yellowtail flounder that is necessary to rebuild this stock under the proposed rebuilding program. These reduced ACLs are sufficient to overcome any gains resulting from the updated status and associated increased ACLs for pollock proposed under this action. However, because the FW 45 EA applied the 2010 catch rates to the lower FY 2011 and 2012 sub-ACL for GB haddock, it is possible that the adverse economic impacts specified in the FW 45 EA were overestimated. Rather than assuming that the 2010 catch rate for this stock would continue into future FYs, as was done in the FW 45 EA, it is reasonable to assume that the fishery is capable of catching the same amount of GB haddock in future FYs. If the same amount of GB haddock is caught in FYs 2011 and 2012 as is projected based on observed catch rates so far in FY 2010, then the realized adverse economic

impacts of the ACLs proposed in this action would be less than those estimated in the FW 45 EA. Given that GB haddock, pollock, and redfish (another rebuilt stock) comprise nearly 70 percent of the aggregate groundfish ACL (41, 18.5, and 10 percent, respectively), improvements in fishing selectivity, particularly while fishing for these stocks, could lead to substantially higher revenues for the fishery.

Because NMFS is also proposing to implement a higher FY 2011 GB yellowtail flounder ACL than that adopted by the Council in FW 45 based on the flexibility afforded by the International Fisheries Agreement Clarification Act, it is likely that fishing revenues will be slightly higher in FY 2011 than that analyzed under FW 45 and described above. The revised FY 2011 GB yellowtail flounder sub-ACL available to the NE multispecies species based upon the TAC approved by the TMGC in its February 9, 2011, conference call is 358 mt (789,255 lb) higher than the ACL adopted in FW 45. At $1.34 per pound ($2.95 per kg), this revised ACL could increase fishing revenues by $1,057,602 in FY 2011. Because GB yellowtail flounder are also caught in conjunction with other regulated species, it is likely that revenues will be even higher based upon additional revenues from landing these other species.

Economic impacts of these ACLs on the fishery at large may not be representative of impacts to individual vessels. Over the past decade, there has been a significant amount of consolidation in this fishery in response to the severely depleted state of the majority of the groundfish stocks and to changes in management measures. In particular, the recent implementation of ACLs, AMs, and an expanded use of sectors under Amendment 16 has affected fishing patterns in ways that are not yet determined. For example, sector measures were intended to provide a mechanism for vessels to increase the economic efficiency of fishing operations. Reasons why fewer vessels have fished thus far may be related to owners with multiple vessels fishing fewer vessels, or vessel owners or sectors using quota differently and waiting to fish later in the fishing year to maximize revenue in response to some of the efficiencies gained through the implementation of sector measures in 2010. It is also likely that some vessels that have not landed groundfish have received revenue from leasing their groundfish allocation or have been fishing in other fisheries. Thus, fewer vessels are actively fishing for and landing regulated species and ocean pout stocks, with 10 percent of the fishing vessels earning more than half of the revenues from such stocks since 2005, leading to a seemingly continuing trend of consolidation in the fishery. However, as alluded to above, this trend began before the implementation and expansion of the sector program, and based on limited data available to date, the trend is not significantly out of proportion to fishing years prior to the implementation of Amendment 16. Based upon concerns over consolidation raised by the public during the development of Amendment 16, the Council is currently working on a white paper regarding fleet diversity and accumulation limits, and has agreed to develop an amendment to the FMP to address concerns identified.

U.S./Canada Management Area TACs

The economic impacts to the groundfish fishery of specification of the U.S./Canada Management Area TACs are difficult to predict due to the many factors that may affect the level of catch. This includes the potential that inseason actions necessary to ensure that the U.S./Canada Management Area TACs for Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder are not exceeded, including area closures, trip limit adjustments, and gear restrictions, may affect the catch of other stocks caught in this area and the timing of when such catch can be landed. The amount of fish landed and sold would not be equal to the sum of the proposed TACs for these stocks, but would be reduced as a result of discards (for the common pool), and may be further reduced by limitations on access to stocks that may result from the associated fishing rules. Reductions to the value of the fish may result from landing large amounts of fish in a short duration following the start of the FY, and the resulting potential impact on markets. It is likely that, because the proposed FY 2011 TACs for these stocks are substantially lower compared to the TACs for FY 2010, the proposed action would result in reduced overall revenue from the U.S./Canada Management Area. Some of this reduction in revenue could be mitigated if the selectivity of the fishery increases such that vessels can minimize the catch of Eastern GB cod and increase catch of abundant resources of Eastern GB haddock.

An evaluation of the specific impacts of the proposed FY 2011 TACs was conducted using FY 2009 prices and discard ratios. It is important to note that this evaluation is not directly comparable to the evaluation of the impacts of proposed ACLs discussed above, due to the use of lower market prices observed during FY 2009 and the likely higher discard rates recorded compared to preliminary estimates from FY 2010 to date. In addition, these impacts are not cumulative, and should not be added to the impacts estimated for the proposed ACLs, as noted above. Nonetheless, this analysis suggests that the proposed FY 2011 U.S./Canada Management Area TACs may result in revenue that is between 48 to 67 percent less than that recorded for FY 2009. Because this analysis used conservative prices from FY 2009, the expected reduction in revenue would likely be less than reported here. In addition, because NMFS is proposing a higher FY 2011 GB yellowtail flounder ACL than that adopted by the Council in FW 45, the resulting reduction in fishing revenue is expected to be less than that analyzed in FW 45, as discussed above. Overall, the primary cause for reduced revenue is the substantially lower proposed FY 2011 TACs compared to those specified for FY 2010 (41 percent lower for Eastern GB cod and 20 percent lower for Eastern GB haddock). The amount of haddock that has been harvested from the U.S./Canada Management Area has been increasing, but it is unknown whether this trend will continue. The delayed opening of the Eastern U.S./Canada Area for common pool vessels using trawl gear that is proposed in this action and described below would likely result in increased revenue from the Eastern U.S./Canada Area, because it is likely to prolong the time period during which the area is open and enable a higher overall catch of all species, particularly GB haddock. Similarly, the proposed closure of the CA II Yellowtail Flounder/Haddock SAP to targeting yellowtail flounder and the associated prohibition of the use of flounder nets in this SAP should reduce the bycatch of these stocks and increase the harvest of the available Eastern GB haddock TAC, prolong the opening of the Eastern U.S./Canada Area, and result in greater overall revenue.

Different impacts would likely be realized by common pool and sector vessels due to the nature of the operations of such groups and applicable regulations. Unlike vessels operating within the same sector, the common pool is unable to actively coordinate fishing operations to maximize fishing revenue based upon resource availability and market price. Therefore, impacts on common pool vessels will be dependent upon the overall rate at which available TACs are caught, and whether any responsive measures necessary to prevent such

TACs from being exceeded are triggered. Further, once the available ACE for a particular stock is caught, sectors must cease fishing operations in the entire stock area. In contrast, while common pool vessels may be subject to more restrictive DAS or trip limits in a particular area, they could continue to fish in the Western U.S./Canada Area even after the GB yellowtail flounder TAC is caught, provided they do not retain any GB yellowtail flounder.

Yellowtail Flounder Allocations to the Scallop Fishery

FW 45 would maintain the yellowtail flounder allocations to the scallop fishery originally implemented under FW 44. This allocation to the scallop fishery recognizes the importance of yellowtail flounder to the prosecution of the scallop fishery and allocates most of the yellowtail flounder that the fishery is expected to catch if it harvests the available scallop yield. It also creates an incentive for scallop fishermen to reduce bycatch of yellowtail flounder in order to maximize scallop yield. The allocation of yellowtail flounder to the scallop fishery in FYs 2011 and FY 2012 would likely have fewer economic impacts on the scallop fishery than those originally estimated in FW 44, because, with the exception of the allocation of GB yellowtail flounder to the scallop fishery in FY 2012 (the proposed action would provide 93 percent of expected yellowtail flounder bycatch by the scallop fishery), that allocation would not constrain scallop catch based on updated estimates of the amount of yellowtail flounder necessary to fully harvest available scallop resources. However, these updated projections of expected yellowtail flounder bycatch by the scallop fishery are based upon data from FY 2009 that are considered to be overly optimistic due to the substantially lower bycatch of yellowtail flounder, particularly from the Nantucket Lightship Closure Area, compared to that observed during previous FYs. In addition, these projections are subject to a high degree of uncertainty, including uncertainty associated with the size of the yellowtail flounder stock. Additional detail regarding the evaluation of the likely economic impacts to the scallop fishery, including those resulting from the proposed yellowtail flounder allocation to the scallop fishery and expected scallop catch and the AMs proposed in that fishery as part of Amendment 15 and FW 22 to the Atlantic Sea Scallop FMP, are contained in the supporting EIS and EA developed for those actions, respectively. Overall, however, it is expected that the allocation of yellowtail flounder to the scallop fishery represents the greatest overall benefit to the nation consistent with the Magnuson-Stevens Act, because it would reduce the likelihood that scallop AMs would be triggered due to excessive catch of yellowtail flounder in FYs 2011 and 2012 and, therefore, put far less fishing revenue at risk compared to other allocation alternatives considered in FW 45. The economic impacts of other alternatives considered for this measure are discussed further below.

The economic impact of this action on the NE multispecies fishery in FY 2011 has two components: (1) The primary revenue reduction due to the forgone sale of yellowtail flounder, and (2) secondary revenue reduction as a result of reduced access to a particular yellowtail flounder stock area. Secondary revenue reduction occurs once a sector's yellowtail flounder ACE is caught and that sector is required to cease fishing in that stock area, or when the GB yellowtail flounder TAC for common pool vessels is caught and the Eastern U.S./Canada Area is closed to such vessels. At a market price of $1.34 per lb ($2.95 per kg), the primary revenue reduction in the NE multispecies fishery associated with the allocations of GB yellowtail flounder to the scallop fishery is estimated at $593,787 and $906,928 for FYs 2011 and 2012, respectively. For SNE/MA yellowtail flounder allocations to the scallop fishery, the primary revenue reduction in the NE multispecies fishery is estimated at $242,241 and $375,179 for FYs 2011 and 2012, respectively.

The secondary revenue reduction in the groundfish fishery from yellowtail flounder allocations to the scallop fishery were estimated using the ratio of the value of catch of all species to yellowtail flounder. In FY 2010, that ratio was approximately 19 to 1 for GB yellowtail flounder. At a market price of $1.34 per lb ($2.95 per kg), the value of each metric ton of GB yellowtail flounder to the NE multispecies fishery is estimated to be $2,954. Accordingly, for each metric ton of GB yellowtail flounder that cannot be caught, approximately $56,130 of revenue from other species would also be lost due to the reduction of catch of other species caught in association with each ton of GB yellowtail flounder caught. Similar to the discussion of the economic impact of the proposed U.S./Canada Management Area TACs, it is important to remember that these impacts are not cumulative, and should not be added to the impacts estimated for the proposed ACLs discussed above. Instead, this discussion provides additional information that clarifies the potential impact of this particular component of the proposed suite of measures that is estimated to be captured by the discussion of the impact of the proposed ACLs on the NE multispecies fishery. It is also not appropriate to consider all of the yellowtail flounder allocated to the scallop fishery as a "loss" to the groundfish fishery because the groundfish fishery does not "own" the yellowtail flounder. Rather, it is more accurate to consider the allocations as a transfer between the two fisheries, particularly given the long and documented history of bycatch of yellowtail flounder in the scallop fishery and the current requirement that scallop vessels must land all legal-size yellowtail flounder.

U.S./Canada Area Measures

This proposed rule would allocate zero trips to target yellowtail flounder in the CA II Yellowtail Flounder/Haddock SAP. This measure would prevent vessels from accessing the SAP to target yellowtail flounder with flounder nets, as defined in the current regulations, but would not reduce the potential revenue from the available ACL of stocks that are caught in this area for several reasons. First, the measures implemented under Amendment 16 allow vessels to access the same SAP area to target GB haddock, a rebuilt stock whose ACL has not been fully harvested in recent years, using hook gear and selective trawl gear such as the haddock separator trawl and Ruhle trawl. Secondly, available ACL of GB yellowtail flounder can also be caught outside this SAP in either the Eastern U.S./Canada Area or the Western U.S./Canada Area. Thus, this measure would not represent a decrease in opportunity or revenue from recent years, because the SAP has not been opened since FY 2004 due to the status of the GB yellowtail flounder stock.

This action would also delay the opening of the Eastern U.S./Canada Area to common pool trawl vessels until August 1, 2011. This delay has been requested by the Council and implemented by NMFS for the past several FYs to reduce the bycatch of Eastern GB cod during the summer months and prolong access to the Eastern U.S./Canada Area. This measure attempts to maximize fishing revenues by increasing the chances that a greater portion of the available Eastern GB haddock TAC can be caught without triggering the premature closure of the Eastern U.S./Canada Area to avoid exceeding the common pool TAC of Eastern GB cod before the end of FY 2011 on April 30, 2012. As noted above

in the description of the economic impacts of the proposed U.S./Canada Management Area TACs, the expected benefits of this measure depend upon the selectivity of the fishery and other factors that are difficult to predict, but will still likely be reduced compared to those observed during FY 2010 due to the reduced TAC of Eastern GB cod. The potential 2011 common pool trip limits listed in Table 14 should increase the likelihood that the fishery will fully harvest, but not exceed, the 2011 common pool sub-ACLs and minimize the need for further revisions to trip limits or differential DAS counting rates. Thus, these trip limits should not result in any different economic impacts than those identified for the proposed 2011 ACLs discussed above.

Great South Channel Exemption Area

This measure would remove the existing yellowtail flounder peak spawning closures and allow LAGC scallop vessels to fish for scallops in the Great South Channel Exemption Area through the year. It is expected that this measure would allow such vessels to harvest individual allocations of scallops in a more cost-effective manner. In doing so, vessel profitability would improve and increase IFQ share values compared to the no action alternative. However, the potential benefit cannot be reliably quantified. If it is later found that fishing with scallop dredge gear during yellowtail flounder peak spawning seasons interferes with yellowtail flounder spawning success, the proposed elimination of the spawning closures may reduce the likelihood that yellowtail flounder stocks will rebuild and could lead to further economic impacts in the future to ensure that the rebuilding requirements of the FMP are achieved.

GOM Cod Spawning Protection Area

FW 45 would create a GOM Cod Spawning Protection Area and prohibit commercial and recreational vessels from fishing in this area with gear capable of catching regulated species and ocean pout from April 1 through June 30 of each year. The proposed measure would affect private recreational anglers and vessels issued a NE multispecies charter/party permit and the value such anglers derive from taking a trip into the proposed protection area. Recreational fishing values are typically measured by the economic surplus beyond what anglers have to pay to take a trip, using specialized surveys that are not available for the recreational groundfish fishery at this time. It can be expected that the proposed action would reduce the economic surplus to anglers that fish in this area, as they would not be allowed to fish for groundfish in their preferred area from April to June of each year. Even if trips could be taken in a different area during these months, the reduction in economic surplus would still impact affected entities.

An estimate of the impact of the proposed measures on charter/party vessels was derived by measuring the loss in passenger revenues if trips are not taken in this area and the vessel cannot fish in another area. During FYs 2007 through 2009, up to 2 percent of charter/party trips taken in the GOM between April and June occurred in the proposed protection area. However, only about 10 vessels are considered likely to be affected by this action based upon their more recent activity within this area. For trips taken in these areas during FYs 2008 and 2009, gross sales were up to $112,000 per year. For vessels that took multiple trips into this area, annual gross sales would be reduced by about 6 to 7 percent, or about $10,000 per vessel (the impacts ranged from less than $1,000 to just over $42,000 per vessel, depending on the FY). Overall, the proposed action would reduce the annual gross sales of the entire charter/party fishery operating in the GOM by between 1.9 to 3 percent. These impacts likely represent a maximum impact, as this analysis did not consider the sales from fishing in alternative locations. If charter/party vessels are able to attract passengers willing to fish in other areas, these impacts would be mitigated, at least to some degree.

Handgear A and Handgear B Measures

If implemented, FW 45 would specify stock-specific cod trip limits and trip limit adjustments (*i.e.,* different trip limits and trip limit adjustments for GOM and GB cod stocks) for vessels issued a limited access NE multispecies Handgear A or an open access NE multispecies Handgear B permit, as described above. In addition, this action would allow Handgear A and Handgear B vessels to access the existing GB Seasonal Closure Area, and Handgear A vessels to access the existing Sector Rolling Closure Areas. Finally, this action would exempt Handgear A and Handgear B vessels from the dockside/roving monitoring requirements, as described further below.

Compared to the no action alternative, the proposed measures are expected to improve the economic opportunity available to such vessels. Although the realized economic impacts of these measures are uncertain as far as the number of vessels that would benefit from these measures based on historic fishing patterns and the degree by which landings by such vessels would change, they are expected to be positive. In particular, specifying stock-specific trip limits and adjustments means that handgear vessels fishing for GB cod would not be subject to lower cod limits if high catch rates of GOM cod by common pool vessels necessitates lower trip limits to prevent the common pool sub-ACL for that stock from being exceeded prior to the end of the FY. Thus, the economic impacts caused by unnecessarily reducing the cod limit for handgear vessels fishing in the GB cod stock area would be avoided. Further, increasing access to seasonal closure areas would provide handgear vessels operating in the common pool a greater chance of landing the allowable cod limit early in the FY before common pool cod trip limits would need to be reduced to ensure the sub-ACL is not exceeded. Further, by maintaining the Handgear A cod trip limit at 300 lb (135 kg) per trip until the applicable cod trip limit for vessels operating under a NE multispecies DAS drops below 300 lb (135 kg) per DAS, such vessels would be better able to land larger amounts of cod and increase fishing revenue compared to the no action alternative.

Dockside/Roving and At-Sea Monitor Requirements

This action would make several changes to the current dockside/roving monitoring requirements, including delaying the requirement for the fishing industry to pay for dockside/roving and at-sea monitoring coverage until FY 2013, exempting vessels issued a NE multispecies Handgear A or B and Small Vessel Category permits operating in the common pool from the dockside/roving monitoring requirements, maintaining the trip-end hail reports in the absence of any dockside/roving monitoring requirements for a particular FY, and requiring dockside monitors to inspect the fish holds. Delaying the fishing industry's responsibility to pay for dockside/roving monitors and exempting handgear and Small Vessel category permits from the dockside/roving monitoring requirements would save approximately $281,000 per year (assuming 20 percent of trips would be covered), while delaying the responsibility for paying for at-sea monitoring would save industry about $5 million per year (assuming 30 percent of trips would be covered). If the level of NMFS funding prevents the Agency from providing sufficient at-sea monitoring coverage through FY 2013, then uncertainty in catch accounting may necessitate the adoption of higher

buffers between the ABC and ACL for each stock in future FYs to account for this increased management uncertainty. Higher buffers would result in decreased ACLs and lower fishing revenues, if adopted in a future action. Maintaining the trip-end hail reports in the absence of any dockside/roving monitoring program for a particular FY would maintain the costs anticipated for such reports, as implemented under Amendment 16. These costs were estimated to be $24,750 ($0.90 per hail report) based on 25,000 trips per year. However, based on fishing patterns during FY 2010, it is likely that the number of trips will be lower in future years, with about 13,000 trips expected during FY 2010. If this trend continues, trip-end hail reports would cost about $12,870 per year. Inspection of fish holds is an administrative measure that would not affect the costs or revenues of fishing operations. Because dockside monitoring service providers are required to have sufficient insurance to cover liability associated with dockside monitor injury, this should result in no impact to either inspected vessels or service providers.

Exempting Handgear A, Handgear B, and vessels issued a Small Vessel Category permit from these regulations would reduce operational costs to such vessels. Assuming dockside/roving monitoring costs remain the same as they are during FY 2010, the estimated costs of dockside/roving monitoring would be a fixed rate of $33 per trip, and an additional $27 for a trip in which a roving monitor is required, with an additional $0.015 per lb ($0.033 per kg) of regulated species landed for 20 percent of trips taken. These costs would represent 5.2 percent of the total regulated species landed by Small Vessel Category permits, and 2.3 percent and 3.7 percent of the regulated species landed by Handgear A and Handgear B permits, respectively. This action would reduce such costs, amounting to an aggregate annual savings of $9,841.

Sector Measures

If implemented, FW 45 would recalculate the PSC for each stock on a yearly basis to reflect the elimination of landings histories from cancelled permits and allow sectors to request an exemption from the dockside/roving monitoring requirements as part of their annual operations plans. Assuming equivalent PSC utilization rates and cost of fishing, the economic value derived from available ACL would be unchanged whether the PSC from cancelled permits is allocated to the common pool under the no action alternative, or equally distributed to all permits as proposed in this action. If, on average, vessels that fish in the common pool are less profitable than sector vessels, then this action would result in an improvement in these vessels' economic efficiency as compared to taking no action. The magnitude of the impact from this provision would likely be small, as few permits have been cancelled since the PSCs were calculated using permits valid as of May 1, 2008. Cancelled permits represent only about 72,000 lb (32,659 kg) of all species combined that would be divided among the 1,288 valid limited access NE multispecies permits based on each permit's individual fishing history. Thus, this measure, in itself, is unlikely to make an unprofitable fishing operation marginally profitable. Nevertheless, this action would provide some positive benefit and increased economic opportunity to all remaining permit holders, and may increase the amount of ACE available on the market to lease. Allowing sectors to request an exemption from the dockside/roving monitoring requirements would likely result in cost savings to applicable sectors that are difficult to quantify. It is expected that some sectors would request an exemption from the dockside/roving monitoring requirements, particularly for trips in southern waters targeting monkfish with large mesh. These trips rarely encounter regulated species and ocean pout, suggesting that the dockside/roving monitoring requirements offer little benefit to increasing the accuracy of monitoring data or the enforceability of sector provisions. Thus, such an exemption, if justified, could result in reducing operational costs and increasing the economic efficiency of sector operations. The environmental analysis developed to support a sector operations plan that includes such an exemption request, not FW 45, would include a discussion of any anticipated economic impacts of such a request.

This action would also approve five new sectors, including four State permit banks and an additional lease-only sector. The approval of these new sectors may affect the market price of both permits or available DAS and ACE on the leasing market. There is a concern that the presence of large institutions such as State governments that have less emphasis on achieving a return on investment, and the potential for such institutions to acquire permits in a short contracting window, would raise the price of available permits for sale. This increase could place a private entity at a competitive disadvantage in relation to the permit market, particularly if access to capital for investment in additional permits by such private entities is limited or already maximized. For these same reasons, State permit banks may also serve to lower the price of DAS or ACE available on the leasing market. The lowering the price of DAS or ACE available on the leasing market by State-operated permit banks, along with the approval of another lease-only sector, may benefit some vessels by providing additional fishing opportunities at a lower market price, especially considering reports that the ACE leasing market that has developed so far during FY 2010 has resulted in higher leasing rates, and a restricted supply of available ACE.

Overall, however, the presence of additional permit banks and lease-only sectors would facilitate price discovery, leading to more efficient markets, the establishment of competitive prices, and a limitation on the ability of market participants to exert some form of monopoly power. Finally, the approval of the lease-only sector may provide some benefits to participating vessels in that it could, depending on the fee structure developed by that sector, reduce or eliminate the need for participating vessels to pay fees associated with dockside/roving and at-sea or electronic monitoring and require participating vessels to only pay a processing fee for any ACE or DAS transactions in which it participates.

Based on funding provided to such permit banks to date, it is unlikely that the amount of permits and associated DAS and ACE that would be able to be purchased by State permit banks would be sufficient to fully meet the demand for available ACE, as a rough estimate suggests that available funding would only able to procure about 1,300 mt of ACE of all stocks, if permits are available to purchase. This benefit is likely to accrue only to a subset of vessels, at least initially, as State permit banks would only be able to lease ACE to vessels that are 45 feet (13.7 m) or shorter and are associated with communities of less than 30,000 residents, based on funding agreements with NMFS. While State permit banks may be able to lower the price of available DAS and ACE, if they elect to offer DAS or ACE at below the prevailing market price, this would affect the returns to private entities in the leasing market that also offer DAS or ACE to lease to other entities.

Any estimate of the magnitude of the possible impacts of the proposed approval of State permit banks or the lease-only sector is speculative. This action would only approve the concept

of such additional sectors, and would not actually approve the annual operations of these sectors. That approval is occurring through a parallel rulemaking to this proposed action.

Corrections

There are several corrections proposed in this rule that are considered to be mostly administrative in nature and do not affect vessel operations that would result in any economic impact to regulated entities. These corrections would include inserting text that would apply a long-standing prohibition on the sale of fish while carrying passengers for hire to vessels fishing on a sector trip and those fishing under the Small Vessel Category and Handgear A permit restrictions, inserting a prohibition to prevent offloading fish prior to the arrival of an assigned dockside/roving monitor, clarifying that sectors can only carry over up to 10 percent of allocated ACE for each stock except for GB yellowtail flounder into the next FY, clarifying that permits in CPH can participate in sectors to reflect the intent of Amendment 16, and revising the text describing how PSCs are calculated to more precisely describe the process outlined in Amendment 16 and implemented by NMFS.

Measures Proposed To Mitigate Adverse Economic Impacts of the Proposed Action

The proposed action contains several measures that would directly or indirectly provide small entities with some ability to offset at least some portion of the estimated economic impacts associated with proposed measures. The major mitigating measures would include allowing LAGC scallop vessels greater access to the Great South Channel Exemption area; increasing access to the seasonal closure areas for Handgear A and Handgear B permits; exempting the existing dockside/roving monitoring requirements; delaying requiring sectors and common pool vessels to pay for dockside/roving and at-sea or electronic monitoring; extending rebuilding period for GB yellowtail flounder and formal recognition of the rebuilt status of pollock; redistributing PSC from cancelled permits to all remaining valid limited access NE multispecies permits; and approving new sectors, including State permit banks and a lease-only sector. During the development of Framework 45, NMFS and the Council considered ways to reduce the regulatory burden on and provide flexibility to the regulated community. The approach taken is consistent with the recent Presidential Memorandum on Regulatory Flexibility, Small Business, and Job Creation (January 18, 2011). Proposed actions and alternatives are described in detail in Framework 45, which includes an Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (available at **ADDRESSES**).

Eliminating the yellowtail flounder peak spawning closure areas in the Great South Channel Exemption Area would enable LAGC scallop vessels greater access to this area. If this measure reduces operational costs by allowing vessels to operate in a more efficient manner, it could increase the economic efficiency of vessel operations and increase the value of the IFQ permits.

Exempting Handgear A, Handgear B, and Small Vessel Category permits from dockside/roving monitoring requirements, delaying industry responsibility for paying for dockside/roving monitoring coverage until FY 2013, and delaying industry responsibility for paying for a sector at-sea monitoring program until FY 2013 would explicitly reduce monitoring costs to affected entities, saving such entities approximately $5.28 million each year compared to the no action alternative.

Allowing vessels with handgear permits access to at least some of the seasonal closure areas would increase the chance that such permits could increase their catch of regulated species, particularly during the early months of the fishing season before trip limits may be reduced to prevent the overall ACLs from being exceeded. Similar benefits would be expected from specifications of stock-specific trip limits and trip limit adjustments for cod for these vessels.

Extending the rebuilding program for GB yellowtail flounder would indirectly reduce economic impacts on NE multispecies vessels by allowing higher ACLs to be specified for the remainder of the rebuilding program compared to the existing rebuilding program adopted for this stock. The adoption of updated biological reference points for pollock would formally end the rebuilding program implemented for this stock under Amendment 16, and enable the specification of higher ACLs on an indefinite basis that would have otherwise expired on April 30, 2011, following the extension of the July 20, 2010, emergency rule.

As noted above, the approval of new sectors, including State permit banks and a lease-only sector, would help to reduce vessel operational costs by increasing the amount of DAS and ACE available on the leasing market, reducing market price for such additional fishing opportunities, and increasing competition in the leasing market by providing alternative means to acquire the ACE necessary for to help vessels remain financially solvent. In addition, it is possible that the lease-only sector could reduce sector monitoring fees due to the presumption that participating vessels would not be actively fishing, but rather exist for the sole purpose of providing PSC that the sector may use to enable other sectors to continue fishing.

Economic Impacts of Alternatives to the Proposed Action

Under the no action alternative, updated status determination criteria would not be adopted for pollock. These updated criteria were adopted in the July 20, 2010, emergency action, but would expire on April 30, 2011, if not formally integrated into the FMP under this action. The expiration of the emergency action would mean that the rebuilding program implemented under Amendment 16 would be reinstated, and that the fishery would not be able to benefit from the harvest the additional pollock based upon its status as a rebuilt stock. The implications of this alternative are transmitted through lower ACLs described in further detail below.

Because FW 45 is a discrete adjustment in a long line of frameworks and amendments, a number and scope of alternatives have either already been considered in earlier actions or are not appropriate in the context of this action. FW 45 considered five alternatives to revising the GB yellowtail flounder rebuilding strategy. These five alternatives included: (1) The no action alternative that would maintain the current FW 42 rebuilding period that would rebuild the GB yellowtail flounder stock by FY 2014 with a 75 percent probability of success; (2) Sub-option A (the proposed action) that would rebuild this stock by 2016 with a 50 percent probability of success; (3) Sub-option B that would rebuild this stock by 2016 with a 60 percent probability of success; (4) Sub-option C that would rebuild this stock by 2016 with a 75 percent probability of success; and (5) Sub-option D that would rebuild this stock by 2019 with a 60 percent probability of success. The present values of a stream of potential revenues over a 10-year period for each of these alternatives are presented in Section 9.4.1 of the FW 45 EA using several discount rates. Discards were not incorporated into this analysis; however, because discard rates are not expected to differ among the

alternatives, this was not expected to affect the ranking of these alternatives.

According to this analysis, sub-option D (rebuilding this stock by 2019 with a 60-percent probability of success) would result in the highest median present values among all alternatives considered, followed by sub-option A (the proposed action), sub-option B, the no action alternative, and sub-option C. This pattern was repeated, regardless of the discount rate applied. Sub-option D would result in U.S. catches with a median present value of $74.7 million through 2020, while the proposed action is expected to yield $70.8 million over the same period, using a 5-percent discount rate. Therefore, sub-option D would result in about $4 million of additional revenue, compared to the proposed action, over the course of 10 years. However, as noted earlier in this preamble, because sub-option D would extend the rebuilding period though FY 2019, the rebuilding period would run 13 years, or 3 years beyond the maximum rebuilding period allowed under the Magnuson-Stevens Act. Therefore, that alternative is not consistent with applicable law. The proposed action, in contrast, is consistent with applicable law and would result in the next highest median present value among the alternatives considered. Thus, the proposed action represents the alternative with the least economic impact of the alternatives that were considered that are also consistent with applicable law.

Under the no action alternative, the ACLs implemented under FW 44 would be retained for FYs 2011 and 2012. Those ACLs do not reflect the updated status of pollock, or the extended rebuilding period for GB yellowtail flounder proposed in this action. This alternative would result in foregone income for NE multispecies vessels, as they would not be able to capitalize on increased ACLs for these stocks under this proposed action. The economic impact of the no action alternative was measured by estimating the revenue associated with landing the full amount of available ACL for each stock using prices as of September 30, 2010. This analysis suggests that the potential value of FY 2011 and 2012 ACLs under the no action alternative would be $191.3 million and $184.6 million, respectively. These estimates are lower than that specified under FW 44 ($205 million and $196 million, respectively) due to changes in prices used. The proposed action would result in a value of between $185.4 million and $187.8 million, depending on the GB yellowtail flounder rebuilding alternative analyzed, or between nearly $3.5 million and $6 million less value than the no action alternative. However, because the no action alternative and GB yellowtail flounder rebuilding sub-option C would specify an ACL of zero for that stock, the potential realized revenues associated with those options would be much lower, since revenues associated with any other stock caught with GB yellowtail flounder would be reduced as well. This factor is particularly important for sectors, as sectors are not allowed to operate in the GB yellowtail flounder stock area since they would not be allocated any GB yellowtail flounder ACE during FYs 2011 and 2012 based on existing regulations.

A more realistic estimate projected FY 2011 landings based upon the ACL utilization rate as of October 16, 2010, and a consideration of discards. This analysis suggests that potential revenues from the no action alternative would be $80.2 million during FY 2011 and $81.9 million during FY 2012, with estimated sector revenues of $71.1 million and $73 million for those FYs, respectively. Compared to the proposed action, the no action alternative would produce about $0.4 million more revenue in FY 2011 and $9.4 million revenue in FY 2012. Once again, this amount does not factor in potential revenue loss from the specification of zero GB yellowtail ACL. Because the no action alternative for ACLs is affected by the integration of updates to the status determination criteria for pollock and the updated rebuilding program for GB yellowtail flounder, the no action alternative for specifying ACLs would not incorporate the best available scientific information and would be, therefore, inconsistent with the Magnuson-Stevens Act.

Failure to specify FY 2011 U.S./Canada Management Area TACs under the no action alternative would result in increased revenue compared to the proposed action. Vessels would be able to harvest the available ACL for GB cod, GB haddock, and GB yellowtail flounder throughout GB, including in the Eastern U.S./Canada Area, but overall catches would still be limited by ACLs specified under this action. Revenue from the catch of other stocks caught in conjunction with these stocks would also be higher under the no action alternative. However, because the no action alternative would ignore the joint efforts to manage transboundary stocks, it would likely set F on such stocks higher in FY 2011 than they actually are (or would be), and perhaps at unsustainable levels. In contrast to the proposed action, the no action alternative may result in long-term negative economic impacts if such fishing would undermine efforts to prevent overfishing and rebuild overfished stocks of GB cod and GB yellowtail flounder and necessitate further action in the future to ensure the FMP's conservation objectives are achieved.

The Council considered one alternative allocation of GB and SNE/MA yellowtail flounder to the Atlantic sea scallop fishery to the allocations proposed in this action based upon the management measures adopted in the scallop fishery as part of FW 22 to the Atlantic Sea Scallop FMP. The Council opted to retain the existing allocations of yellowtail flounder implemented under FW 44, even though it also analyzed additional alternatives as part of FW 22 to the Atlantic Sea Scallop FMP. This allocation to the scallop fishery recognizes the importance of yellowtail flounder to the prosecution of the scallop fishery and allocates most of the yellowtail flounder that the fishery is expected to catch if it harvests the available scallop yield. It also creates an incentive for scallop fishermen to reduce bycatch of yellowtail flounder in order to maximize scallop yield. It is expected that the allocation of yellowtail flounder to the scallop fishery will represent the greatest net benefit to the nation, as it will enable the continuation of one of the nation's most profitable fisheries by reducing the chance that the catch of scallops will be limited by the available bycatch of yellowtail flounder, as described in further detail in FW 45 and the analysis of FW 22 to the Atlantic Sea Scallop FMP.

A possible impact from allocating yellowtail flounder to the scallop fishery is that it may limit opportunities for groundfish fishermen to target other stocks. The FW 45 analysis characterizes this potential impact as secondary revenue at risk. The proposed action to allocate yellowtail flounder to the scallop fishery would place far less fishing revenue at risk compared to the other option considered. For example, based upon the ratio of yellowtail flounder revenues to total groundfish revenues, the amount of fishing revenue at risk in the groundfish fishery (*i.e.,* the amount of groundfish revenue reduction that would be expected if the groundfish fishery was not able to harvest allocated 100 percent of the available yellowtail flounder based on the proposed allocations) is estimated to be $11.2 million in FY 2011 and $17.2 million in FY 2012 for GB yellowtail flounder, and $1.8 million in FY 2011 and $2.8 million in FY 2012 for SNE/MA yellowtail flounder, or a combined $32,560,387 at a discount rate of 3

percent. The amount of fishing revenue at risk in the scallop fishery (*i.e.,* the amount of scallop revenue reduction that would be expected if the groundfish fishery was not able to harvest allocated 100 percent of the available yellowtail flounder based on the proposed allocations) is estimated to be about $4,228,222 in FY 2011 using a discount rate of 3 percent, because the GB yellowtail flounder sub-ACL to the scallop fishery is 93 percent of the amount of yellowtail flounder the scallop fishery is expected to catch in FY 2012, indicating that 7 percent of the scallop revenues from this stock are at risk in FY 2013 based on the AMs implemented in FW 22 to the Atlantic Sea Scallop FMP that would be implemented the year after an overage. Therefore, the total fishing revenue at risk for the proposed allocation is $36.8 million in FY 2011, using a 3 percent discount rate. In contrast, under the other allocation alternative considered (Option 2) that would have only allocated 90 percent of the estimated yellowtail flounder catch by the scallop fishery based upon updated projections, the revenue at risk would be $91,063,372 ($27,042,096 revenue at risk in the groundfish fishery plus $64,021,277 revenue at risk in the scallop fishery) in FY 2011 using a 3 percent discount rate, or $54,274,763 more revenue at risk than the proposed action. Thus, the proposed action put far less fishing revenue at risk. In addition, the proposed action may also result in less adverse biological effects on a wide range of species compared to Option 2, because the proposed action would reduce the likelihood that the scallop bycatch of yellowtail flounder would exceed sub-ACLs and, therefore, the overall yellowtail flounder ABC, and trigger AMs that would alter the distribution of scallop fishing effort and the resulting impacts to other species.

The only other alternative considered to the proposed approval of five new sectors is the no action alternative. The no action alternative for this measure would not approve any new sectors for FY 2011. This may have a small adverse economic impact on permit holders intending to participate in the Sustainable Harvest Sector III. However, permit holders may be able to remain in or join the Sustainable Harvest Sector that was approved under Amendment 16. If the operations plan for the Sustainable Harvest Sector III offered reduced operational costs to participating vessels due to the intended lease-only status of that sector, those costs savings may not be realized under the no action alternative.

Additional sectors were considered for approval under FW 45, but the Council chose not to approve them because they did not submit an operations plan to NMFS by the existing deadline of September 1. Approval of these other sectors, the Northeast Fisheries Sector XIV and the Sustainable Harvest Sector II, may have resulted in a small positive economic impact since permit holders would have had more options for which sectors to join. However, permit holders were able to join other sectors following the Council's decision, so any impacts to such permit holders would be minimal.

Under the no action alternative, the dockside monitoring requirements originally implemented under Amendment 16 would be maintained. These requirements would make sector vessels responsible for developing and paying for a dockside/roving monitoring program beginning in FY 2010, and an at-sea or electronic monitoring program beginning in FY 2012, while all common pool vessels would be subject to dockside/roving monitoring beginning in FY 2012. The no action alternative would have resulted in an estimated annual cost of $9,841 per vessel to Handgear A, Handgear B, and Small Vessel Category vessels. Further, the estimated $280,000 cost of dockside monitoring to the remainder of the fishery would have been imposed on the fleet, as well as the $5 million cost associated with at-sea monitoring during FYs 2011 and 2012, respectively.

Failing to redistribute PSC from cancelled permits to all valid limited access NE multispecies as of a certain date each year as part of the no action alternative would result in continued allocation of such PSC to the common pool. This allocation would provide some marginal benefit to the common pool that would be redistributed to the entire fishery under the proposed action. However, because the amount of PSCs that have been cancelled to date represent a small amount of fish (72,000 lb (32,659 kg) of all regulated species and ocean pout stocks combined), the benefits are not expected to materially affect the operations of the common pool under the no action alternative, particularly because a majority of this PSC is pollock, a species that has not been constraining to the operations by the common pool so far during FY 2010.

The no action alternative would not specify stock-specific cod limits for handgear vessels, allow such vessels increased access to the existing seasonal closure areas, or allow LAGC vessels to fish in the Great South Channel Exemption Area during peak yellowtail flounder spawning periods. It would maintain the existing value of such permits, and not improve the economic opportunity provided to these vessels as part of the proposed action. Such an action would reduce the economic efficiency of such vessels.

The no action alternative would also maintain the existing recreational measures and would not implement the proposed GOM Cod Spawning Protection Area. Since FY 2007, the number of trips taken by charter/party vessels in the GOM has steadily declined, with gross receipts declining by almost $2 million based on an average ticket price of $60 per person. Thus, the no action alternative is not likely to alter what appears to be a continuing downward trend in participation in the charter/party fishery in the GOM in recent years.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

Reporting and Recordkeeping Requirements

The only reporting and recordkeeping requirements affected by this proposed rule are the request for a LOA to fish south of the GOM Regulated Mesh Area by Handgear A and Handgear B vessels, or a similar declaration via VMS prior to each trip by Handgear A vessels required to use VMS under the existing regulations, and the trip-end hail report already approved as part of Amendment 16. This action would not impose any new reporting or recordkeeping requirements that have not already been in existence. However, it would require additional vessels (handgear vessels) to comply with the LOA requirements. Existing reporting and recordkeeping requirements for the dockside/roving and at-sea or electronic monitoring programs approved under Amendment 16 have been included below for reference.

The costs associated with the reporting and recordkeeping requirements supporting measures proposed in this action are detailed in the PRA analysis associated with Amendment 16 and the permit family of forms for the Northeast Region of NMFS. The time burden associated with a telephone call to request for a LOA to fish south of the GOM Regulated Mesh Area is estimated at 5 minutes, with no costs to vessels requesting such a LOA. The cost associated with a similar declaration via VMS is estimated at $0.50 per submission. For the trip-end hail reports, the yearly cost to each vessel would be approximately $17, assuming that such reports were made via VMS. Costs to vessels receiving

dockside/roving monitoring services proposed under Amendment 16 include $10 per year for confirming pre-trip hail reports and $13 per year to confirm trip-end hail reports and specify whether a particular trip would be observed by a dockside monitor. Requirements to maintain and enter data into a dockside monitoring database would cost approximately $4,225 per service provider annually, while submitting dockside monitoring data to NMFS would cost each service provider approximately $36,000 per year. Similar costs to service providers are expected to notify sector vessels of selection for at-sea/electronic monitoring coverage ($3,125 per year) and to submit at-sea or electronic monitoring data to NMFS ($36,000 per year).

Other Compliance Requirements

This proposed rule contains a collection-of-information requirement subject to the PRA and which has been approved by OMB under the various OMB control numbers listed below. Public reporting burden for these collections of information are estimated to average, as follows:

1. VTR submissions, OMB# 0648–0605, (5 min/response);
2. Sector operations plan and associated NEPA analysis, OMB# 0648–0605, (640 hr/response);
3. Dockside/at-sea monitoring service provider application, OMB# 0648–0605, (10 hr/response);
4. Dockside/at-sea monitoring service provider response to application disapproval, OMB# 0648–0605, (10 hr/response);
5. Data entry for sector discard monitoring system, OMB# 0648–0605, (3 min/response);
6. Sector weekly catch report, OMB# 0648–0605, (4 hr/response);
7. Sector annual report, OMB# 0648–0605, (12 hr/response);
8. Notification of expulsion from a sector, OMB# 0648–0605, (30 min/response);
9. Request to transfer ACE, OMB# 0648–0605, (5 min/response);
10. VMS certification form, OMB# 0648–0605, (10 min/response);
11. VMS confirmation call, OMB# 0648–0605, (5 min/response);
12. VMS area and DAS declaration, OMB# 0648–0605, (5 min/response);
13. VMS trip-level catch reports, OMB# 0648–0605, (15 min/response);
14. Request for a LOA to participate in the GOM Haddock Gillnet Pilot Program, OMB# 0648–0605, (5 min/response);
15. Request for a LOA to fish in a NE multispecies RGA, OMB# 0648–0605, (5 min/response);
16. VMS declaration to fish in a NE multispecies RGA, OMB# 0648–0605, (5 min/response);
17. Pre-trip hail report to a dockside monitoring service provider, OMB# 0648–0605, (2 min/response);
18. Trip-end hail report to a dockside monitoring service provider, OMB# 0648–0605, (15 min/response);
19. Confirmation of dockside monitoring trip-end hail report, OMB# 0648–0605, (2 min/response);
20. Dockside/roving service provider data entry, OMB# 0648–0605, (3 min/response);
21. Dockside/roving or at-sea monitor deployment report, OMB# 0648–0605, (10 min/response);
22. Dockside/roving or at-sea monitoring service provider catch report to NMFS upon request, OMB# 0648–0605, (5 min/response);
23. Dockside/roving or at-sea monitor report of harassment and other issues, OMB# 0648–0605, (30 min/response);
24. OLE debriefing of dockside/roving or at-sea monitors, OMB# 0648–0605, (2 hr/response);
25. Copy of dockside/roving or at-sea monitoring service provider contract upon request, OMB# 0648–0605, (30 min/response);
26. Copy of dockside/roving or at-sea monitoring service provider information materials upon request, OMB# 0648–0605, (30 min/response);
27. Observer program pre-trip notification, OMB# 0648–0605, (2 min/response);
28. Daily VMS catch reports when fishing in the U.S./Canada Management Area and CA II SAPs, OMB# 0648–0605, (15 min/response);
29. Daily VMS catch reports when fishing in the CA I Hook Gear Haddock SAP, OMB# 0648–0605, (15 min/response);
30. Daily VMS catch reports when fishing in the Regular B DAS Program, OMB# 0648–0605, (15 min/response);
31. Copy of the dealer weigh-out slip or dealer signature of the dockside monitor report, OMB# 0648–0605, (2 min/response);
32. Forward trip start/end hails to NMFS, OMB# 0648–0605 (2 min/response);
33. Notification to vessel/sector/NMFS of monitor emergency, OMB# 0648–0605 (5 min/response);
34. Initial vessel application for a limited access Handgear A permit, OMB Control Number 0648–0202, (10 min/response);
35. DAS Transfer Program application, OMB Control Number 0648–0202, (5 min/response);
36. VMS purchase and installation, OMB Control Number 0648–0202, (1 hr/response);
37. Automated VMS polling of vessel position twice per hour while fishing within the U.S./Canada Area, OMB Control Number 0648–0202, (5 sec/response);
38. VMS proof of installation, OMB Control Number 0648–0202, (5 min/response);
39. Expedited submission of a proposed SAP, OMB Control Number 0648–0202, (20 hr/response);
40. Request to power down VMS for at least 1 month, OMB Control Number 0648–0202, (5 min/response);
41. Request for an LOA to participate in the GOM Cod Landing Exemption, OMB Control Number 0648–0202, (5 min/response);
42. Request for an LOA to participate in the Skate Bait-only Possession Limit Exemption, OMB Control Number 0648–0202, (5 min/response);
43. Submission of a sector allocation proposal, OMB Control Number 0648–0202, (50 hr/response);
44. DAS "flip" notification via VMS for the Regular B DAS pilot program, OMB #0648–0202 (5 min/response);
45. DAS "flip" notification via VMS for the Eastern U.S./Canada Haddock SAP Pilot Program, OMB #0648–0202 (5 min/response);
46. NMFS Office of Law Enforcement landings notice requirement for Category 1 herring vessels operating with an observer waiver, OMB# 0648–0521, (5 min/response);
47. Notification and Communication with USCG and Center for Coastal Studies, OMB# 0648–0521, (10 min/response);
48. Written requests to receive a DAS credit for standing by an entangled whale, OMB# 0648–0521, (30 min/response);
49. Vessel baseline downgrade request for the DAS Leasing Program, OMB# 0648–0475, (1 hr/response);
50. Spawning block declaration, OMB# 0648–0202 (2 min/response);
51. Sector Manager daily reports for CA I Hook Gear Haddock SAP, OMB# 0648–0212 (2 hr/response);
52. DAS Leasing Program application, OMB# 0648–0475 (10 min/response); and
53. Declaration of intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip, OMB# 0648–0202 (5 min/response).

Public reporting burden for these requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, andcompleting and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of this

data collection, including suggestions for reducing the burden, to NMFS (*see* **ADDRESSES**) and by e-mail to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 22, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.10, revise paragraph (k)(1) to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(k) * * *

(1) *Reporting requirements for all limited access NE multispecies vessel owners or operators.* In addition to any other reporting requirements specified in this part, the owner or operator of any vessel issued a limited access NE multispecies permit on either a common pool or sector trip must declare the following information via VMS or IVR, as instructed by the Regional Administrator:

(i) *Broad stock area(s) to be fished.* To fish in any of the broad stock areas, the vessel owner or operator must declare his/her intent to fish within one or more of the NE multispecies broad stock areas, as defined in paragraph (k)(3) of this section, prior to leaving port at the start of a fishing trip;

(ii) *VTR serial number.* On its return to port, prior to crossing the VMS demarcation line, as defined at § 648.10, the vessel owner or operator must provide the VTR serial number for the first page of the VTR for that particular trip, or other applicable trip ID specified by NMFS; and

(iii) *Trip-end hail report.* Unless otherwise required to comply with both the dockside/roving monitoring trip-start and trip-end hail reports pursuant to § 648.87(b)(5), beginning in fishing year 2011 (May 1, 2011), upon its return to port and prior to crossing the VMS demarcation line as defined in § 648.10, the owner or operator of any vessel issued a limited access NE multispecies permit that is subject to the VMS requirements specified in paragraph (b)(4) of this section must submit a trip-end hail report to NMFS via VMS, as instructed by the Regional Administrator. The trip-end hail report must include at least the following information, as instructed by the Regional Administrator: The vessel permit number; VTR serial number, or other applicable trip ID specified by NMFS; intended offloading location(s), including the dealer name/offload location, port/harbor, and State for the first dealer/facility where the vessel intends to offload catch and the port/harbor, and State for the second dealer/facility where the vessel intends to offload catch; estimated date/time of arrival; estimated date/time of offload; and the estimated total amount of all species retained, including species managed by other FMPs (in pounds, landed weight), on board at the time the vessel first offloads its catch from a particular trip. The trip-end hail report must be submitted at least 6 hr in advance of landing for all trips of at least 6 hr in duration or occurring more than 6 hr from port. For shorter trips, the trip-end hail reports must be submitted upon the completion of the last tow or hauling of gear, as instructed by the Regional Administrator.

* * * * *

3. In § 648.14, revise paragraph (k)(7)(i)(B); and add paragraphs (k)(9)(i), (k)(15)(ii)(A)(*5*), and (k)(18)(i)(D) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(k) * * *

(7) * * *

(i) * * *

(B) Fish for, harvest, possess, or land regulated species in or from the closed areas specified in § 648.81(a) through (f) and (o), unless otherwise specified in § 648.81(c)(2)(iii), (f)(2)(i), (f)(2)(iii), (f)(2)(vi), (i), (o)(2)(i), or as authorized under § 648.85.

* * * * *

(9) * * *

(i) If operating under the provisions of a limited access NE multispecies Handgear A permit south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), fail to declare the vessel operator's intent to fish in this area via VMS or fail to obtain or retain on board a letter of authorization from the Regional Administrator, as required by § 648.82(b)(6)(iv).

* * * * *

(15) * * *

(ii) * * *

(A) * * *

(*5*) If operating under the provisions of a limited access NE multispecies Handgear B permit south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), fail to obtain or retain on board a letter of authorization from the Regional Administrator, as required by § 648.88(a)(2)(iv).

* * * * *

(18) * * *

(i) * * *

(D) Offload fish before a dockside/roving monitor arrives, if selected to have its offloading events observed by a dockside/roving monitor, as specified by § 648.87(b)(1)(v)(B)(1) and (b)(5)(i)(C).

* * * * *

4. In § 648.80, revise the introductory text to paragraph (a)(18), and remove paragraphs (a)(18)(ii)(C) and (D) to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

(a) * * *

(18) *Great South Channel Scallop Dredge Exemption Area.* Vessels issued a LAGC scallop permit, including limited access scallop permits that have used up their DAS allocations, may fish in the Great South Channel Scallop Dredge Exemption Area, as defined under paragraph (a)(18)(i) of this section, when not under a NE multispecies or scallop DAS or on a sector trip, provided the vessel complies with the requirements specified in paragraph (a)(18)(ii) of this section and applicable scallop regulations in subpart D of this chapter.

* * * * *

5. In § 648.81, revise paragraphs (f)(2)(vi) and (i); and add paragraphs (g)(2)(vi) and (o) to read as follows:

§ 648.81 NE multispecies closed areas and measures to protect EFH.

* * * * *

(f) * * *

(2) * * *

(vi) That are fishing on a sector trip, or under the provisions of a Northeast multispecies Handgear A permit, as specified at § 648.82(b)(6), provided such vessels comply with the following restricted areas referred to as the Sector Rolling Closure Areas:

* * * * *

(g) * * *

(2) * * *

(vi) That are fishing under the provisions of a Northeast multispecies Handgear A permit, as specified at § 648.82(b)(6), or the provisions of a Northeast multispecies Handgear B permit, as specified at § 648.88(a).

* * * * *

(i) *Transiting.* Unless otherwise restricted or specified in this paragraph (i), a vessel may transit CA I, the Nantucket Lightship Closed Area, the Cashes Ledge Closed Area, the Western GOM Closure Area, the GOM Rolling Closure Areas, the GB Seasonal Closure Area, the EFH Closure Areas, and the GOM Cod Spawning Protection Area, as defined in paragraphs (a)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), and (o)(1), of this section, respectively, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel may transit CA II, as defined in paragraph (b)(1) of this section, in accordance with paragraph (b)(2)(iv) of this section. Private recreational or charter/party vessels fishing under the Northeast multispecies provisions specified at § 648.89 may transit the GOM Cod Spawning Protection Area, as defined in paragraph (o)(1) of this section, provided all bait and hooks are removed from fishing rods, and any regulated species on board have been caught outside the GOM Cod Spawning Protection Area and has been gutted and stored.

* * * * *

(o) *GOM Cod Spawning Protection Area.* (1) Except as specified in paragraph (o)(2) of this section, from April through June of each year, no fishing vessel or person on a fishing vessel may enter, fish in, or be in; and no fishing gear capable of catching NE multispecies may be used, on, or be on board, a vessel in the GOM Cod Spawning Protection Area, as defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

GOM COD SPAWNING PROTECTION AREA

Point	N. latitude	W. longitude
CSPA1	42°50.95′	70°32.22′
CSPA2	42°47.65′	70°35.64′
CSPA3	42°54.91′	70°41.88′
CSPA4	42°58.27′	70°38.64′
CSPA1	42°50.95′	70°32.22′

(2) Paragraph (o)(1) of this section does not apply to persons on a fishing vessel or fishing vessels:

(i) That have not been issued a NE multispecies permit and that are fishing exclusively in State waters;

(ii) That are fishing with or using exempted gear as defined under this part, excluding pelagic gillnet gear capable of catching NE multispecies, except for vessels fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided:

(A) The net is attached to the boat and fished in the upper two-thirds of the water column;

(B) The net is marked with the vessel owner's name and vessel identification number;

(C) There is no retention of regulated species or ocean pout; and

(D) There is no other gear on board capable of catching NE multispecies;

(iii) That are fishing as a charter/party or recreational fishing vessel, provided that:

(A) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter, or sale, regardless where the species are caught;

(B) The vessel has no gear other than pelagic hook and line gear, as defined in this part, on board unless that gear is properly stowed pursuant to § 648.23(b); and

(C) There is no retention of regulated species, or ocean pout; and

(iv) That are transiting pursuant to paragraph (i) of this section.

* * * * *

6. In § 648.82, revise paragraphs (a)(2), the introductory text of paragraph (b)(6), and (n)(2)(iv), and add paragraph (b)(6)(iv) to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

(a) * * *

(2) Notwithstanding any other provision of this part, any vessel issued a NE multispecies limited access permit may not call into the DAS program and fish under a DAS, fish on a sector trip, or fish under the provisions of a limited access Small Vessel Category or Handgear A permits pursuant to paragraphs (b)(5) and (b)(6) of this section, respectively, if such vessel carries passengers for hire for any portion of a fishing trip.

(b) * * *

(6) *Handgear A category.* A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(A), may retain, per trip, up to 300 lb (135 kg) of cod, one Atlantic halibut, and the daily possession limit for other regulated species and ocean pout, as specified under § 648.86. If either the GOM or GB cod trip limit applicable to a vessel fishing under a NE multispecies DAS permit, as specified in § 648.86(b)(1) and (b)(2), respectively, is reduced below 300 lb (135 kg) per DAS by NMFS, the cod trip limit specified in this paragraph (b)(6) shall be adjusted to be the same as the applicable cod trip limit specified for NE multispecies DAS permits. For example, if the GOM cod trip limit for NE multispecies DAS vessels was reduced to 250 lb (113.4 kg) per DAS, then the cod trip limit for a vessel issued a Handgear A category permit that is fishing in the GOM Regulated Mesh Area would also be reduced to 250 lb (113.4 kg). Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

* * * * *

(iv) *Declaration.* For any such vessel that is not required to use VMS pursuant to § 648.10(b)(4), to fish for GB cod south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), a vessel owner or operator must obtain, and retain on board, a letter of authorization from the Regional Administrator stating his or her intent to fish south of the GOM Regulated Mesh Area and may not fish in any other area for a minimum of 7 consecutive days from the effective date of the letter of authorization. For any such vessel that is required to use VMS pursuant to § 648.10(b)(4), to fish for GB cod south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), a vessel owner or operator must declare his or her intent to fish south of the GOM Regulated Mesh Area on each trip through the VMS prior to leaving port, in accordance with instructions provided by the Regional Administrator. Such vessels may transit the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), provided that their gear is stowed in accordance with the provisions at § 648.23(b).

* * * * *

(n) * * *

(2) * * *

(iv) *Monitoring requirements.* Except as specified in paragraph (n)(2)(iv)(C) of this section, starting in fishing year 2012 (May 1, 2012), landings of regulated species or ocean pout by common pool vessels shall be monitored at the point of offload by independent, third-party service providers approved to provide such services by NMFS, as specified in paragraphs (n)(2)(iv)(A) and (B) of this section. Unless otherwise instructed by

NMFS, these service providers shall deploy dockside monitors to monitor the offload of catch directly to a dealer, and roving monitors to monitor the offload of catch onto a truck for subsequent shipment to a dealer. For fishing year 2012 only, common pool vessels must comply with any dockside/roving monitoring program specified by NMFS pursuant to § 648.87(b)(1)(v)(B)(*1*). None of the costs associated with dockside/roving monitors during fishing year 2012 shall be paid by the owner or operator of a vessel subject to these requirements. Starting in fishing year 2013 and thereafter, the costs associated with monitoring vessel offloads shall be the responsibility of individual vessels, unless otherwise instructed by NMFS. An individual vessel owner or operator may only use one dockside/roving monitoring service provider per fishing year beginning in fishing year 2013, and must contract for such services with a service provider approved by NMFS pursuant to § 648.87(b)(4), as instructed by the Regional Administrator. Both common pool vessels and service providers providing offloading monitoring services will be subject to the requirements specified in § 648.87(b)(5).

(A) *Coverage levels.* For fishing year 2012, dockside/roving monitoring coverage levels shall be determined by NMFS based on available funding. If NMFS does not require 100-percent coverage of all common pool trips, NMFS shall first provide dockside/roving monitoring for trips that are not also assigned an observer or at-sea monitor pursuant to § 648.11. Starting in fishing year 2013, at least 20 percent of the trips taken by vessels operating under the provisions of the common pool shall be monitored. To ensure that these levels of coverage are achieved, if a trip has been selected to be observed by a dockside/roving monitor, all offloading events associated with that trip must be monitored by a dockside/roving monitor, as specified in paragraph (n)(2) of this section, and a vessel may not offload any of its catch until the dockside/roving monitor arrives. For example, a vessel offloading at more than one dealer or facility must have a dockside/roving monitor present during offload at each location. All landing events at remote ports that are selected to be observed by a dockside/roving monitor must have a roving monitor present to witness offload activities to the truck, as well as a dockside monitor present at each dealer to certify weigh-out of all landings. Except as provided in this paragraph (n)(2)(iv)(A) or paragraph (n)(2)(iv)(C) of this section, or as instructed by the Regional Administrator, any service provider providing dockside/monitoring services required under this paragraph (n)(2)(iv) must ensure that coverage is randomly distributed among all such trips, and that the landing events monitored are representative of fishing operations by common pool vessels throughout the fishing year.

(B) *Dockside/roving monitor service provider standards.* Starting in fishing year 2013, a common pool vessel must employ a service provider approved by NMFS to provide dockside/roving monitor services, as identified by the Regional Administrator. To be approved to provide the services specified in paragraph (n)(2) of this section, dockside/roving monitor service providers must meet the standards in § 648.87(b)(4).

(C) *Exemption.* Common pool vessels operating under the provisions of either a limited access Northeast multispecies Small Vessel Category permit or Handgear A permit, as specified at §§ 648.82(b)(5) and (6), respectively, or an open access Northeast multispecies Handgear B permit, as specified at § 648.88(a), are exempt from the dockside/roving monitoring requirements specified in this paragraph (n)(2)(iv).

* * * * *

7. In § 648.87, revise the introductory text of paragraphs (b)(1)(i)(E), (b)(1)(viii), (b)(2), and (b)(5); revise paragraphs (b)(1)(i)(A), (b)(1)(i)(C), (b)(1)(i)(E)(*1*), (b)(1)(i)(E)(*2*)(*i*) and (*ii*), (b)(1)(iii)(C), (b)(1)(v)(B), (b)(1)(viii)(C), and (c)(2)(i); and add paragraphs (b)(5)(ii)(E) and (d)(20) through (24) to read as follows:

§ 648.87 Sector allocation.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) *Allocated stocks.* Each sector shall be allocated a TAC in the form of an ACE for each NE multispecies stock, with the exception of Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder (both the GOM/GB and the SNE/MA stocks), and Atlantic wolffish based upon the cumulative PSCs of vessels/permits participating in each sector during a particular fishing year, as described in paragraph (b)(1)(i)(E) of this section. In the event that a future allocation of SNE/MA winter flounder can be made available pursuant to the biennial adjustment or framework process specified in § 648.90(a)(2), an ACE for this stock will be specified pursuant to paragraph (b)(1)(i)(E)(*1*) of this section.

* * * * *

(C) *Carry-over.* With the exception of GB yellowtail flounder, a sector may carry over an amount of ACE equal to up to 10 percent of its original ACE allocation for each stock that is unused at the end of one fishing year into the following fishing year. Any unused ACE allocated for Eastern GB stocks pursuant to paragraph (b)(1)(i)(B) of this section will contribute to the 10-percent carry-over allowance for each stock, as specified in this paragraph (b)(1)(i)(C), but will not increase an individual sector's allocation of Eastern GB stocks during the following year. This carry-over ACE remains effective during the subsequent fishing year even if vessels that contributed to the sector allocation during the previous fishing year are no longer participating in the same sector for the subsequent fishing year.

* * * * *

(E) *Potential sector contribution (PSC).* For the purposes of allocating a share of the available ACL for each NE multispecies stock to approved sectors pursuant to § 648.90(a)(4), the landings history of all limited access NE multispecies permits shall be evaluated to determine each permit's share of the overall landings for each NE multispecies stock as specified in paragraphs (b)(1)(i)(E)(*1*) and (*2*) of this section. When calculating an individual permit's share of the overall landings for a particular regulated species or ocean pout stock, landed weight shall be converted to live weight to maintain consistency with the way ACLs are calculated pursuant to § 648.90(a)(4) and the way ACEs are allocated to sectors pursuant to this paragraph (b)(1)(i). This calculation shall be performed on July 1 of each year, unless another date is specified by the Regional Administrator, to redistribute the landings history associated with permits that have been voluntarily relinquished or otherwise canceled among all remaining valid limited access NE multispecies permits as of that date during the following fishing year. The PSC calculated pursuant to this paragraph (b)(1)(i)(E) shall remain with the permit indefinitely, but may be permanently reduced or eliminated due to a permit sanction or other enforcement action.

(*1*) *Calculation of PSC for all NE multispecies stocks except GB cod.* Unless otherwise specified in paragraph (b)(1)(i)(E)(*2*) of this section, for each valid limited access NE multispecies permit, including limited access NE multispecies Handgear A permits,

landings recorded in the NMFS dealer database of each stock of NE multispecies determined by NMFS to be the landings history associated with that permit while subject to the NE multispecies regulations based on whether the vessel fishing under that permit was issued a limited access NE multispecies permit or subsequently qualified for a limited access NE multispecies permit pursuant to § 648.4(a)(1)(i), including regulated species or ocean pout caught under a NE multispecies DAS when participating in the skate or monkfish fisheries, but excluding, for example, landings by scallop vessels operating under a scallop DAS, shall be summed for fishing years 1996 through 2006. This sum shall then be divided by the total landings of each NE multispecies stock during the same period by all permits eligible to join sectors as of May 1, 2008. The resulting figure shall then be multiplied by a factor of 1/PSC of remaining permits as of June 1 of each year, unless another date is specified by the Regional Administrator, to calculate the PSC for each individual valid limited access NE multispecies permit for each regulated species or ocean pout stock allocated to sectors in the NE multispecies fishery for the following fishing year pursuant to this paragraph (b)(1)(i)(E)(*1*).

(*2*) * * *

(*i*) *GB cod PSC for permits committed to participate in the GB Cod Hook Gear Sector or GB Cod Fixed Gear Sector.* For each owner of a valid NE multispecies permit, or CPH, that committed to participate in either the GB Cod Hook Gear Sector or the GB Cod Fixed Gear Sector as evidenced by a valid authorized signature executed on or before March 1, 2008, on a preliminary roster for either of these sectors, the PSC for GB cod shall be equal to the sum of dealer landings of GB cod for fishing years 1996 through 2001, divided by the total landings of GB cod by permits eligible to join sectors as of May 1, 2008, during that period. The PSC for all other regulated species or ocean pout stocks specified for these permits shall be calculated pursuant to paragraph (b)(1)(i)(E)(*1*) of this section. The PSC calculated pursuant to this paragraph (b)(1)(i)(E)(*2*)(*i*) shall then be multiplied by a factor of 1/PSC of remaining permits as of June 1 of each year, unless another date is specified by the Regional Administrator, to calculate the GB cod PSC for each permit for the following fishing year.

(*ii*) *GB cod PSC for all other permits.* For each owner of a valid NE multispecies permit or CPH that has not committed to participate in either the GB Cod Hook Gear Sector or GB Cod Fixed Gear Sector, as specified in paragraph (b)(1)(i)(E)(*2*)(*i*) of this section, the GB cod PSC for each such permit or CPH shall be based upon the GB cod PSC available after accounting for the GB cod PSC calculated pursuant to paragraph (b)(1)(i)(E)(*2*)(*i*) of this section. To determine the GB cod PSC for each of these permits, the sum of the individual permit's landings of GB cod available in the NMFS dealer database for fishing years 1996 through 2006 shall be divided by the total landings of GB cod during that period by the total landings of GB cod by permits eligible to join sectors as of May 1, 2008, during that period, after subtracting the total landings of GB cod by permits that committed to participate in either the GB Cod Hook Sector or GB Cod Fixed Gear Sector as of March 1, 2008. This individual share shall then be multiplied by the available GB cod PSC calculated by subtracting the GB cod PSC allocated pursuant to paragraph (b)(1)(i)(E)(*2*)(*i*) of this section from one. The PSC calculated pursuant to this paragraph (b)(1)(i)(E)(*2*)(*ii*) shall then be multiplied by a factor of 1/PSC of remaining permits as of July 1 of each year, unless another date is specified by the Regional Administrator, to calculate the GB cod PSC for each permit.

* * * * *

(iii) * * *

(C) *ACE buffer.* At the beginning of each fishing year, NMFS shall withhold 20 percent of a sector's ACE for each stock for a period of up to 61 days (*i.e.,* through June 30), unless otherwise specified by NMFS, to allow time to process any ACE transfers submitted at the end of the fishing year pursuant to paragraph (b)(1)(viii) of this section and to determine whether the ACE allocated to any sector needs to be reduced, or any overage penalties need to be applied to individual permits/vessels in the current fishing year to accommodate an ACE overage by that sector during the previous fishing year, as specified in paragraph (b)(1)(iii) of this section.

* * * * *

(v) * * *

(B) *Independent third-party monitoring program.* A sector must comply with any dockside/roving monitoring program specified by NMFS for fishing years 2011 and 2012, pursuant to paragraph (b)(1)(v)(B)(*1*) of this section, including the dockside/roving monitoring operational standards specified in paragraph (b)(5) of this section, and develop and implement an independent third-party dockside/roving monitoring program by fishing year 2013. A sector must also develop and implement an at-sea or electronic monitoring program by fishing year 2012 (May 1, 2012) consistent with paragraph (b)(1)(v)(B)(*2*) of this section. Both the dockside/roving and at-sea or electronic monitoring program developed by sectors must be approved by NMFS for monitoring landings and utilization of sector ACE, as specified in this paragraph (b)(1)(v)(B). Any service provider providing dockside/roving and at-sea or electronic monitoring services pursuant to this paragraph (b)(1)(v)(B) must meet the service provider standards specified in paragraph (b)(4) of this section, and any dockside/roving and at-sea or electronic monitoring program proposed by sectors must meet the operational standards specified in paragraphs (b)(5) and (b)(6) of this section, respectively, and be approved by NMFS in a manner consistent with the Administrative Procedure Act. None of the costs associated with any dockside/roving monitor or at-sea or electronic monitoring requirements shall be paid by the owner or operator of a vessel subject to these requirements during fishing years 2011 and 2012. Starting in fishing year 2013, sectors shall be responsible for paying the costs associated with dockside/roving and at-sea or electronic monitoring coverage, unless otherwise instructed by NMFS.

(*1*) Dockside/roving monitoring program. Dockside/roving monitors shall monitor landings of regulated species and ocean pout at every offload for which a trip has been selected to be observed by a dockside/roving monitor, whether directly to a Federally permitted dealer or to a truck for transfer to a Federally permitted dealer, to verify such landings at the time the landings are weighed by a Federally permitted dealer and to certify the landing weights are accurate as reported on the dealer report. Unless otherwise specified in this part, the level of coverage for landings is specified in paragraph (b)(1)(v)(B)(*3*) of this section. To ensure that these levels of coverage are achieved, if a trip has been selected to be observed by a dockside/roving monitor, all offloading events associated with that trip, regardless of how many or the location of offloading events, must be monitored, and a vessel may not offload any of its catch until the dockside/roving monitor arrives. For example, if a trip is selected to be observed by a dockside/roving monitor, a vessel offloading at more than one dealer or facility must have a dockside/roving monitor present during the offload at each location. All landing events at remote ports that are selected to be observed by a dockside/roving

monitor must have a roving monitor present to witness offload activities to the truck, as well as a dockside monitor present at each dealer to certify weigh-out of all landings. Any service provider providing dockside/roving monitoring services pursuant to this paragraph (b)(1)(v)(B)(*1*) must meet the service provider standards specified in paragraph (b)(4) of this section. The details of the dockside/roving monitoring program used by each sector starting in fishing year 2013 pursuant to paragraph (b)(1)(v)(B) of this section must be specified in the sector's operations plan, and must be consistent with the operational standards specified in paragraph (b)(5) of this section. The Regional Administrator shall review the dockside/roving monitoring program and approve/disapprove it as part of the yearly operations plan in a manner consistent with the Administrative Procedure Act. Common pool vessels operating under the provisions of the either a limited access Northeast multispecies Small Vessel Category permit or Handgear A permit, as specified at §§ 648.82(b)(5) and (b)(6), respectively, or an open access Northeast multispecies Handgear B permit, as specified at § 648.88(a), are exempt from the dockside/roving monitoring requirements specified in this paragraph (b)(1)(v)(B)(*1*). Except as provided in this paragraph (b)(1)(v)(B)(*1*), all common pool and sector vessels, along with service providers providing dockside monitoring services, will be subject to the dockside monitoring operational requirements specified at § 648.87(b)(5).

(*2*) At-sea or electronic monitoring program. Beginning in fishing year 2012, in addition to any dockside/roving monitoring requirement implemented pursuant to paragraph (b)(1)(v)(B)(*1*) of this section, an at-sea or electronic monitoring program must be implemented by each sector to verify area fished, as well as catch and discards by species and gear type. A sector may elect to develop an at-sea or electronic monitoring program before fishing year 2012 and specify the details of such a program in its operations plan. Electronic monitoring may be used in place of actual observers if the technology is deemed sufficient by NMFS for a specific trip type based on gear type and area fished, in a manner consistent with the Administrative Procedure Act. No electronic monitoring technology may be used in place of an at-sea monitor, unless approved by NMFS as part of the sector's annual operations plan. If either an at-sea monitor or electronic monitoring is assigned to a particular trip, a vessel may not leave port without the appropriate at-sea monitor or electronic monitoring equipment on board. The at-sea or electronic monitoring program developed and implemented by each sector must be consistent with the operational standards specified in paragraph (b)(6) of this section, with details of the program specified in the sector's annual operations plan. The Regional Administrator shall review the at-sea or electronic monitoring program and approve/disapprove it as part of the annual operations plan in a manner consistent with the Administrative Procedure Act. The level of coverage for operations by sector vessels is specified in paragraph (b)(1)(v)(B)(*3*) of this section.

(*3*) Coverage levels. Except as specified in paragraph (b)(1)(v)(B)(*3*)(*i*), any service provider providing dockside/roving or at-sea or electronic monitoring services required under this paragraph (b)(1)(v)(B)(*3*) must provide coverage that is fair and equitable, and distributed in a statistically random manner among all trips such that coverage is representative of fishing activities by all vessels within the common pool or each sector, and by all operations of common pool vessels or vessels operating in each sector throughout the fishing year.

(*i*) Dockside/roving monitoring. For fishing years 2011 and 2012, NMFS shall determine the level of coverage for any NMFS-sponsored dockside/roving monitoring program specified pursuant to paragraph (b)(1)(v)(B)(*1*) of this section based on available funding. If 100-percent coverage of all sector and common pool trips is not possible, NMFS shall first provide coverage to trips without an observer or at-sea monitor assigned pursuant to § 648.11(k), or approved electronic monitoring equipment assigned pursuant to paragraph (b)(1)(v)(B) of this section for sector vessels. Starting in fishing year 2013, at least 20 percent of all sector and common pool trips shall be monitored by dockside/roving monitors.

(*ii*) At-sea or electronic monitoring. For fishing year 2012, coverage levels for an at-sea or electronic monitoring program developed by a sector shall be specified by NMFS based upon the amount of funding available to support sector at-sea or electronic monitoring programs for that fishing year. Starting in fishing year 2013, coverage levels for an at-sea or electronic monitoring program shall be specified by NMFS, but shall be less than 100 percent of all sector trips. Such coverage levels must be sufficient to at least meet the Standardized Bycatch Reporting Methodology and accurately monitor sector operations. In the event that a NMFS-sponsored observer and a third-party at-sea monitor are assigned to the same trip, only the NMFS observer is required to observe that trip.

(*4*) Hail reports. For the purposes of the dockside/roving and at-sea monitoring requirements specified in this paragraph (b)(1)(v)(B), sector vessels must submit all hail reports for a sector trip in which the NE multispecies catch applies against the ACE allocated to a sector, as specified in this part, to service providers offering dockside/roving and at-sea monitoring services pursuant to this paragraph (b)(1)(v)(B). The mechanism and timing of the transmission of such hail reports must be consistent with instructions provided by the Regional Administrator for any dockside/roving monitoring program required by paragraph (b)(1)(v)(B)(*1*) of this section, or specified in the annual sector operations plan, consistent with paragraphs (b)(5) and (b)(6) of this section.

(*5*) Notification of service provider change. If for any reason a sector decides to change approved service providers used to provide dockside/roving or at-sea or electronic monitoring services required in this paragraph (b)(1)(v), the sector manager must first inform NMFS in writing in advance of the effective date of the change in approved service providers in conjunction with the submission of the next weekly sector catch report specified in paragraph (b)(1)(vi)(B) of this section. A sector may employ more than one service provider at any time, provided any service provider employed by a sector meets the standards specified in paragraph (b)(4) of this section.

* * * * *

(viii) ACE transfers. All or a portion of a sector's ACE for any NE multispecies stock may be transferred to another sector at any time during the fishing year and up to 2 weeks into the following fishing year (*i.e.,* through May 14), unless otherwise instructed by NMFS, to cover any overages during the previous fishing year. A sector is not required to transfer ACE to another sector. An ACE transfer only becomes effective upon approval by NMFS, as specified in paragraph (b)(1)(viii)(B) of this section.

* * * * *

(C) Duration of transfer. Notwithstanding ACE carried over into the next fishing year pursuant to paragraph (b)(1)(i)(C) of this section, ACE transferred pursuant to this

paragraph (b)(1)(viii) is only valid for the fishing year in which the transfer is approved, with the exception of ACE transfer requests that are submitted up to 2 weeks into the subsequent fishing year to address any potential ACE overages from the previous fishing year, as provided in paragraph (b)(1)(iii) of this section, unless otherwise instructed by NMFS.

* * * * *

(2) Operations plan and sector contract. To be approved to operate, each sector must submit an operations plan and preliminary sector contract to the Regional Administrator no later than September 1 prior to the fishing year in which the sector intends to begin operations, unless otherwise instructed by NMFS. A final roster, sector contract, and list of Federal and State permits held by participating vessels for each sector must be submitted by December 1 prior to the fishing year in which the sector intends to begin operations, unless otherwise instructed by NMFS. The operations plan may cover a 1- or 2-year period, provided the analysis required in paragraph (b)(3) of this section is sufficient to assess the impacts of sector operations during the 2-year period and that sector membership, or any other parameter that may affect sector operations during the second year of the approved operations plan, does not differ to the point where the impacts analyzed by the supporting NEPA document are compromised. Each vessel and vessel operator and/or vessel owner participating in a sector must agree to and comply with all applicable requirements and conditions of the operations plan specified in this paragraph (b)(2) and the letter of authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements unless such conditions or restrictions are identified in an approved operations plan as administrative only. If a proposed sector does not comply with the requirements of this paragraph (b)(2), NMFS may decline to propose for approval such sector operations plans, even if the Council has approved such sector. At least the following elements must be contained in either the final operations plan or sector contract submitted to NMFS:

* * * * *

(5) Dockside monitoring operational standards. In addition to the independent third-party monitoring provider standards specified in paragraph (b)(4) of this section, any dockside monitoring program developed by NMFS pursuant to paragraph (b)(1)(v)(B)(*1*) of this section must meet the following operational standards to be approved by NMFS:

(ii) * * *

(E) Inspection of fish holds. A dockside/roving monitor assigned to observe the offloading of fish from a particular trip shall inspect the fish holds, or any other areas of the vessel in which fish are stored, to determine if all fish are offloaded for that particular trip.

* * * * *

(c) * * *

(2) * * *

(i) Regulations that may not be exempted for sector participants. The Regional Administrator may not exempt participants in a sector from the following Federal fishing regulations: NE multispecies year-round closure areas; permitting restrictions (*e.g.,* vessel upgrades, *etc.*); gear restrictions designed to minimize habitat impacts (*e.g.,* roller gear restrictions, *etc.*); and reporting requirements. For the purposes of this paragraph (c)(2)(i), the DAS reporting requirements specified at § 648.82; the SAP-specific reporting requirements specified at § 648.85; and the reporting requirements associated with a dockside monitoring program specified in paragraph (b)(5)(i) of this section are not considered reporting requirements, and the Regional Administrator may exempt sector participants from these requirements as part of the approval of yearly operations plans. This list may be modified through a framework adjustment, as specified in § 648.90.

* * * * *

(d) * * *

(20) State of Maine Permit Banking Sector.

(21) State of Rhode Island Permit Bank sector.

(22) State of New Hampshire Permit Bank Sector.

(23) State of Massachusetts Permit Bank Sector.

(24) Sustainable Harvest Sector III.

8. In § 648.88, revise paragraph (a)(1), and add paragraph (a)(2)(iv) to read as follows:

§ 648.88 Multispecies open access permit restrictions.

(a) * * *

(1) The vessel may possess and land up to 75 lb (90.7 kg) of cod, and up to the landing and possession limit restrictions for other NE multispecies specified in § 648.86, provided the vessel complies with the restrictions specified in paragraph (a)(2) of this section. If either the GOM or GB cod trip limit applicable to a vessel fishing under a NE multispecies DAS permit, as specified in § 648.86(b)(1) and (2), respectively, is adjusted by NMFS, the cod trip limit specified in this paragraph (a)(1) shall be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)). For example, if the GOM cod trip limit specified at § 648.86(b)(1) doubled, then the cod trip limit for the Handgear B category fishing in the GOM Regulated Mesh Area would also double to 150 lb (68 kg).

(2) * * *

(iv) *Declaration.* To fish for GB cod south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), a vessel owner or operator must obtain, and retain on board, a letter of authorization from the Regional Administrator declaring his or her intent to fish south of the GOM Regulated Mesh Area, and may not fish in any other area for a minimum of 7 consecutive days from the effective date of the letter of authorization. Such a vessel may transit the GOM Regulated Mesh Area, provided that their gear is stowed in accordance with the provisions at § 648.23(b).

* * * * *

9. In § 648.89, revise paragraph (e)(1) to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(e) * * *

(1) *GOM Closed Areas.* Unless otherwise specified in this paragraph (e)(1) of this section, a vessel fishing under charter/party regulations may not fish in the GOM closed areas specified at § 648.81(d)(1) through (f)(1) during the time periods specified in those paragraphs, unless the vessel has on board a valid letter of authorization issued by the Regional Administrator pursuant to § 648.81(f)(2)(iii) and paragraph (e)(3) of this section. The conditions and restrictions of the letter of authorization must be complied with for a minimum of 3 months if the vessel fishes or intends to fish in the seasonal GOM closure areas; or for the rest of the fishing year, beginning with the start of the participation period of the letter of authorization, if the vessel fishes or intends to fish in the year-round GOM closure areas. A vessel fishing under charter/party regulations may not fish in the GOM Cod Spawning Protection Area specified at § 648.81(o)(1) during the time period specified in that paragraph, unless the vessel complies with the requirements specified at § 648.81(o)(2)(iii).

* * * * *

10. In § 648.90, revise paragraph (a)(4)(iii)(E)(*2*) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

(a) * * *

(4) * * *

(iii) * * *

(E) * * *

(*2*) *Commercial allocation.* The ABC/ACL for regulated species or ocean pout stocks available to the commercial NE multispecies fishery, after consideration of the recreational allocation pursuant to paragraph (a)(4)(iii)(E)(*1*) of this section, shall be divided between sectors operating under an approved sector operations plan, as described at § 648.87(c), and vessels operating under the provisions of the common pool, as defined in this part, based upon the cumulative PSCs of vessels/permits participating in sectors calculated pursuant to § 648.87(b)(1)(i)(E). Unless otherwise specified in paragraph (a)(5) of this section, regulated species or ocean pout catch by common pool and sector vessels shall be deducted from the sub-ACL/ACE allocated pursuant to this paragraph (a)(4)(iii)(E)(*2*) for the purposes of determining whether adjustments to common pool measures are necessary, pursuant to the common pool AMs specified in § 648.82(n), or whether sector ACE overages must be deducted, pursuant to § 648.87(b)(1)(iii).

* * * * *

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Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 113
Temperature-Indicating Devices; Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 113

[Docket No. FDA–2007–N–0265; Formerly Docket No. 2007P–0026]

Temperature-Indicating Devices; Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations for thermally processed low-acid foods packaged in hermetically sealed containers to allow for use of other temperature-indicating devices, in addition to mercury-in-glass thermometers, during processing. This final rule also establishes recordkeeping requirements relating to temperature-indicating devices and reference devices maintained by the processor and allows for the use of advanced technology for measuring and recording temperatures during processing. Finally, this final rule includes metric equivalents of avoirdupois (U.S.) measurements where appropriate. This final rule will allow low-acid canned food processors to transition from mercury-in-glass thermometers to alternative temperature-indicating devices. Use of temperature-indicating devices that do not contain mercury will eliminate concerns about potential contamination of the food or the processing environment from broken mercury-in-glass thermometers. Elsewhere in this issue of the **Federal Register**, FDA is publishing a 30-day notice announcing that it has submitted the information collection provisions of this final rule to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA). The notice also invites the public to submit comments on the information provisions to OMB. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions of the final rule.

DATES: This final rule is effective March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Mischelle B. Ledet, Center for Food Safety and Applied Nutrition (HFS–615), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2070.

SUPPLEMENTARY INFORMATION:

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I. Background

In the **Federal Register** of March 14, 2007 (72 FR 11990), FDA published a proposed rule entitled "Temperature-Indicating Devices; Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers" (the proposed rule). We proposed to revise § 113.40 (21 CFR 113.40) to provide for use of temperature-indicating devices that accurately indicate the temperature during processing. We proposed that temperature-indicating devices shall be tested for accuracy against an accurate calibrated reference device upon installation and at least once a year thereafter, or more frequently if necessary, to ensure accuracy during processing. We also proposed that the design of the temperature-indicating device shall ensure that the accuracy of the device is not affected by electromagnetic interference and environmental conditions.

We proposed to require that each temperature-indicating device have a tag, seal, or other means of identity that will be used by the processor to identify the temperature-indicating device, and that each reference device have a tag, seal, or other means of identity that will be used by the processor to identify the reference device. We proposed the establishment and maintenance of written records to document the accuracy for each temperature-indicating device and each reference or standard device.

We also proposed to provide for the use of metric equivalents of avoirdupois (U.S.) measurements for temperature-indicating devices, to provide for use of temperature-recording devices that create analog, graphical, or digital recordings, and to clarify various operational and record requirements of the regulations.

In the preamble to the proposed rule, FDA stated that, pending issuance of a final rule, we intended to consider the exercise of our enforcement discretion on a case-by-case basis when processors of low-acid canned food elect to replace mercury-in-glass thermometers with alternative temperature-indicating devices in a manner that was consistent with the proposed rule (72 FR 11990 at 11999, March 14, 2007). The Federal Food, Drug, and Cosmetic Act's (the FD&C Act) enforcement provisions commit complete discretion to the Secretary of Health and Human Services (and by delegation to FDA) to decide how and when they should be exercised (*see Heckler* v. *Chaney,* 470 U.S. 821, 835 (1985); *see also Schering Corp.* v. *Heckler,* 779 F.2d 683, 685–86 (DC Cir. 1985) (stating that the provisions of the act "authorize, but do not compel FDA to undertake enforcement activity")). FDA will continue to consider the exercise of our enforcement discretion on a case-by-case basis when processors of low-acid canned food elect to replace mercury-in-glass thermometers with alternative temperature-indicating devices in a manner that is consistent with the proposed rule until the effective date of the final rule. In addition, we will consider the exercise of our enforcement discretion on a case-by-case basis for processors who comply with the provisions of this final rule prior to the effective date. All low-acid canned food processors must comply with the requirements of this final rule on and after the effective date.

II. Comments on the Proposed Rule

FDA received six letters, each containing one or more comments, to the proposed rule. The comments were from industry, a trade association, and individuals. Most of the letters generally supported the proposed rule, but provided some comments that suggested modifications to the proposed rule. Some of the comments addressed issues outside the scope of this rulemaking and will not be addressed in this document. A summary of the comments and FDA's responses follows.

(Comment 1) One comment requested that the effective date of this final rule be not less than 1 year from the date of publication. The comment indicated that companies that are continuing to use mercury-in-glass thermometers will need time to comply with the additional recordkeeping requirements for accuracy checks. Furthermore, companies with existing water retorts will need at least 1 year to comply with the additional equipment requirements of the regulation. The comment also indicated that firms that currently reprocess products or rework previously processed product into a new formulation need at least 1 year to review existing process schedules and conduct confirmatory testing if necessary, to comply with § 113.83 (21 CFR 113.83).

(Response) We agree with the comment's request to allow 1 year for processors to comply with recordkeeping requirements relating to use of mercury-in-glass thermometers and to other requirements relating to temperature-indicating devices established in this final rule. Thus, the effective date of this final rule is 1 year from the date of publication in the **Federal Register**. However, FDA does not agree with the comment's suggestion that processors need a year to comply with § 113.83 for reprocessed or reworked product. As discussed in our response to comment 38, although we clarified the requirements in final § 113.83, we did not propose new requirements for reprocessed or reworked products in the proposed rule or establish new requirements for reprocessed or reworked products in this final rule.

(Comment 2) One comment recommended defining the term "temperature-indicating device" as the entire system, including the sensor(s) and the temperature-indicating device display. The comment noted that separate references to the "temperature-indicating device" and the "sensor of the temperature-indicating device" could be interpreted to mean that the sensor is not part of the temperature-indicating device and thus does not have to be calibrated. The comment suggested using the term "temperature-indicating device display" to refer to the electronics/display portion only and to define "temperature-indicating device" to mean the entire system.

(Response) We agree that the term "temperature-indicating device" includes the temperature-indicating device sensor and the temperature-indicating device display. Accordingly, we revised the proposed requirements to clarify that each temperature-indicating device must have a sensor and a display (final § 113.40(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), and (g)(1)(i)(A)). As appropriate, we replaced the terms "sensors of temperature-indicating devices" and "sensor of the temperature-indicating device" with "temperature-indicating device sensor" (final § 113.40(a)(1)(v), (b)(1)(v), (c)(1)(v), (d)(1)(v), and (e)(1)(v)). In final § 113.40(f)(1)(v), we clarified that the temperature-indicating device sensor, rather than the temperature-indicating device, must be located in the steam dome near the steam water interface or, when applicable, in each hydrostatic water leg.

Although the comment did not request similar clarification for temperature-recording devices, in this final rule we also clarified that each temperature-recording device must have a sensor and a mechanism for recording temperatures to a permanent record, such as a temperature-recording chart (final § 113.40(a)(2), (b)(2), (c)(2), (d)(2), (e)(2), (f)(2), and (g)(1)(i)(B)).

(Comment 3) One comment indicated that the mercury-in-glass thermometer originally was used for three important reasons, *i.e.,* permanent accuracy, no drift over time, and reliability. According to the comment, reliability means "it works or it doesn't work and you know when it doesn't work." The comment suggested that these factors should be characteristics of any alternative temperature-indicating device. Another comment suggested revising proposed § 113.40(a)(1) to require alternative temperature-indicating devices to meet or exceed the accuracy and reliability of mercury-in-glass thermometers.

(Response) The Agency recognizes that accuracy, drift, and reliability are important considerations for any temperature-indicating device. However, the comment does not specify any unique problems that may be associated with these factors that were not addressed by the proposed codified language. Thus, the Agency is not making any changes to the proposed codified in response to this comment.

The comment's reference to "permanent accuracy" is not clear. Perpetual and unfailing accuracy cannot be guaranteed for any temperature-indicating device, including mercury-in-glass thermometers. Each temperature-indicating device must be tested for accuracy, as required in final § 113.40(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), and (g)(1)(i)(A) of this final rule. A temperature-indicating device that is defective or cannot be adjusted to the accurate calibrated reference device must be repaired before further use or replaced (final § 113.40(a)(1)(iii), (b)(1)(iii), (c)(1)(iii), (d)(1)(iii), (e)(1)(iii), (f)(1)(iii), and (g)(1)(i)(A)(*3*)).

We use the terms "accurate" and "accuracy" in this final rule to refer to "measurement accuracy." Measurement accuracy is defined in the International Vocabulary of Metrology as "closeness of agreement between a measured quantity value and a true quantity value of a measurand" (Ref. 1). For a temperature-indicating device, the temperature shown on the display is the "measured quantity value" and the actual or true temperature is the "true quantity value." As discussed in our response to Comment 9, this final rule provides that the measurement accuracy for a temperature-indicating device must be within 1 °F (0.5 °C) of the true quantity value, *i.e.,* the temperature-indicating device must be accurate to 1 °F (0.5 °C) (final § 113.40(a)(1)(iv), (b)(1)(iv), (c)(1)(iv), (d)(1)(iv), (e)(1)(iv), (f)(1)(iv), and (g)(1)(i)(A)(*4*)).

We agree that "drift over time" is a factor that must be considered to assure that the temperature-indicating device is accurate during processing. However, because an absolute requirement for no drift over time may prevent use of an otherwise appropriate temperature-indicating device, we do not agree that this characteristic should be specified in this final rule. We believe the requirement of this final rule for the temperature-indicating device to be accurate encompasses considerations relating to drift. If the accuracy of the temperature-indicating device may be affected by drift, it is our expectation that an appropriate calibration interval (*i.e.,* more frequently than once per year) or other appropriate mechanism will be established by the processor to ensure that the temperature-indicating device is accurate during processing.

The reliability of a temperature-indicating device is determined based on evaluation of past performance of the specific temperature-indicating device or similar temperature-indicating devices. Past performance may be used as an indicator, but not as an absolute guarantee or predictor, of future performance. Although we agree that warranties and predictions of reliability are important considerations for processors when choosing a temperature-indicating device, they do not ensure accuracy during processing or alleviate the processors' responsibility to ensure that the temperature-indicating device provides an accurate temperature reading during processing (final § 113.40(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), and (g)(1)(i)(A)). A temperature-indicating device that does not accurately indicate the temperature during processing does not comply with the requirements of this final rule.

We believe that the requirement in this final rule for the temperature-indicating device to accurately indicate the temperature during processing (final § 113.40(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), and (g)(1)(i)(A) is adequate to ensure the accuracy and reliability of the temperature-indicating device, and that it is not necessary to revise the regulation to require that alternate temperature-indicating devices meet or exceed the accuracy and reliability of mercury-in-glass thermometers, as suggested by the comment.

(Comment 4) One comment recommended revising proposed § 113.40(a)(1) to require temperature-indicating devices to be tested for

accuracy against a reference device for which the accuracy is traceable to a National Institute of Standards and Technology (NIST), or equivalent, standard reference device.

(Response) We agree with the comment. We revised the applicable proposed requirements to clarify that each temperature-indicating device and each reference device that is maintained by the processor must be tested for accuracy against a reference device for which the accuracy is traceable to a NIST, or other national metrology institute, standard reference device (final § 113.40(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), and (g)(1)(i)(A)). The term "reference device maintained by the processor" refers to the reference device used by a processor who performs the accuracy tests at the processor's own facility or facility laboratory. For such reference device, the processor, rather than a third party laboratory, is responsible for ensuring accuracy of the reference device when it is used for the accuracy test and for ensuring that its accuracy is traceable to a NIST, or other national metrology institute, standard reference device. The term "traceable" refers to "metrological traceability," which is defined in the International Vocabulary of Metrology as the "property of a measurement result whereby the result can be related to a reference through a documented unbroken chain of calibrations, each contributing to the measurement uncertainty" (Ref. 2). "Measurement result" is defined as a "set of quantity values being attributed to a measurand together with any other available relevant information" (Ref. 3) and "measurement uncertainty" is defined as "the non-negative parameter characterizing the dispersion of the quantity values being attributed to a measurand, based on the information used" (Ref. 4).

This final rule also clarifies that the record of the accuracy test for a temperature-indicating device or a reference device maintained by the processor must include documentation of the traceability of the accuracy of the reference device to a NIST, or other national metrology institute, standard reference device (final § 113.100(c) and (d) (21 CFR 113.100(c) and (d))). For an accuracy test performed by the processor and, thus, for which the processor maintains the reference device, the documentation of traceability must be a guarantee, certificate of accuracy, certificate of calibration, or other document from the manufacturer or other source of the reference device. For an accuracy test performed by an outside facility, the documentation of traceability must be a guarantee, certificate of accuracy, certificate of calibration, or other document from the facility that includes a statement or other documentation regarding the traceability of the accuracy to a NIST, or other national metrology institute, standard reference device.

The information required to be included in the records of accuracy for temperature-indicating devices and reference devices was set forth in proposed § 113.40(a)(1)(ii), (b)(1)(ii), (c)(1)(ii), (d)(1)(ii), (e)(1)(ii), (f)(1)(ii), and (g)(1)(i)(A)(*2*). To eliminate redundancy, we moved the information requirements for the records of accuracy for temperature-indicating devices and reference devices maintained by the processor from each of these sections to final § 113.100(c) and (d) of Subpart F—Records and Reports. We redesignated proposed § 113.100(c), (d), and (e), as final § 113.100(e), (f), and (g), respectively. We also revised proposed § 113.87(c) (21 CFR 113.87(c)) to clarify that the records of accuracy tests for temperature-indicating devices used to determine the initial product temperature and reference devices maintained by the processor must be maintained in accordance with § 113.100(c) and (d).

(Comment 5) One comment expressed concern about the proposed requirement that the design of the temperature-indicating device ensure that the accuracy of the device is not affected by electromagnetic interference and environmental conditions (proposed § 113.40(a)(1)(i), (b)(1)(i), (c)(1)(i), (d)(1)(i), (e)(1)(i), (f)(1)(i), and (g)(1)(i)(A)(*1*)). According to the comment, the proposed language focuses on only a few of the considerations that a processor must take into account when selecting a temperature-indicating device and the considerations in the proposed language may not be applicable to future temperature-indicating technologies. The comment pointed out that a temperature-indicating device that is very robust in terms of the electromagnetic interference and environmental conditions could provide unreliable temperature readings because of other aspects of the design and installation. However, a temperature-indicating device that is less robust in terms of electromagnetic interference and environmental conditions could provide reliable and accurate readings due to good design and installation practices. The comment stated that the end goal of any temperature-indicating device is reliable and accurate readings. The comment suggested that it would be more effective to state that: "The design, installation, and operation of the temperature-indicating device shall be such that the accuracy and reliability of the device is ensured."

(Response) We do not agree that the language recommended by the comment provides clarity or value to the regulation. The requirements in the regulation for the temperature-indicating device to be accurate upon installation and during processing (final § 113.40(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), and (g)(1)(i)(A)) encompass design, installation, operation, and reliability considerations traditionally associated with mercury-in-glass thermometers and that must be considered for other temperature-indicating devices. However, we believe it is necessary to emphasize in this final rule that the design of the temperature-indicating device must assure that accuracy is not affected by electromagnetic interference and environmental conditions because these factors are not traditionally associated with mercury-in-glass thermometers. As discussed in the preamble to the proposed final rule, although electromagnetic energy does not affect the accuracy of mercury-in-glass thermometers, temperature-indicating devices with electronic or electromagnetic components are vulnerable to electromagnetic interference. Electromagnetic energy may vary in the area where a temperature-indicating device is located as electronics are turned on and off, introduced into, and removed from the area. Electromagnetic energy exposure may also vary when a temperature-indicating device is moved from one location to another, *e.g.,* from one retort to another. Thus, unlike a mercury-in-glass thermometer, a temperature-indicating device that may be affected by electromagnetic energy must be designed based on consideration of that factor, *i.e.,* the temperature-indicating device must be designed to ensure that its accuracy during processing is not compromised by exposure to electronics that generate or cause fluctuations in electromagnetic energy. Similarly, some environmental conditions, such as humidity, vibrations, and air pressure, that do not affect the accuracy or performance of mercury-in-glass thermometers must be considered and addressed in the design of other temperature-indicating devices.

(Comment 6) One comment objected to the proposed requirement that the design of the temperature-indicating device ensure that accuracy is not affected by environmental conditions because it does not clearly state which

environmental conditions are important and which are not (proposed § 113.40(a)(1)(i), (b)(1)(i), (c)(1)(i), (d)(1)(i), (e)(1)(i), (f)(1)(i), and (g)(1)(i)(A)(*1*)). The comment expressed concern that some important environmental factors may not be adequately considered. The comment noted that there is a difference between environmental considerations for mechanical and electronic instruments. According to the comment, moisture is an important environmental concern with electronic instruments. The comment noted that condensation on a computer board or wiring terminals can be detrimental to making a measurement and can cause errors. The comment suggested requiring the use of temperature-indicating devices with an Ingress Protection code suitable for the environment. The comment also indicated concern about ambient temperature and vibration, either or both of which may affect some electronic and mechanical technologies. According to the comment, the ambient temperature coefficient, which is usually expressed as degrees of error per degree of change from a specified ambient temperature, may not be specified for some temperature-indicating devices. The comment expressed concern that most users will not have the ability to evaluate the impact of ambient temperature and may not be aware that the ambient temperature coefficient is important. The comment emphasized that design and installation are essential components in vibration resistance.

(Response) Processors are responsible for ensuring that environmental factors, including those expressed in the comment, are adequately considered. Processors must use temperature-indicating devices appropriate for the processing environment and take appropriate steps to evaluate environmental factors that may affect the accuracy of the temperature-indicating device. Processors who do not have specific expertise for evaluating the effect of environmental factors on temperature-indicating devices may need to obtain advice from a thermometry expert or obtain a manufacturer's guaranty or warranty regarding use of a specific temperature-indicating device in their specific food processing environment.

(Comment 7) One comment requested clarification of proposed § 113.40(a)(1)(i), which requires that the design of the temperature-indicating device ensure that the accuracy of the device is not affected by electromagnetic interference and environmental conditions. The comment questioned whether mechanical thermometers are exempt from this requirement. The comment stated that most processors will have no way to determine the effects of electromagnetic interference on an electronic thermometer design. The comment suggested that the regulation should state that temperature-indicating devices should comply with an electromagnetic interference standard that is current at the time they are designed. According to the comment, this would eliminate issues associated with changes to standards that make existing temperature-indicating devices noncompliant. The comment suggested that temperature-indicating devices should comply with the European standards EN 61326–1:2006 Electrical equipment for measurement, control and laboratory use; EN 61000–4–2 Personnel Electrostatic Discharge Immunity; EN 61000–4–3 Electromagnetic compatibility (EMC); and EN 61000–4–6 Conducted disturbances immunity.

(Response) This final rule does not exempt mechanical thermometers, *e.g.,* mercury-in-glass thermometers, from the requirement that the design ensure that accuracy is not affected by electromagnetic interference and environmental conditions. However, although the accuracy of mechanical thermometers may be affected by environmental conditions, they generally are not susceptible to the affects of electromagnetic interference as are electronic devices.

FDA is providing flexibility to processors with respect to this requirement and is not limiting processors to specific standards with which they must comply. Processors, in conjunction with temperature-indicating device manufacturers and appropriate thermometry experts, should ensure that the temperature-indicating devices that processors use are accurate during processing. A processor may elect to use an appropriate electronic standard, such as those established by the European Union, to ensure compliance with final § 113.40(a)(1)(i), (b)(1)(i), (c)(1)(i), (d)(1)(i), (e)(1)(i), (f)(1)(i), and (g)(1)(i)(A)(*1*).

(Comment 8) One comment stated that electronic thermometers are not capable of communicating that there is an accuracy problem. The comment stated that it is risky to rely on the history of calibration to prove an instrument's accuracy because the temperature-indicating device may perform properly for years and then fail without warning. The comment pointed out that a failure that occurs between calibration cycles may not be detected for a significant period of time. The comment suggested that additional features are needed to ensure that a temperature-indicating device retains its accuracy, will not drift, and will report any potential errors. The comment indicated that a system with internal diagnostics and error reporting to the operator would be one way of providing this evidence. The comment suggested that FDA require that an electronic temperature-indicating device incorporate technology to alert the operator of measurement errors.

(Response) Processors must ensure that temperature-indicating devices are accurate during processing (final § 113.40(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), and (g)(1)(i)(A)). Processors must test the temperature-indicating device for accuracy upon installation and at least once per year thereafter, or more frequently if necessary, to ensure accuracy (emphasis added) (*see, e.g.,* final § 113.40(a)(1)). These requirements for accuracy for all temperature-indicating devices make it unnecessary for this final rule to require specific mechanisms to alert the operator of measurement errors. Processors should adopt whatever features or systems are appropriate to ensure the accuracy of a given temperature-indicating device, and to detect defects or failures that may cause a temperature-indicating device to be inaccurate. For mercury-in-glass thermometers, the process for detecting failure may include periodic visual examinations and appropriate followup based on findings of defects or potential for failure. Electronic devices may have hardware and software components with built-in diagnostic and alarm features. Processors also may use backup or duplicate devices to detect defects or failures. In addition, when adjustments are made to the temperature-recording device so that it agrees as nearly as possible with, but to be in no event higher than, the temperature-indicating device during the process time, as required by this regulation (final § 113.40(a)(2)(iii), (b)(2)(iii), (c)(2)(iii), (d)(2)(iii), (e)(2)(iii), (f)(2)(iii), and (g)(1)(i)(B)(*3*)), the need for such adjustment may be used as a signal for determining whether a temperature-indicating device failure occurred. Thus, features or systems for ensuring accuracy or for detecting inaccuracies may be different for different types of temperature-indicating devices, as well as subject to technological advancements that we may not anticipate at this time. To ensure processors have flexibility to adopt future technologies to detect

defects or failures of temperature-indicating devices, we have not required in this final rule specific features or systems to detect such defects or failures.

(Comment 9) One comment expressed concern that the proposed rule did not mention measurement uncertainties or test accuracy ratio, which are essential parameters for assuring an accurate calibration that are specified in standards issued by the American National Standards Institute (ANSI) and the International Organization for Standardization (ISO) for certification of calibration laboratories. The comment stated that the ANSI and ISO standards provide a limit for measurement uncertainty and establish a minimum test accuracy ratio that is commonly used by calibration facilities. According to the comment, although the proposed rule requires use of a calibrated accurate reference device, the lack of specific calibration parameters may lead to inaccurate calibrations for temperature-indicating devices.

(Response) Measurement uncertainty is inherent in the proposed requirement that the temperature-indicating device be easily readable to 1 °F (0.5 °C), (*i.e.,* the dispersion of the quantity values for the temperature must be within 1 °F (0.5 °C) of the actual temperature) (proposed § 113.40(a)(1)(iv), (b)(1)(iv), (c)(1)(iv), (d)(1)(iv), (e)(1)(iv), (f)(1)(iv), and (g)(1)(i)(A)(*4*)). However, we acknowledge that the term "easily readable" is readily understood for a mercury-in-glass thermometer, which has a visible scale of temperature gradations, but it may not be clear for other temperature-indicating devices, such as those that display a digital reading of the temperature. Therefore, we removed the term "easily readable" and clarified in this final rule that a temperature-indicating device must be accurate to 1 °F (0.5 °C) (final § 113.40(a)(1)(iv), (b)(1)(iv), (c)(1)(iv), (d)(1)(iv), (e)(1)(iv), (f)(1)(iv), and (g)(1)(i)(A)(*4*)).

We do not agree that the regulations should specify calibration parameters, such as those relating to measurement uncertainties or test accuracy ratio, or require use of specific calibration standards, such as the ANSI and ISO standards suggested by the comment. Metrology authorities, in addition to ANSI and ISO, issue calibration standards, which may be revised or replaced. It would be impractical for FDA to maintain in the regulations a current list of acceptable calibration standards. Processors are responsible for ensuring that the temperature-indicating device is accurate during processing and for testing each temperature-indicating device for accuracy against a reference device for which the accuracy is traceable to a NIST, or other national metrology institute, standard reference device by appropriate standard procedures, upon installation and at least once a year thereafter, or more frequently if necessary (final § 113.40(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), and (g)(1)(i)(A)). Thus, processors are responsible for ensuring that accuracy tests are performed by appropriate standard procedures or by calibration facilities that use appropriate standard procedures.

(Comment 10) One comment recommended revising proposed § 113.40(a)(1) to clarify that the identity of each temperature-indicating device and reference device must be "unique."

(Response) We do not agree that the term "unique" is necessary because each temperature-indicating device and each reference device that is maintained by the processor must have a tag, seal, or other means of identity (final § 113.40(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), and (g)(1)(i)(A)). The purpose of a tag, seal, or other means of identity is, in part, to uniquely identify each temperature-indicating device and each reference device that is maintained by the processor so that one temperature-indicating or reference device can be distinguished from another and so that appropriate records can be associated with each temperature-indicating device or reference device.

(Comment 11) One comment expressed concern about the information required in proposed § 113.40(a)(1)(ii)(A) and (a)(1)(ii)(B) for documentation of accuracy of temperature-indicating devices and reference devices. The comment suggested that the final rule should instead require documentation that conforms to the standards established by the American National Standards Institute, National Conference of Standards Laboratories (ANSI/NCSL) or the International Organization for Standardization, International Electrotechnical Commission (ISO/IEC) for accrediting calibration laboratories. The comment stated that the laboratory accreditation standards indicate acceptable reporting practices. The comment acknowledged that the standards may be too prescriptive for food processors who perform their own calibrations.

(Response) We do not agree that the regulation should require the documentation of accuracy of temperature-indicating devices and reference devices to conform to the standards specified in the comment for accrediting calibration laboratories. Although FDA supports use of accredited calibration laboratories and recognizes that the laboratories must maintain certain documentation for the accreditation, the records required by this final rule are appropriately limited to those necessary to document that the temperature-indicating device was tested for accuracy at sufficient frequency to ensure accuracy during processing. As acknowledged by the comment, a requirement for processors to adhere to accreditation standards would impose an unnecessary burden on those who successfully perform their own calibrations but are not accredited by ANSI/NCSL or ISO/IEC.

(Comment 12) One comment recommended revising proposed § 113.40(a)(1)(ii)(A) and (a)(1)(ii)(B) to require that documentation of the results of the accuracy test include before and after data, *i.e.,* the temperature reading of the temperature-indicating device compared to the accurate calibrated reference device, before and after the calibration. The comment indicated that the before data is needed because it is the basis for determining whether the device was accurate at the time of calibration and for documenting any adjustment that was made.

(Response) Proposed § 113.40(a)(1)(ii)(A) and (a)(1)(ii)(B) require that the results of each accuracy test be documented. Although not explicitly stated in the proposed rule, we would expect documentation of the results of the accuracy test to include information about the amount of calibration adjustment that was necessary. The "before and after data" suggested by the comment would be reflected in the amount of calibration adjustment. The amount of calibration adjustment is an indication of whether the temperature-indicating device was accurate at the time of the calibration. If an adjustment is required, the processor should evaluate the need for more frequent accuracy tests and also determine whether food processed prior to the adjustment is under processed. To provide clarity in the regulation regarding the requirement to record the amount of calibration adjustment that was necessary for a temperature-indicating device, we are revising final § 113.100 "Processing and production records" to indicate that the record of each accuracy test for each temperature-indicating device and for each reference device that is maintained by the processor must include the results of each accuracy test, including the amount of calibration adjustment (final § 113.100(c)(5) and (d)(5)).

Other information relating to the results of the accuracy test that should be recorded when it is relevant includes information about the condition of the temperature-indicating device (*i.e.,* intact or broken mercury column, worn or broken components) and disposition of the temperature-indicating device if it cannot be calibrated (*i.e.,* destroyed, repaired, or replaced).

(Comment 13) One comment addressed the proposed requirement that records of the accuracy test for the temperature-indicating device include the date of the next scheduled accuracy test (proposed § 113.40(a)(1)(ii)(A), (b)(1)(ii)(A), (c)(1)(ii)(A), (d)(1)(ii)(A), (e)(1)(ii)(A), (f)(1)(ii)(A), and (g)(1)(i)(A)(*2*)(*i*)). One comment interpreted this requirement to imply that the test must be conducted on that specific date. The comment suggested removing the requirement or changing the language to "the date of the calibration expiration."

(Response) We acknowledge that the proposed requirement concerning the date of the next scheduled accuracy test may be misinterpreted to mean that the next accuracy test must be conducted on that specific date. However, we do not agree that the revised language recommended by the comment, *i.e.,* the date of the calibration expiration, adequately clarifies that the next accuracy test must be conducted on or before the specified date. In this final rule, we require that the record of accuracy for a temperature-indicating device and a reference device maintained by the processor include the date on or before which the next accuracy test must be performed (final § 113.100(c)(6) and (d)(6)).

(Comment 14) One comment recommended placing on each temperature-indicating device a calibration sticker that indicates the date of the last calibration and the date the next calibration is due. According to the comment, the calibration standard ISO/IEC 17025 does not require the calibration due date to be recorded on the certificate issued by the calibration facility, which may have no knowledge of the calibration interval for the specific device.

(Response) We recognize that outside calibration facilities are not responsible for determining the frequency of the accuracy tests for temperature-indicating devices and, thus, are not required to record the frequency on a calibration certificate. We do not agree with the comment's recommendation to require a sticker on each temperature-indicating device with the date of the last calibration and date the next calibration is due. Although we do not object to processors using stickers or similar mechanisms on temperature-indicating devices to emphasize when the next accuracy test for a temperature-indicating device must be performed, we consider it sufficient to require that information relating to the accuracy test, such as the date on or before which the next accuracy test must be performed, be included in the processor's records of the accuracy test (final § 113.100(c)).

(Comment 15) One comment questioned why the documentation requirements for accuracy tests in proposed § 113.40(a)(1)(ii)(B) apply to reference devices. The comment pointed out that the reference device may be located in a third party calibration laboratory.

(Response) Accuracy tests for temperature-indicating devices may be performed by the processor or by a third party calibration laboratory. Processors who perform their own accuracy test must ensure that the reference device they use is accurate and must maintain records to document that accuracy. In this final rule, we clarify that the required records of the accuracy tests for reference devices are for reference devices maintained by the processor (final §§ 113.40(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), and (g)(1)(i)(A), 113.87(c), and 113.100(d)).

(Comment 16) One comment recommended that processors be required to implement a method or process for identifying when a temperature-indicating device needs to be calibrated. The comment pointed out that inexpensive software packages are readily available for this purpose.

(Response) We recognize that processors may desire to establish a system to prompt them when scheduled activities, such as calibrations, need to be performed. Although available software may be appropriate for that purpose, we do not agree that the regulations should require processors to develop or use existing software or any other specific method or system to identify when a temperature-indicating device needs to be calibrated. Processors must test temperature-indicating devices for accuracy upon installation and at least once a year thereafter, or more frequently if necessary (final § 113.40(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), and (g)(1)(i)(A)). The appropriate frequency for the accuracy test should be determined based on previous accuracy test results, evidence of damage, and other factors or situations that cause the accuracy of the temperature-indicating device to be questionable.

(Comment 17) One comment objected to the preamble statement, "FDA recommends, but is not proposing to require, a dual probe design." (72 FR 11989 at 11993). According to the comment, FDA's recommendation for a dual probe design will lead companies to purchase a dual probe unit to reduce any potential conflict with FDA. The comment stated that the dual probe design is a patented technology and other designs or mechanisms may be used for detecting malfunctions.

(Response) In the preamble to the proposed rule, FDA stated, "The design of the mercury-in-glass thermometer makes it relatively easy to detect a malfunction, including those caused by environmental conditions, because most are associated with a broken thermometer, separated column, or scale slippage. However, malfunction of other temperature-indicating devices may need to be detected by means other than observation. For example, a temperature-indicating device could be designed with a dual probe sensor that would enable detection of loss of accuracy of one of the probes when the probe readings do not agree. FDA recommends, but is not proposing to require, a dual probe design. FDA recognizes that specific design specifications for temperature-indicating devices may limit the flexibility of the regulation for current and future technologies" (72 FR 11990 at 11993). Thus, in the preamble to the proposed rule, we discussed a dual probe sensor as one means to detect a malfunction of a temperature-indicating device. We agree that a dual probe sensor is not the only design, mechanism, or process that may help detect temperature-indicating device failures. Therefore, this final rule does not require a dual probe design to detect malfunctions or failures of a temperature-indicating device.

(Comment 18) One comment objected to the requirement for "written documentation," found in proposed §§ 113.40(a)(1)(ii), (b)(1)(ii), (c)(1)(ii), (d)(1)(ii), (e)(1)(ii), (f)(1)(ii), and (g)(1)(i)(A)(*2*). The comment indicated that the term "written" implies hand-written documentation and will limit new documentation technologies. The comment stated that the term "written" should be removed to allow for means of documentation other than just written records, especially since the Agency proposed in § 113.100(f) to allow electronic records. The comment also stated that the term "written" should be removed from other sections of the regulations that apply to records.

(Response) We do not agree that the term "written" implies that the documents are hand-written. Written documentation may be generated

mechanically, such as when a stylus generates a tracing onto a paper chart, or electronically, including computer generated documents. However, we do agree that the term is not necessary for describing the requirements for establishing and maintaining records. Therefore, in this final rule, we used the term "record" or "records" without the qualifying term "written" (final §§ 113.87(e) and 113.100(b) and (e)). For consistency, we also removed the qualifying term "written" from § 113.87(b). In addition, where the term "written documentation" is intended to mean "records" that must be established and maintained, we changed the term "written documentation" to "records" (final § 113.40(a)(1)(ii), (b)(1)(ii), (c)(1)(ii), (d)(1)(ii), (e)(1)(ii), (f)(1)(ii), and (g)(1)(i)(A)(*2*)).

(Comment 19) One comment recommended that proposed § 113.40(b)(6)(ii) on water circulation be redesignated as new § 113.40(b)(9). The comment suggested that it was inappropriate to place the requirements for water circulation and for air supply in the same section, specifically proposed § 113.40(b)(6)(i) and (b)(6)(ii), which, according to the comment, respectively addressed air supply and water control. The comment stated that, for discontinuous water retort, air supply and water circulation are not related functions as they are for vertical water retorts covered in § 113.40(b).

(Response) The proposed rule does not have a § 113.40(b)(6)(ii). Because the comment was related to water circulation for discontinuous agitating retorts, we assume the comment was requesting redesignation of proposed § 113.40(e)(6)(ii). We also assume the comment was comparing proposed § 113.40(e)(6)(ii), related to water circulation in discontinuous agitating retorts, to proposed § 113.40(b)(10)(ii), related to water circulation in still retorts, including vertical still retorts. We reviewed the structure of proposed § 113.40(b)(10) and (e)(6) and agree that separating the requirements for the air supply and controls and the water circulation functions into distinct paragraphs for both discontinuous agitating and still retorts enhances the clarity of the regulation. We also determined that, based on changes to proposed § 113.40(e)(8), as explained in response to Comment 20, proposed § 113.40(b)(9) and (e)(8), relating to the water level indicator, should be redesignated to immediately precede proposed § 113.40(b)(10)(ii) and (e)(6)(ii), respectively, relating to water circulation. Thus, in this final rule, we redesignated proposed § 113.40(b)(9), (b)(10)(i), and (b)(10)(ii) as final § 113.40(b)(10), (b)(9), and (b)(11), respectively. We redesignated proposed § 113.40(e)(6)(ii) and (e)(8) as final § 113.40(e)(7) and (e)(6)(ii), respectively. We made conforming changes to the numbering of proposed § 113.40(b)(11), (b)(12), (b)(13), and (b)(14), which is now final § 113.40(b)(12), (b)(13), (b)(14), and (b)(15), respectively. Similarly, we redesignated proposed § 113.40(e)(6)(ii) and (e)(7), as final § 113.40(e)(7) and (e)(8), respectively.

(Comment 20) One comment suggested revising proposed § 113.40(b)(6), relating to air supply and controls, to clarify that the requirements apply only if air is used for providing overpressure. The comment also suggested revising proposed § 113.40(e)(8), which requires a water level indicator and operator checks of the water level to ensure that water covers the top layer of containers during the entire come-up time and processing periods. The comment requested revisions to clarify that the requirements of proposed § 113.40(e)(8) apply only if water level is determined to be a critical factor in the scheduled process or retort operating procedures. According to the comment, these revisions would accommodate current systems for pressure processing in discontinuous agitating retorts that utilize steam as the source of overpressure. The comment stated that for such systems, the processing authority may have determined that water level is not critical to the scheduled process because of the influences of steam in the retort headspace area and the continuous rotation of the retort baskets.

(Response) Because proposed § 113.40(b)(6) does not relate to air supply and controls, but is instead about crate supports, we assume here as we did in our response to Comment 19 that the comment is referring to proposed § 113.40(e)(6)(i), relating to air supply and controls for pressure processing in water in discontinuous agitating retorts. Proposed § 113.40(e)(6)(i) requires that a means be provided for introducing compressed air at the proper pressure and rate. We agree with the comment that the requirement of proposed § 113.40(e)(6)(i) applies only if air is used for providing overpressure. We also agree that the requirement of proposed § 113.40(e)(6)(ii) for a water level indicator and recorded checks of the water level during processing should be revised to accommodate discontinuous agitating retorts that utilize steam as the source of overpressure. Accordingly, in final § 113.40(e)(6)(i) and (e)(6)(ii), we clarified that the requirements relating to air supply and controls and to the water level indicator apply only if air is used for providing overpressure.

(Comment 21) One comment suggested revising proposed § 113.40(b)(10)(ii), which requires the water circulation pump to be equipped with a bleeder to remove air when starting operations. The comment suggested revising this requirement to allow for use of other suitable devices for air removal.

(Response) We agree that proposed § 113.40(b)(10)(ii), redesignated as § 113.40(b)(11) in this final rule, should be revised to allow for use of water circulation pumps, other than a water circulation pump with a bleeder, designed to ensure proper heat distribution. To ensure proper heat distribution, the water circulation pump must be designed to properly start the flow of water and to maintain the flow of water at the appropriate flow rate. To obtain the appropriate flow rate, the water circulation pump must be designed or equipped with a suitable means, such as a bleeder, to remove air from the pump chamber or the pump must be self priming. In addition, the pumping system must ensure that it avoids cavitation, *i.e.,* changes in water pressure caused by the formation of cavities or voids within the circulating water. Water circulation pumps that use mechanisms other than bleeders to remove air must be designed to ensure appropriate water circulation and to prevent cavitation.

To clarify this requirement, in § 113.40(b)(11) of this final rule we specify that the water circulation pump must be designed to provide proper flow on startup and during operation, such as with a bleeder or other suitable means to remove air during startup and with an appropriate device or design to prevent pump cavitation during operation. In addition, the pump must be equipped with a signaling device to warn the operator when it is not running. For consistency, we made similar changes to proposed § 113.40(e)(6)(ii) (redesignated as § 113.40(e)(7) in this final rule). In final § 113.40(b)(11) and (e)(7), we removed the reference to "pilot light" as the example of a signaling device to avoid the appearance of preference for a pilot light signaling device and to provide flexibility for processors to determine an appropriate signaling device.

(Comment 22) One comment agreed with the provision of proposed § 113.40(b)(1)(v) that allows a temperature-indicating device to be installed in a separate well or sleeve, *i.e.,* "If a separate well or sleeve is used, there must be adequate circulation to

ensure accurate temperature measurement." However, the comment indicated that the provision appears to conflict with another requirement in proposed § 113.40(b)(1)(v) for the temperature-indicating device sensor to extend directly into the water a minimum of at least 2 inches (5.1 centimeters) without a separable well or sleeve.

(Response) We agree that additional clarification is needed. In this final rule, we revised proposed § 113.40(b)(1)(v) and a similar requirement in proposed § 113.40(e)(1)(v) to clarify that the temperature-indicating device sensor must be installed directly into the retort shell or in a separate well or sleeve attached to the retort. In addition, for all retorts covered by these sections, the temperature-indicating device sensor must be located so that it is beneath the surface of the water throughout the process and where there is adequate circulation to ensure accurate temperature measurement. We also removed the requirement for the temperature-indicating device sensor to extend at least 2 inches (5.1 centimeters) directly into the water when the temperature-indicating device sensor is not located in a separate well or sleeve. We believe the requirement for adequate water circulation to ensure accurate temperature measurement obviates the need to specify how far the temperature-indicating device sensor must extend into the water and allows for use of alternative technologies.

(Comment 23) One comment noted that proposed § 113.40(f)(1)(v) should be revised to clarify that placement requirements in the steam dome and the hydrostatic water leg are for the temperature-indicating device sensor.

(Response) We agree. In this final rule, we revised proposed § 113.40(f)(1)(v) to clarify that the placement requirements in the steam dome and the hydrostatic water leg apply to the temperature-indicating device sensor, rather than the entire temperature-indicating device.

(Comment 24) One comment stated that the requirement for the temperature-recording device sensor to be installed either within the retort shell or in a well attached to the shell is misplaced in the paragraph heading, *Temperature controller* (proposed § 113.40(a)(2)(iv), (c)(2)(iv), (d)(2)(iv), (e)(2)(iv), and (f)(2)(iv)). The comment indicated that the statement applies to all temperature-recording device sensors, but its placement in the regulations implies that it applies only to combination recording-controlling devices. The comment suggested moving the statement relating to installation of the sensor, along with the requirement for the temperature-recording device sensor well to have a 1/16-inch (1.5 millimeters) or larger bleeder, to a separate paragraph.

(Response) We agree. In this final rule, we moved the statements relating to installation of the sensor and, where relevant, the requirement for the temperature-recording device sensor well to have a 1/16-inch (1.5 millimeters) or larger bleeder to the paragraph heading, *Temperature-recording device* (final § 113.40(a)(2), (c)(2), (d)(2), (e)(2), and (f)(2)).

(Comment 25) One comment objected to the requirement in proposed § 113.40(e)(1)(v) for the temperature-indicating device sensor to be installed either within the retort shell or in an external well attached to the retort. The comment indicated that placement of the temperature-indicating device in the suction manifold shows good agreement with temperatures inside the retort once the Cook Hold step begins. According to the comment, this placement is an improvement over using a thermometer well, since the water line for a partial immersion process is normally below the feed leg of the thermometer well and the temperature at that location may not be representative of the retort temperature. The comment suggested revising § 113.40(e)(1)(v) by adding the following language to permit alternative sensor placement, if appropriately documented: "Other installations deviating from these sensor locations may be used if the processor has evidence, on file, in the form of heat distribution data that its installation accomplishes adequate heat distribution. Such documentation is likely to include heat distribution studies conducted and documented by the processor to show that the process temperature will be reached once the Cook Hold time begins."

(Response) We do not agree with the comment's recommendation that § 113.40(e)(1)(v) should state that process deviations relating to placement of temperature-indicating device sensors may be acceptable if supported by heat distribution data. Section 108.35 states the requirements for submitting information to demonstrate process adequacy for a system design that deviates from the requirements of the regulations. A change in the design of a system for processing in water in discontinuous agitating retorts, such as placement of a temperature-indicating device sensor in a suction manifold rather than within the retort shell or in an external well attached to the retort, would require substantiation by qualified scientific authority as to its adequacy, including, for example, heat distribution studies as suggested by the comment. Such information must be submitted to FDA (§ 108.35(c)(2)(ii) (21 CFR 108.35(c)(2)(ii))).

(Comment 26) One comment expressed concern that proposed § 113.40(a)(2), which requires each retort to have an accurate temperature-recording device, does not define the term "accurate" or state how to determine that a temperature-recording device is accurate. The comment suggested using the same calibration method for temperature-recording devices as used for temperature-indicating devices and reference devices by requiring annual calibrations of temperature-recording devices with NIST traceability. The comment stated that this would effectively allow the temperature-recording device to be used as a secondary component of a "redundant system" to verify the accuracy of the temperature-indicating device. Accordingly, the temperature-indicating device would still be "the standard" device and should still be required to have the characteristics of high accuracy and reliability. The comment indicated that if the temperature-recording device is adjusted to the temperature-indicating device and the temperature-indicating device slowly drifts, this may not be known until the next calibration cycle, which could be up to a year later. However, according to the comment, if the devices are allowed to vary within their individual established calibration tolerances, it will be known if one device drifts out of its tolerance. The comment stated that adjusting the temperature-recording to the temperature-indicating device does not ensure the accuracy of the temperature-recording device or the recorded data.

(Response) This final rule requires the temperature-recording device to be adjusted to agree as nearly as possible with, but to be in no event higher than, the temperature-indicating device during the process time (final § 113.40(a)(2)(iii), (b)(2)(iii), (c)(2)(iii), (d)(2)(iii), (e)(2)(iii), (f)(2)(iii), and (g)(1)(i)(B)(*3*)). Processors must ensure that the temperature-indicating device is accurate during processing and that the recording mechanism of the temperature-recording device is adjusted to and reflects the temperature indicated by the temperature-indicating device. For some temperature-recording devices, such as those that record to a chart, adjustments to the mechanism that draws onto the chart are made by hand based on visually determining where the mechanism should be placed in contact with the chart. Unavoidable

imprecision relating to, for example, manual placement of the recording mechanism onto a chart, must result in recording a temperature that is not greater than the actual processing temperature. A recorded temperature that is higher than the actual processing temperature may mean that the product was not processed at or above the required processing temperature (*i.e.,* the product was under processed) and may pose a health hazard. However, if the temperature-recording device records a temperature that is lower than the actual processing temperature, although the quality of the product may be affected, processing at a higher temperature than recorded (*i.e.,* over processing) does not create a health hazard. Thus, although the recorded temperature should reflect the actual processing temperature as precisely as possible, we believe the requirement to not record a temperature that is higher than the temperature-indicating device, which must be accurate, provides an appropriate parameter for ensuring that the product is not under processed.

We believe processors should adjust the temperature-recording device mechanism for each batch at least at the beginning of the process and, as necessary, check the adjustment during the process time to ensure compliance with the regulation and to ensure that the batch is processed at or above the scheduled process temperature. To emphasize that the adjustment must occur with sufficient frequency to ensure that the temperature-recording device record reflects the temperature indicated by the temperature-indicating device, we revised the final rule to require the temperature-recording device to be adjusted with sufficient frequency to ensure agreement as nearly as possible with, but to be in no event higher than, the temperature-indicating device during processing (final § 113.40(a)(2)(iii), (b)(2)(iii), (c)(2)(iii), (d)(2)(iii), (e)(2)(iii), (f)(2)(iii), and (g)(1)(i)(B)(*3*)).

(Comment 27) One comment suggested replacing the term "recording chart" with "temperature-recording device record" in proposed § 113.40(c)(8)(ii).

(Response) We agree. In § 113.40(c)(8)(ii) of this final rule, we replaced the term "recording chart" with "temperature-recording device record." Also, because the term "marked" may be interpreted to mean a manual action, for clarity and to allow for use of alternative technologies, we replaced the term "marked" with "indicated" in § 113.40(c)(8)(ii) and (c)(9).

(Comment 28) One comment suggested that the statement that air-operated temperature controllers should have adequate filter systems to ensure a supply of clean, dry air is misplaced in the regulations (proposed § 113.40(a)(2)(iv), (b)(2)(iv), (c)(2)(iv), (d)(2)(iv), (e)(2)(iv), and (f)(2)(iv)). The comment stated that, because this statement applies to all air-operated temperature or steam control systems, regardless of whether or not it is a combination recorder-controller, it should be moved to proposed § 113.40(a)(4), (b)(4), (c)(4), (d)(4), (e)(4), and (f)(5), respectively, which set out the requirements for the steam controller.

(Response) We agree. In this final rule, we moved the statement that air-operated temperature controllers should have adequate filter systems to ensure a supply of clean, dry air from proposed § 113.40(a)(2)(iv), (b)(2)(iv), (c)(2)(iv), (d)(2)(iv), (e)(2)(iv), and (f)(2)(iv) to final § 113.40(a)(4), (b)(4), (c)(4), (d)(4), (e)(4), and (f)(5). In addition, for consistency in terminology, we replaced the term "recording-controlling instrument" with "recorder-controller" in final § 113.40(a)(2)(iv), (a)(4), (b)(2)(iv), (b)(4), (c)(2)(iv), (c)(4), (d)(2)(iv), (d)(4), (e)(2)(iv), (e)(4), (f)(2)(iv), and (f)(5).

(Comment 29) One comment stated that the requirement in proposed § 113.40(g)(1)(i)(E) for the differential pressure recorder-controller to be installed on the product-to-product regenerator is confusing because it implies that the recorder-controller needs to be physically attached to the product-to-product regenerator. Thus, according to the comment, the requirement does not accommodate operational practices where recording and control are done in remote systems. The comment stated that the pressure sensing device, rather than the recorder-controller, is installed on the regenerator.

(Response) We agree with the comment's suggestion to allow for use of alternative differential pressure recorder-controllers by eliminating the requirement for the differential pressure recorder-controller to be installed on the product-to-product regenerator. In this final rule, we clarify that when a product-to-product regenerator is used, it must be equipped with an accurate differential pressure recorder-controller (final § 113.40(g)(1)(i)(E)).

(Comment 30) One comment stated that the scale division requirements for differential pressure recorder-controllers in proposed § 113.40(g)(1)(i)(E) do not allow for use of differential pressure recorder-controllers that incorporate alternative technologies, such as digital recordings, for recording and controlling differential pressure.

(Response) We agree with the comment. In this final rule, we clarify that the requirements for scale divisions apply to graphical recordings and allowed for use of digital recordings, as well as analog or graphical recordings (final § 113.40(g)(1)(i)(E)(*i*) and (g)(1)(i)(E)(*ii*)). We also clarified that the differential pressure recorder-controller must be accurate to within 2 pounds per square inch (13.8 kilopascals) and that the sensor and the recorder of the differential pressure recorder-controller must be tested for accuracy against an accurate reference device (final § 113.40(g)(1)(i)(E)).

Although the comment did not request a similar change for pressure gages, in this final rule, for consistency, we changed the recommendation for each retort to be equipped with a pressure gage that is "graduated in divisions of 2 pounds per square inch (13.8 kilopascals) or less" to a recommendation that each retort be "equipped with a pressure gage that is accurate to 2 pounds per square inch (13.8 kilopascals) or less" (§ 113.40(a)(3), (b)(3), (c)(3), (d)(3), (e)(3) and (f)(3)).

(Comment 31) One comment stated that the requirement for the differential pressure recorder-controller to be tested for accuracy against a known accurate standard pressure indicator upon installation and at least once every 3 months of operation, is confusing and not reflective of actual operating conditions (proposed § 113.40(g)(1)(i)(E)). The comment indicated that the pressure sensors, rather than the controller, are tested for accuracy and that the controller should be tested for proper functioning. In addition, the comment stated that the required minimum frequency for testing the differential pressure recorder-controller after installation should be once per year, consistent with the requirement for testing temperature-indicating devices, instead of once every 3 months.

(Response) We do not agree with the comment's suggestion to reduce the requirement to test for accuracy from at least once every 3 months to once every year. The requirement to test the differential pressure recorder-controller for accuracy at least once every 3 months of operation is well established (current § 113.40(g)(1)(i)(E). The comment did not provide, and we do not have, data to support the adequacy of testing only once every year. Accordingly, we are making no changes in response to this comment.

(Comment 32) One comment suggested revising proposed § 113.40(g)(1)(ii)(C) and (g)(2)(ii)(B) to be consistent with § 113.40(g)(1)(ii)(B),

which states that a processing deviation must be handled in accordance with § 113.89 (21 CFR 113.89).

(Response) We agree that the suggested revision clarifies and provides consistency in the regulation. In this final rule, we clarify that the processing deviation must be handled in accordance with final § 113.89 (§ 113.40(g)(1)(ii)(C) and (g)(2)(ii)(B)).

(Comment 33) One comment objected to the way we expressed temperatures in Fahrenheit, followed by a parenthetical reference to the temperature expressed in Celsius. According to the comment, food chemists use only metric equivalents and their equipment is only calibrated in metric units. The comment suggested that we list the temperature in Celsius followed by a parenthetical reference in Fahrenheit, *i.e.,* instead of 220 °F (104.4 °C), use 105 °C (221 °F). The comment stated that the proposed temperature conversions do not follow the Omnibus Trade and Competitiveness Act of 1988. The comment also objected to expressing Celsius temperatures to four digits.

(Response) We do not agree with the comments suggestion to first list the Celsius temperature, followed by a parenthetical reference to the Fahrenheit temperature. Thermal processing temperatures are expressed in Fahrenheit in the current low-acid canned food regulations (part 113 (21 CFR part 113)) and many processors use temperature-indicating devices that express temperature in Fahrenheit. In the proposed rule, we added appropriate conversions to Celsius to ensure consistency in such conversions. Each conversion provided in the proposed rule was carefully evaluated to ensure that it appropriately expressed the required Fahrenheit temperature, or increments of temperature changes, and that any rounding did not significantly alter the intended temperature measurement established in the regulations in Fahrenheit. As demonstrated by the one degree Fahrenheit change in the comment's example, the conversion and rounding of the Fahrenheit temperature, based on the converted and rounded Celsius temperature, may result in a change that could significantly impact scheduled processes established based on Fahrenheit temperatures in the regulation. The comment did not provide a basis for changing the required scheduled process temperatures or cite specific provisions of the Omnibus Trade and Competitiveness Act of 1988 that would be applicable to Fahrenheit conversions in this regulation.

The comment also did not explain the basis for objecting to expressing Celsius temperatures to four digits. We interpret the comment to mean that, above 100 °C, the temperature should be rounded to the nearest whole number, rather than to the nearest tenth, which adds a fourth digit to the temperature measurement. We agree that it is not necessary to convert the Fahrenheit temperatures to the nearest tenth degree Celsius. Rather, we believe rounding should be to the nearest 0.5 degree Celsius, consistent with the requirement for temperature-indicating devices to be accurate to 1 °F (0.5 °C) ((final § 113.40(a)(1)(iv), (b)(1)(iv), (c)(1)(iv), (d)(1)(iv), (e)(1)(iv), (f)(1)(iv), and (g)(1)(i)(A)(*4*)). Accordingly, in this final rule we rounded the Celsius temperatures up to the nearest 0.5 degree Celsius, *i.e.,* we rounded 101.7 °C to 102 °C, 103.3 °C to 103.5 °C, 104.4 °C to 104.5 °C, and 107.2 °C to 107.5 °C (final § 113.40(a)(12)(i)(A), (a)(12)(i)(B), (a)(12)(i)(C), (a)(12)(i)(D), (a)(12)(ii)(A), and (a)(12)(ii)(B)).

(Comment 34) One comment indicated that using kilopascals as the metric equivalent for pounds per square inch may cause confusion. According to the comment, many systems use other units for pressure, such as bar. The comment suggested that the parenthetical addition of "kilopascals" at various locations in the proposed rule be qualified with "or equivalent unit" to support the use of the different, but equivalent, ways of referring to pressure.

(Response) We disagree with the comment. Each measurement in the regulations, including pounds per square inch, may be converted to the units appropriate for the equipment or system used by the processor, provided that the converted measurement does not differ significantly from the U.S. measurement in the regulation. Processors are responsible for ensuring that converted measurements are consistent with the requirements of the regulations, regardless of the unit of measure used.

(Comment 35) One comment noted that, in proposed § 113.40(d)(7) and (d)(8), the word "schedules" should be "scheduled."

(Response) We agree. We revised proposed § 113.40(d)(7) and (d)(8) accordingly.

(Comment 36) One comment suggested revising proposed § 113.40(g)(1)(ii)(E) to change the term "metering pump" to "flow controlling device" to be consistent with changes in proposed § 113.40(g)(1)(i)(F).

(Response) We agree that the term "metering pump" should be replaced with a more current term. As noted by the comment, in proposed § 113.40(g)(1)(i)(F), we used the term "flow controlling device." However, we believe the term "flow control device" is more consistent with current terminology. Thus, we replaced the terms "flow controlling device" and "metering pump" with "flow control device" in § 113.40(g)(1)(i)(F) and (g)(1)(ii)(E) of this final rule.

(Comment 37) One comment objected to the requirements in proposed § 113.60(d) for container handling equipment to be designed, constructed, and operated to preserve the can seam or other container closure integrity and for container handling equipment to be checked with sufficient frequency and repaired or replaced to prevent damage to containers. The comment stated that these proposed changes will not provide greater public health protection than the current regulations. According to the comment, the proposed changes will not provide FDA with any additional enforcement tools because they do not specify what processors must do to comply with the requirements and, thus, are subject to interpretation. The comment requested that no change be made to § 113.60(d) in the current regulations.

(Response) We do not agree with the comment's request to make no change to previous § 113.60(d), relating to container handling equipment. Previous § 113.60(d) recommends specific preventive measures that may be taken to prevent damage to containers and container closures, but does not clearly express that the measures are a few examples, rather than an exhaustive expression of the processor's responsibility to ensure that the can seam and container closure are not compromised during post-process handling. The proposed revision to § 113.60(d) was intended to clarify that processors are responsible for ensuring that container handling equipment used in handling filled containers, including automated and non-automated equipment, is designed and operated to preserve the can seam and container closure integrity. This proposal allows flexibility regarding appropriate design, construction, and operation of container handling equipment. We believe processors currently ensure can seam and container closure integrity without prescriptive instructions from the Agency. Also, we recognize that the proposed revision does not establish a new enforcement tool for FDA. The revised language is intended to clarify processors' responsibilities relating to post-process handling. We believe consumer protection will be enhanced

by processors who, as a result of the clarification to § 113.60(d), evaluate their post-process handling equipment and procedures and either confirm that they are adequate or correct deficiencies.

(Comment 38) One comment encouraged FDA to develop guidance for processors and inspection personnel on how to verify compliance with the proposed revision to § 113.83, which indicates that when a product is reprocessed or a previously processed product is blended into a new formulation, this condition must be covered in the scheduled process. According to the comment, amending existing process filings for thousands of products that currently meet this new requirement will be burdensome to both the industry and FDA. The comment suggested that a note in the processor's file from the processing authority should satisfy this requirement.

(Response) Previous § 113.83 requires the type, range, and combination of variations encountered in commercial production to be adequately provided for in establishing the scheduled process. Variations may occur due to seasonal or growing fluctuations, variety differences, or supplier processes. Variations also may occur when a food is reprocessed or when a previously processed product is mixed with a batch of the same unprocessed product before it is processed. In proposed § 113.83 we clarified that variations that occur due to reprocessing or mixing processed and unprocessed batches must be provided for in the scheduled process. In this final rule, we clarify in § 113.83 that variations include those that occur due to seasonal or growing fluctuations, variety differences, supplier processes, reprocessing, and mixing a batch of processed product with the same unprocessed product before it is processed. Therefore, this clarification does not represent a change from what has already been required of processors. Consistent with current § 108.35(c)(2)(ii), a processor who intentionally makes a change in a previously filed scheduled process by changing a condition that is basic to the adequacy of the scheduled process must obtain substantiation by a qualified scientific authority as to its adequacy, promptly record the substantiation, and obtain and file written verification from the authority for review by FDA. In addition, within 30 days after the first use, the processor must submit to FDA a copy of the file record showing the substantiation by a qualified scientific authority.

(Comment 39) One comment stated that proposed § 113.100(g) duplicates, in part, the requirements of § 108.35(h). The comment recommended removing the requirement from § 113.100(g) or, if retained, making the language identical to the language in § 108.35(h).

(Response) We agree with the comment and deleted § 113.100(g) from this final rule.

III. Minor Revisions in Regulations

We made minor revisions in this final rule, including the following:

In final § 113.40(a)(12)(i)(C), we corrected the metric conversion for 2.5 inches to 6.4 centimeters.

In final § 113.40(d)(6), we changed the word "containing" to "continuing."

In final § 113.40(e)(7), we changed the word "cross-section" to "cross-sectional," for consistency with use of the term in final § 113.40(a)(7) and (a)(12).

IV. Analysis of Economic Impacts

A. Final Regulatory Impact Analysis

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action under the Executive Order.

1. Need for Regulation

This final rule is needed to address inflexibility in the current regulations with regard to the requirement to use mercury-in-glass thermometry in low-acid canned food manufacturing, as well as to update and clarify current regulations. Previous regulations for thermally processed low-acid foods in hermetically sealed containers, except for aseptic packaging and processing, required the exclusive use of mercury-in-glass thermometers for indicating temperatures during food processing. The requirement for exclusive use of mercury-in-glass thermometers reflects the absence of alternatives on the market at the time current regulations became effective in 1973. Because of technological advances in thermometry since that time, alternatives to mercury-in-glass thermometers may now be available for the low-acid canned food industry.

Moreover, the number and variety of low-acid canned food products, the technologies, and the countries where they are processed have changed substantially since 1973 when the low-acid canned food regulations became effective. Data on imported foods obtained from FDA's "Consumption of Imported Foods" model indicates that approximately 15 billion pounds of low-acid canned food were imported from more than 100 countries in 2006 (Ref. 5). Provisions in the regulations issued in 1973 that were targeted toward technologies at that time may be less clear when applied to technologies being used today.

2. Costs and Benefits of Revisions Suggested by Comments

There were no comments that directly addressed the economic sections in the proposed regulatory impact analysis. We evaluated the revisions to the proposed rule to determine whether they may have implications for costs and benefits of this final rule. We identify each revision to the proposed rule that may have implications for the costs and benefits of this final rule as belonging to one of three categories of provisions, each category distinguished by the way it contributes to the costs and benefits. The categories of provisions are: Revisions to proposed recordkeeping requirements reported in table 1 of this document, revisions to the proposed non-recordkeeping requirements that may facilitate adoption of alternative technologies reported in table 2 of this document, and other minor revisions. Even though many of the revisions lie outside the framework of the economic analysis in the proposed rule, their categorization may help identify any potential costs and benefits. The costs and benefits of this final rule are reported in table 3 of this document.

TABLE 1—REVISIONS TO PROPOSED RECORDKEEPING REQUIREMENTS

Proposed 21 CFR Section	Final 21 CFR Section	Revision
113.40(a)(1)(ii)(A) and (a)(1)(ii)(B), 113.40(b)(1)(ii)(A) and (b)(1)(ii)(B), 113.40(c)(1)(ii)(A) and (c)(1)(ii)(B), 113.40(d)(1)(ii)(A) and (d)(1)(ii)(B), 113.40(e)(1)(ii)(A) and (e)(1)(ii)(B), 113.40(f)(1)(ii)(A) and (f)(1)(ii)(B), 113.40(g)(1)(i)(A)(*2*)(*i*) and (g)(1)(i)(A)(2)(*ii*).	113.100(c)(3) and (d)(3)	Make explicit the records requirements that apply when an accuracy test for a temperature-indicating device and for a reference device that is maintained by the processor is conducted by an outside facility.
113.40(a)(1)(ii)(A) and (a)(1)(ii)(B), 113.40(b)(1)(ii)(A) and (b)(1)(ii)(B), 113.40(c)(1)(ii)(A) and (c)(1)(ii)(B), 113.40(d)(1)(ii)(A) and (d)(1)(ii)(B), 113.40(e)(1)(ii)(A) and (e)(1)(ii)(B), 113.40(f)(1)(ii)(A) and (f)(1)(ii)(B), 113.40(g)(1)(i)(A)(*2*)(*i)* and (g)(1)(i)(A)(*2*)(*ii*).	113.100(c)(5) and (d)(5)	Clarify that records of the accuracy of a temperature-indicating device and a reference device maintained by the processor must include the date and results of each accuracy test, including the amount of calibration adjustment.
113.40(a)(1)(ii)(A) and (a)(1)(ii)(B), 113.40(b)(1)(ii)(A) and (b)(1)(ii)(B), 113.40(c)(1)(ii)(A) and (c)(1)(ii)(B), 113.40(d)(1)(ii)(A) and (d)(1)(ii)(B), 113.40(e)(1)(ii)(A) and (e)(1)(ii)(B), 113.40(f)(1)(ii)(A) and (f)(1)(ii)(B), 113.40(g)(1)(i)(A)(*2*)(*i*) and (g)(1)(i)(A)(*2*)(*ii*).	113.100(c)(6) and (d)(6)	Indicate "[t]he date on or before which the next accuracy test must be performed" instead of the proposed "the date of the next scheduled accuracy test."

FDA believes that the information required by this final rule to be established and maintained for accuracy tests is currently generated even though it may not currently be permanently recorded. We estimate that the revisions to the proposed records requirements reported in table 1 of this document will add very little or no additional costs to the recordkeeping costs estimated in the analysis of the proposed rule. Thus, the estimated costs of the records of the accuracy tests for this final rule are not different than those estimated for the analysis of the proposed rule (72 FR 11990 at 11999, March 14, 2007).

TABLE 2—REVISIONS TO PROPOSED NON-RECORDKEEPING REQUIREMENTS THAT MAY FACILITATE ADOPTION OF ALTERNATIVE TECHNOLOGIES

Revised 21 CFR Section	Revision
113.40(a)(1), 113.40(b)(1), 113.40(c)(1), 113.40(d)(1), 113.40(e)(1), 113.40(f)(1) and (g)(1)(i)(A), 113.87(c).	Replace "an accurate calibrated reference device" with "a reference device for which the accuracy is traceable to a National Institute of Standards and Technology (NIST), or other national metrology institute, standard reference device."
113.40(a)(1)(iv), 113.40(b)(1)(iv), 113.40(c)(1)(iv), 113.40(e)(1)(iv) and (f)(1)(iv), 113.40(g)(1)(i)(A)(*4*).	Replace "easily readable to" with "accurate to" to describe the measurement uncertainty allowed for temperature-indicating devices.
Proposed 113.40(b)(10)(ii): Final 113.40(b)(11)	Change the term "pilot light or other signaling device" to "signaling device" on the pump that controls water circulation to allow for the use of alternative signaling devices.
Proposed 113.40(e)(6)(ii): Final 113.40(e)(7)	
113.40(g)(1)(i)(E)	Clarify that recordings for differential pressure recorder-controllers may be analog or graphical or digital.
130.40(g)(1)(i)(F) and (g)(1)(ii)(E)	Replace "metering pump" with "flow control device".

The costs for the revisions to the proposed rule of non-recordkeeping requirements that may facilitate adoption of alternative technologies are estimated to be zero since the adoption of alternative technologies is voluntary and there would be no additional health risks from their adoption. The benefits of these revisions are estimated to be positive since they would allow additional flexibility for adopting alternative thermometry and other technologies that, consistent with the framework in the analysis of the proposed rule, could slightly improve labor productivity in the manufacture of low-acid canned food.

Other revisions in this final rule include those that are editorial in nature and clarifications of existing regulations that have neither additional costs nor additional benefits to those considered in the analysis of the proposed rule (72 FR 11990 at 11999, March 14, 2007).

3. Regulatory Options

This section reports estimates of the costs and benefits of several regulatory options. The regulatory options include: (a) No new regulation; (b) allow flexibility to use temperature-indicating devices, including mercury-in-glass thermometers, without explicit recordkeeping requirements; and (c) final rule—Option (b), with explicit recordkeeping requirements for accuracy tests for temperature-indicating devices and reference devices maintained by the processor.

- Option (a)—No new regulation.

There would be neither costs nor benefits from this option.

- Option (b)—Allow flexibility to use temperature-indicating devices, including mercury-in-glass thermometers, without explicit recordkeeping requirements.

There would be neither costs nor benefits from this option.

- Option (c)—Final rule—Option (b), with explicit recordkeeping requirements for accuracy tests for temperature-indicating devices and reference devices maintained by the processor.

Tables 3 and 4 of this document report the costs and benefits of this final rule based on estimates derived in the analysis of the proposed rule and modified in accordance with changes to the final rule, as indicated in the tables. In the analysis of the proposed rule, we estimated the costs to be from the recordkeeping provisions that involved one-time and recurring costs. The benefits from the proposed rule were from the reduced presence of mercury in food processing facilities, the reduced mercury cleanup and remediation costs, and improved labor productivity due to the voluntary adoption of alternative temperature device technologies. In addition, benefits from the recordkeeping provisions were from the

enhanced ability to track critical accuracy test data, particularly during the transition from mercury-in-glass thermometers to alternative temperature-indicating devices (72 FR 11990 at 11999, March 14, 2007).

TABLE 3—COSTS OF THE FINAL RULE

One-time recordkeeping costs	
Design of new recordkeeping forms	Minimal.
Recordkeeping training	Minimal.
Recurring Costs (annual)	
Recordkeeping [1]	$5,000–$23,000 plus a minimal amount in accordance to the changes to the recordkeeping language.
Purchase and additional testing of alternative devices	Voluntarily incurred.

[1] Estimates based on those reported in the analysis for the proposed rule.

TABLE 4—BENEFITS OF THE FINAL RULE

Benefits (annual)	
Change in risk from low-acid canned foods	No change.
Clarification of existing processor's responsibilities	Not quantified.
Avoided mercury cleanup costs [1]	$31,000–$152,000.
Enhanced labor productivity from adopting alternative temperature-indicating devices and other processing technologies.	Not quantified.
Enhanced ability to track critical accuracy performance data—especially during the transition period following the adoption of alternative temperature indicating devices.	Not quantified.

[1] Estimates based on those reported in the analysis for the proposed rule.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. An estimate of the cost of the proposed rule on small entities was made in the proposed rule. For firms of all sizes, the per-firm costs were estimated to be between $1 and $4 per year for each of the estimated 6,700 firms. The per-firm costs for small firms were estimated to be on the lower end of that range. Based on these estimates, FDA certified that the proposed rule would not have a significant impact on a substantial number of small entities. Under the RFA, no further analysis is required. For the complete discussion, *see* the Regulatory Flexibility Analysis of the proposed rule (72 FR 11990 at 11999 and 12003 to 12004, March 14, 2007). No comments objected to or suggested significant modifications to the estimates of the per-firm costs in the regulatory flexibility analysis in the proposed rule.

C. Unfunded Mandate Analysis

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, for "any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year." The current threshold after adjustment for inflation is $135 million, using the most current (2009) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

V. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by OMB under the PRA (44 U.S.C. 3501–3520). The final rule revises information collection requirements in part 113 that are currently approved under OMB control number 0910–0037 (expires August 31, 2011). Comments on the information collection requirements currently approved under OMB control number 0910–0037, as amended by the information collection provisions of this final rule, are being solicited in a separate notice published elsewhere in this issue of the **Federal Register**. That notice also announces that FDA has submitted the information collection provisions of the final rule to OMB for approval, along with a request for extension of the related information collection provisions already approved under OMB control number 0910–0037, as revised by the final rule. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. 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.

In compliance with the PRA (44 U.S.C. 3506(c)(2)(B)), the Agency requested public comment on the information collection provisions of the proposed rule (72 FR 11990 at 12004). The proposed rule also stated that FDA had submitted the information collection provisions to OMB for review (72 FR 11990 at 12005). However, due to an administrative error, the Agency did not actually do so, and therefore is submitting them to OMB now. No public comments to the analysis of the information collection provisions in the proposed rule suggested that we modify our burden estimates. Thus, we have not changed our estimates of the annual frequency per recordkeeping or the hours per record. We have, however, increased the estimated number of recordkeepers to reflect growth in the low-acid canned food processing industry since the 2007 proposed rule.

Title: Recordkeeping Requirements for Temperature-Indicating Devices.

Description: The information to be collected is related to accuracy tests of temperature-indicating devices and reference devices maintained by processors of low-acid canned foods. These tests must be performed to ensure the accuracy of the devices during the processing of these foods. If these devices are not accurate, the processor cannot ensure that the low-acid canned foods it produces are safe to eat, and consumers may be harmed. The recordkeeping requirements of the rule are necessary to document that

appropriate accuracy tests have been performed with the appropriate frequencies for each temperature-indicating device and each reference device maintained by the processor. Records of accuracy tests for these devices also help processors determine how frequently the devices should be tested for accuracy. Much of the information is currently generated for accuracy tests performed under current regulations. However, the information may not be recorded as required under the final rule.

Current low-acid canned food regulations recommend, but do not require, that processors keep records of accuracy tests for mercury-in-glass thermometers, including test date, standard used, method used, and person performing the test. This final rule requires processors to keep records documenting the accuracy of temperature-indicating devices (including but not limited to mercury-in-glass thermometers) and of reference devices that are maintained by the processor. These records include: The identifier of the device being tested, such as its tag or seal; the name of the manufacturer of the device; the identity of the reference device, equipment, and procedures used for the accuracy test and to adjust the device or, if an outside facility conducts the accuracy test, documentation tracing the accuracy to a NIST or other national metrology institute standard; the identity of the person or facility that performed the accuracy test and adjusted or calibrated the device; the date and results of each accuracy test, including the amount of adjustment; and the date on or before which the next accuracy test must be performed.

Description of Respondents: The respondents to this information collection are commercial low-acid canned food processors. Based on FDA's low-acid canned food manufacturers' registration database as of September 2009, we estimate that there are approximately 8,450 foreign and domestic low-acid canned food processing establishments.

Burden: The burden of the recordkeeping requirement consists of the setup time required to design and establish a form for recording the required information, and the additional hours of labor needed to record the information. The setup time required for designing a new recordkeeping form is assumed to be minimal since we estimate that only a few data elements required in the final rule are currently unreported by some processors and that only small modifications to a processor's recordkeeping form would be required to accommodate the additional data elements.

We estimate that the time needed to comply with the recordkeeping requirements of the final rule will be small because current industry practice is to keep track of most, if not all, of this information. Because current incentives to track accuracy of mercury-in-glass thermometers may vary across the industry, however, some information that is currently generated during accuracy tests may not be recorded as required under the final rule. Thus, we assume there will be a burden incurred from the final rule to record information that is currently generated, but not recorded.

We assume that half of the industry currently does not record all of the device accuracy testing information that the final rule requires. We further assume that current practice by these firms is to leave unrecorded 1 to 4 separate pieces of information required under the final rule, and that each piece of information takes between 10 and 15 seconds to record. Consequently, we estimate that half of all low-acid canned food manufacturers will spend between 10 seconds and 1 minute (*i.e.,* 1×10 seconds and 4×15 seconds) per device to record information required in the final rule.

Based on a survey conducted by FDA between 1992 and 1993 of mercury-in-glass thermometer calibration in the low-acid canned food industry, we estimate that low-acid food firms use an average of 10 temperature-indicating devices, including reference devices. We estimate that 4,225 low-acid canned food manufacturers (half of the industry) currently do not fully record the accuracy test results required by the final rule. Because the regulations specify that each device must be tested upon installation and at least once a year thereafter, or more frequently if necessary to ensure accuracy, we estimate that each device requires 1 to 2 tests per year (midpoint of 1.5 tests per year). We therefore estimate the annual frequency per recordkeeping to be 15 (*i.e.,* 10 devices $\times$ 1.5 tests per year). We estimate the burden for recording the additional information to be between 10 and 60 seconds per device (midpoint of 35 seconds or 0.0097 hours per device). Therefore, the estimated total annual burden in hours for the recordkeeping requirements of the final rule is approximately 615 hours ($63{,}375 \times 0.0097 = 614.7$ hours, rounded to 615 hours). Table 5 of this document reports the average annual recordkeeping burden described previously in this section of the document.

TABLE 5–ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Annual frequency per recordkeeping	Total annual records	Hours per record	Total hours
113.100(c) and (d)	4,225	15	63,375	0.0097	615

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the Agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. References

We have placed the following references on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. You may see them between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.

1. International Vocabulary of Metrology—Basic and General Concepts and Associated Terms (VIM), BIPM, IEC, IFCC, ILAC, ISO, IUPAC, IUPAP, OIML, 3d ed., p. 21, definition 2.13, 2008; accessed online October 20, 2010, at *http://www.bipm.org/utils/common/documents/jcgm/JCGM_200_2008.pdf.*

2. International Vocabulary of Metrology—Basic and General Concepts and Associated Terms (VIM), BIPM, IEC, IFCC, ILAC, ISO, IUPAC, IUPAP, OIML, 3d ed., p. 29, definition 2.41, 2008; accessed online October 20, 2010, at *http://www.bipm.org/utils/common/documents/jcgm/JCGM_200_2008.pdf.*

3. International Vocabulary of Metrology—Basic and General Concepts and Associated Terms (VIM), BIPM, IEC, IFCC, ILAC, ISO, IUPAC, IUPAP, OIML, 3d ed., p. 19, definition 2.9, 2008; accessed online October 20, 2010, at *http://www.bipm.org/utils/common/documents/jcgm/JCGM_200_2008.pdf.*

4. International Vocabulary of Metrology—Basic and General Concepts and Associated Terms (VIM), BIPM, IEC, IFCC, ILAC, ISO, IUPAC, IUPAP, OIML, 3d ed., p. 25, definition 2.26, 2008; accessed online October 20, 2010, at *http://www.bipm.org/utils/common/documents/jcgm/JCGM_200_2008.pdf.*

5. U.S. FDA, Consumption of Imported Foods, Final Report. RTI International, Contract 223–01–2466, Task Order 11, RTI Project Number 0208184.011, August 2008.

List of Subjects in 21 CFR Part 113

Food packaging, Foods, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 113 is amended as follows:

PART 113—THERMALLY PROCESSED LOW-ACID FOODS PACKAGED IN HERMETICALLY SEALED CONTAINERS

■ 1. The authority citation for 21 CFR part 113 continues to read as follows:

Authority: 21 U.S.C. 342, 371, 374; 42 U.S.C. 264.

■ 2. Revise § 113.40 to read as follows:

§ 113.40 Equipment and procedures.

(a) *Equipment and procedures for pressure processing in steam in still retorts*—(1) *Temperature-indicating device.* Each retort shall be equipped with at least one temperature-indicating device that accurately indicates the temperature during processing. Each temperature-indicating device shall have a sensor and a display. Each temperature-indicating device and each reference device that is maintained by the processor shall be tested for accuracy against a reference device for which the accuracy is traceable to a National Institute of Standards and Technology (NIST), or other national metrology institute, standard reference device by appropriate standard procedures, upon installation and at least once a year thereafter, or more frequently if necessary, to ensure accuracy during processing. Each temperature-indicating device and each reference device that is maintained by the processor shall have a tag, seal, or other means of identity.

(i) The design of the temperature-indicating device shall ensure that the accuracy of the device is not affected by electromagnetic interference and environmental conditions.

(ii) Records of the accuracy of the temperature-indicating device and of a reference device that is maintained by the processor shall be established and maintained in accordance with § 113.100(c) and (d).

(iii) A temperature-indicating device that is defective or cannot be adjusted to the accurate calibrated reference device shall be repaired before further use or replaced.

(iv) A temperature-indicating device shall be accurate to 1 °F (0.5 °C). The temperature range of a mercury-in-glass thermometer shall not exceed 17 °F per inch (4 °C per centimeter) of graduated scale. A mercury-in-glass thermometer that has a divided mercury column shall be considered defective.

(v) Each temperature-indicating device shall be installed where it can be accurately and easily read. The temperature-indicating device sensor shall be installed either within the retort shell or in external wells attached to the retort. External wells or pipes shall be connected to the retort through at least a ¾-inch (2 centimeters) diameter opening and equipped with a 1/16-inch (1.5 millimeters) or larger bleeder opening so located as to provide a full flow of steam past the length of the temperature-indicating device sensor. The bleeders for external wells shall emit steam continuously during the entire processing period. The temperature-indicating device—not the temperature recording device—shall be the reference instrument for indicating the processing temperature.

(2) *Temperature-recording device.* Each retort shall have an accurate temperature-recording device. Each temperature-recording device shall have a sensor and a mechanism for recording temperatures to a permanent record, such as a temperature-recording chart. The temperature-recording device sensor shall be installed either within the retort shell or in a well attached to the shell. Each temperature-recording device sensor well shall have a 1/16-inch (1.5 millimeters) or larger bleeder that emits steam continuously during the processing period.

(i) *Analog or graphical recordings.* Temperature-recording devices that create analog or graphical recordings may be used. Temperature-recording devices that record to charts shall be used only with the appropriate chart. Each chart shall have a working scale of not more than 55 °F per inch (12 °C per centimeter) within a range of 20 °F (10 °C) of the process temperature. Chart graduations shall not exceed 2 °F (1 °C) within a range of 10 °F (5 °C) of the process temperature. Temperature-recording devices that create multipoint plottings of temperature readings shall record the temperature at intervals that will assure that the parameters of the process time and process temperature have been met.

(ii) *Digital recordings.* Temperature-recording devices, such as data loggers, that record numbers or create other digital records may be used. Such a device shall record the temperature at intervals that will assure that the parameters of the process time and process temperature have been met.

(iii) *Adjustments.* The temperature-recording device shall be adjusted with sufficient frequency to ensure agreement as nearly as possible with, but to be in no event higher than, the temperature-indicating device during processing. A means of preventing unauthorized changes in adjustment shall be provided. A lock or a notice from management posted at or near the temperature-recording device that provides a warning that only authorized persons are permitted to make adjustments is a satisfactory means of preventing unauthorized changes.

(iv) *Temperature controller.* The temperature-recording device may be combined with the steam controller and may be a recorder-controller.

(3) *Pressure gages.* Each retort should be equipped with a pressure gage that is accurate to 2 pounds per square inch (13.8 kilopascals) or less.

(4) *Steam controller.* Each retort shall be equipped with an automatic steam controller to maintain the retort temperature. This may be a recorder-controller when combined with a temperature-recording device. The steam controller may be air-operated and actuated by a temperature sensor positioned near the temperature-indicating device in the retort. Air-operated temperature controllers should have adequate filter systems to ensure a

supply of clean, dry air. A steam controller activated by the steam pressure of the retort is acceptable if it is carefully maintained mechanically so that it operates satisfactorily.

(5) *Steam inlet.* The steam inlet to each still retort shall be large enough to provide sufficient steam for proper operation of the retort. Steam may enter either the top portion or the bottom portion of the retort but, in any case, shall enter the portion of the retort opposite the vent; for example, steam inlet in bottom portion and vent in top portion.

(6) *Crate supports.* A bottom crate support shall be used in vertical still retorts. Baffle plates shall not be used in the bottom of still retorts.

(7) *Steam spreaders.* Steam spreaders are continuations of the steam inlet line inside the retort. Horizontal still retorts shall be equipped with steam spreaders that extend the length of the retort. For steam spreaders along the bottom of the retort, the perforations should be along the top 90° of the pipe, that is, within 45° on either side of the top center. Horizontal still retorts over 30 feet (9.1 meters) long should have two steam inlets connected to the spreader. In vertical still retorts, the steam spreaders, if used, should be perforated along the center line of the pipe facing the interior of the retort or along the sides of the pipe. The number of perforations should be such that the total cross-sectional area of the perforations is equal to 1.5 to 2 times the cross-sectional area of the smallest restriction in the steam inlet line.

(8) *Bleeders.* Bleeders, except those for temperature-indicating device wells, shall be 1/8-inch (3 millimeters) or larger and shall be wide open during the entire process, including the come-up time. For horizontal still retorts, bleeders shall be located within approximately 1 foot (30.5 centimeters) of the outermost locations of containers at each end along the top of the retort. Additional bleeders shall be located not more than 8 feet (2.4 meters) apart along the top. Bleeders may be installed at positions other than those specified in this paragraph, as long as there is evidence in the form of heat distribution data that they accomplish adequate removal of air and circulation of steam within the retort. Vertical retorts shall have at least one bleeder opening located in that portion of the retort opposite the steam inlet. In retorts having top steam inlet and bottom venting, a bleeder shall be installed in the bottom of the retort to remove condensate. All bleeders shall be arranged so that the operator can observe that they are functioning properly.

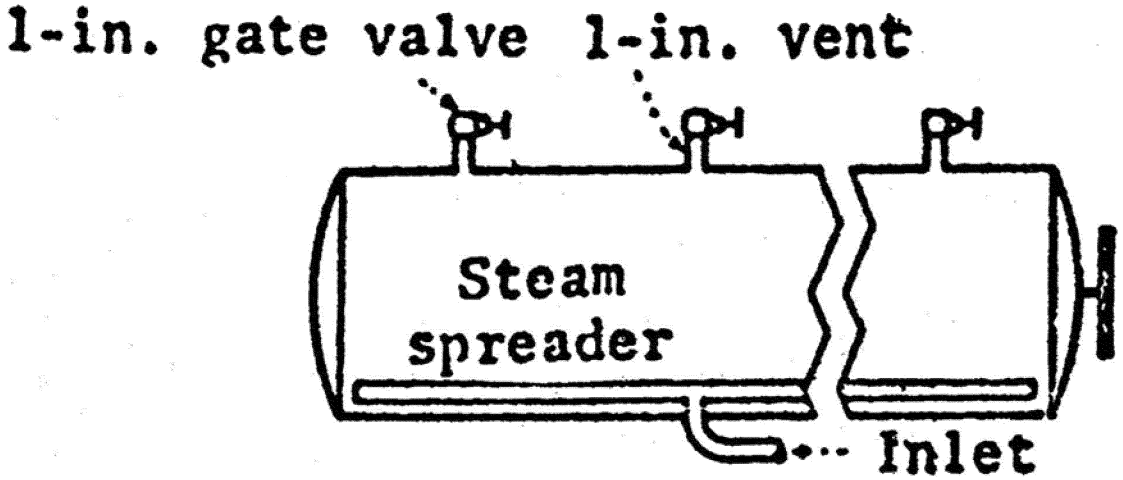
(9) *Stacking equipment and position of containers.* Crates, trays, gondolas, *etc.,* for holding containers shall be made of strap iron, adequately perforated sheet metal, or other suitable material. When perforated sheet metal is used for the bottoms, the perforations should be approximately the equivalent of 1-inch (2.5 centimeters) holes on 2-inch (5.1 centimeters) centers. If dividers are used between the layers of containers, they should be perforated as stated in this paragraph. The positioning of containers in the retort, when specified in the scheduled process, shall be in accordance with that process.

(10) *Air valves.* Retorts using air for pressure cooling shall be equipped with a suitable valve to prevent air leakage into the retort during processing.

(11) *Water valves.* Retorts using water for cooling shall be equipped with a suitable valve to prevent leakage of water into the retort during processing.

(12) *Vents.* Vents shall be installed in such a way that air is removed from the retort before timing of the process is started. Vents shall be controlled by gate, plug cock, or other adequate type valves which shall be fully open to permit rapid discharge of air from the retort during the venting period. Vents shall not be connected directly to a closed drain system. If the overflow is used as a vent, there shall be an atmospheric break in the line before it connects to a closed drain. The vent shall be located in that portion of the retort opposite the steam inlet; for example, steam inlet in bottom portion and vent in top portion. Where a retort manifold connects several vent pipes from a single still retort, it shall be controlled by a gate, plug cock, or other adequate type of valve. The retort manifold shall be of a size that the cross-sectional area of the pipe is larger than the total cross-sectional area of all connecting vents. The discharge shall not be directly connected to a closed drain without an atmospheric break in the line. A manifold header connecting vents or manifolds from several still retorts shall lead to the atmosphere. The manifold header shall not be controlled by a valve and shall be of a size that the cross-sectional area is at least equal to the total cross-sectional area of all connecting retort manifold pipes from all retorts venting simultaneously. Timing of the process shall not begin until the retort has been properly vented and the processing temperature has been reached. Some typical installations and operating procedures reflecting the requirements of this section for venting still retorts without divider plates are given in paragraphs (a)(12)(i)(A) through (a)(12)(i)(D) and (a)(12)(ii)(A) and (a)(12)(ii)(B) of this section.

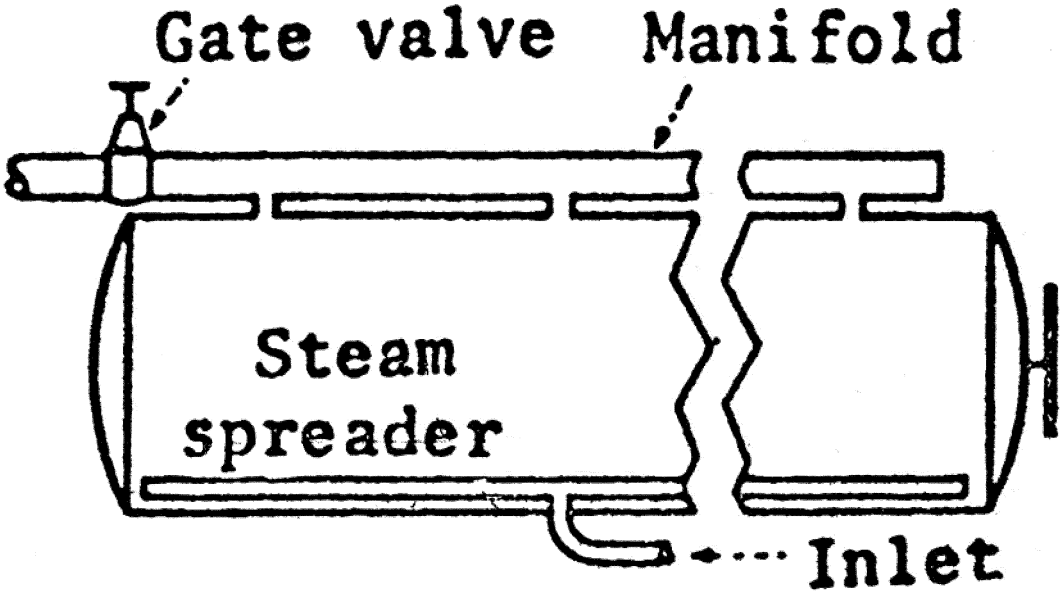
(i) *Venting horizontal retorts.* (A) Venting through multiple 1-inch (2.5 centimeters) vents discharging directly to atmosphere.



(*1*) *Specifications.* One 1-inch (2.5 centimeters) vent for every 5 feet (1.5 meters) of retort length equipped with a gate or plug cock valve and discharging to atmosphere; end vents not more than 2.5 feet (76 centimeters) from ends of retort.

(*2*) *Venting method.* Vent valves should be wide open for at least 5 minutes and to at least 225 °F (107 °C), or at least 7 minutes and to at least 220 °F (104.5 °C).

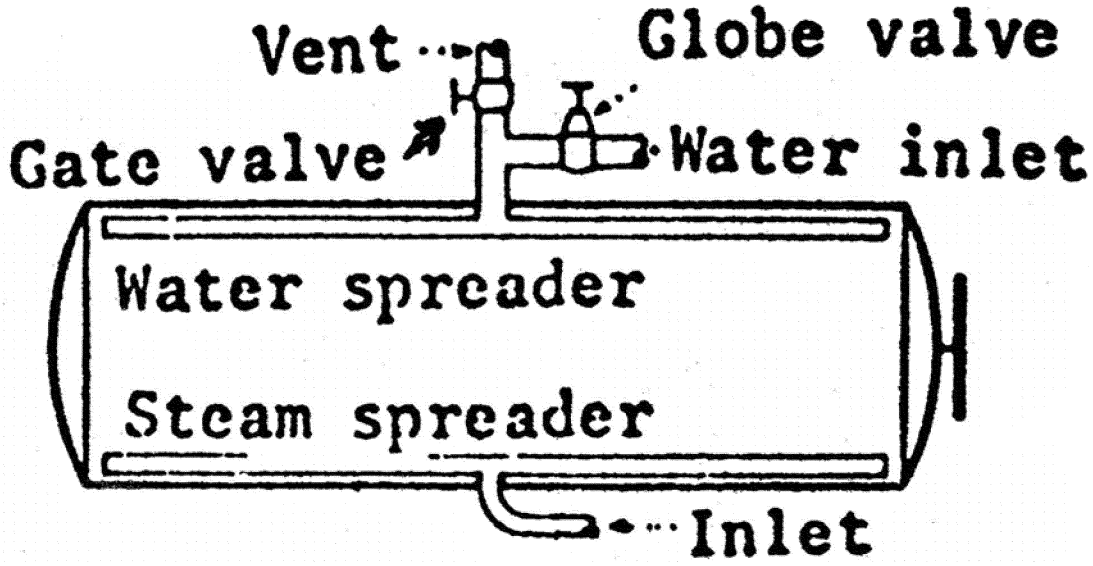
(B) Venting through multiple 1-inch (2.5 centimeters) vents discharging through a manifold to atmosphere.



(*1*) *Specifications.* One 1-inch (2.5 centimeters) vent for every 5 feet (1.5 meters) of retort length; and vents not over 2.5 feet (76 centimeters) from ends of retort. Size of manifold—for retorts less than 15 feet (4.6 meters) in length, 2.5 inches (6.4 centimeters); for retorts 15 feet (4.6 meters) and over in length, 3 inches (7.6 centimeters).

(*2*) *Venting method.* Manifold vent gate or plug cock valve should be wide open for at least 6 minutes and to at least 225 °F (107 °C), or for at least 8 minutes and to at least 220 °F (104.5 °C).

(C) Venting through water spreaders.

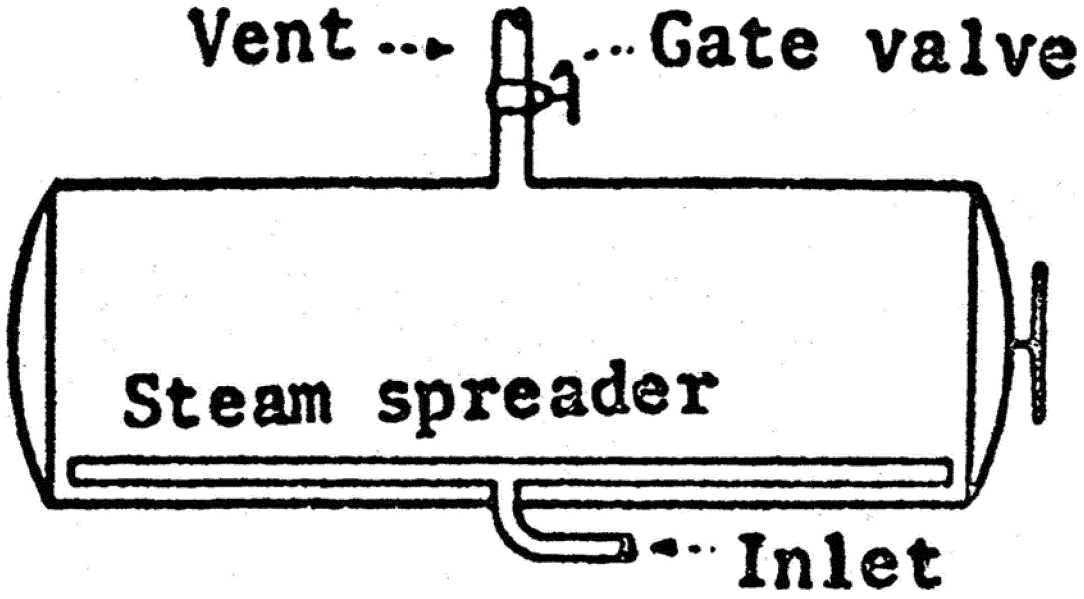


(*1*) *Size of vent and vent valve.* For retorts less than 15 feet (4.6 meters) in length, 2 inches (5.1 centimeters); for retorts 15 feet (4.6 meters) and over in length, 2.5 inches (6.4 centimeters).

(*2*) *Size of water spreader.* For retorts less than 15 feet (4.6 meters) in length, 1.5 inches (3.8 centimeters); for retorts 15 feet (4.6 meters) and over in length, 2 inches (5.1 centimeters). The number of holes should be such that their total cross-sectional area is approximately equal to the cross-sectional area of the vent pipe inlet.

(*3*) *Venting method.* Water spreader vent gate or plug cock valve should be wide open for at least 5 minutes and to at least 225 °F (107 °C), or for at least 7 minutes and to at least 220 °F (104.5 °C).

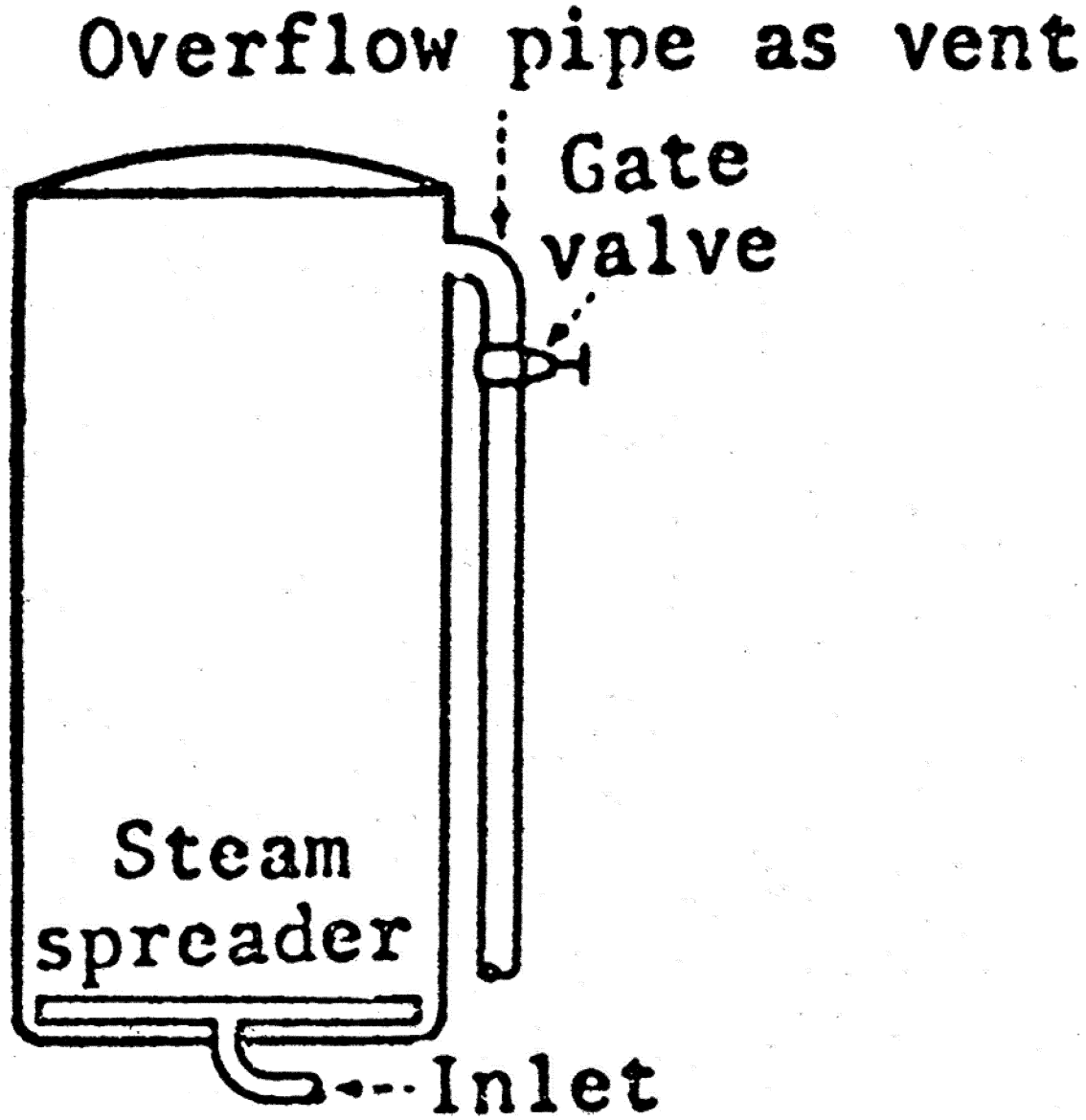
(D) Venting through a single 2.5-inch (6.4 centimeters) top vent (for retorts not exceeding 15 feet (4.6 meters) in length).



(*1*) *Specifications.* A 2.5-inch (6.4 centimeters) vent equipped with a 2.5-inch (6.4 centimeters) gate or plug cock valve and located within 2 feet (61 centimeters) of the center of the retort.

(*2*) *Venting method.* Vent gate or plug cock valve should be wide open for at least 4 minutes and to at least 220 °F (104.5 °C).

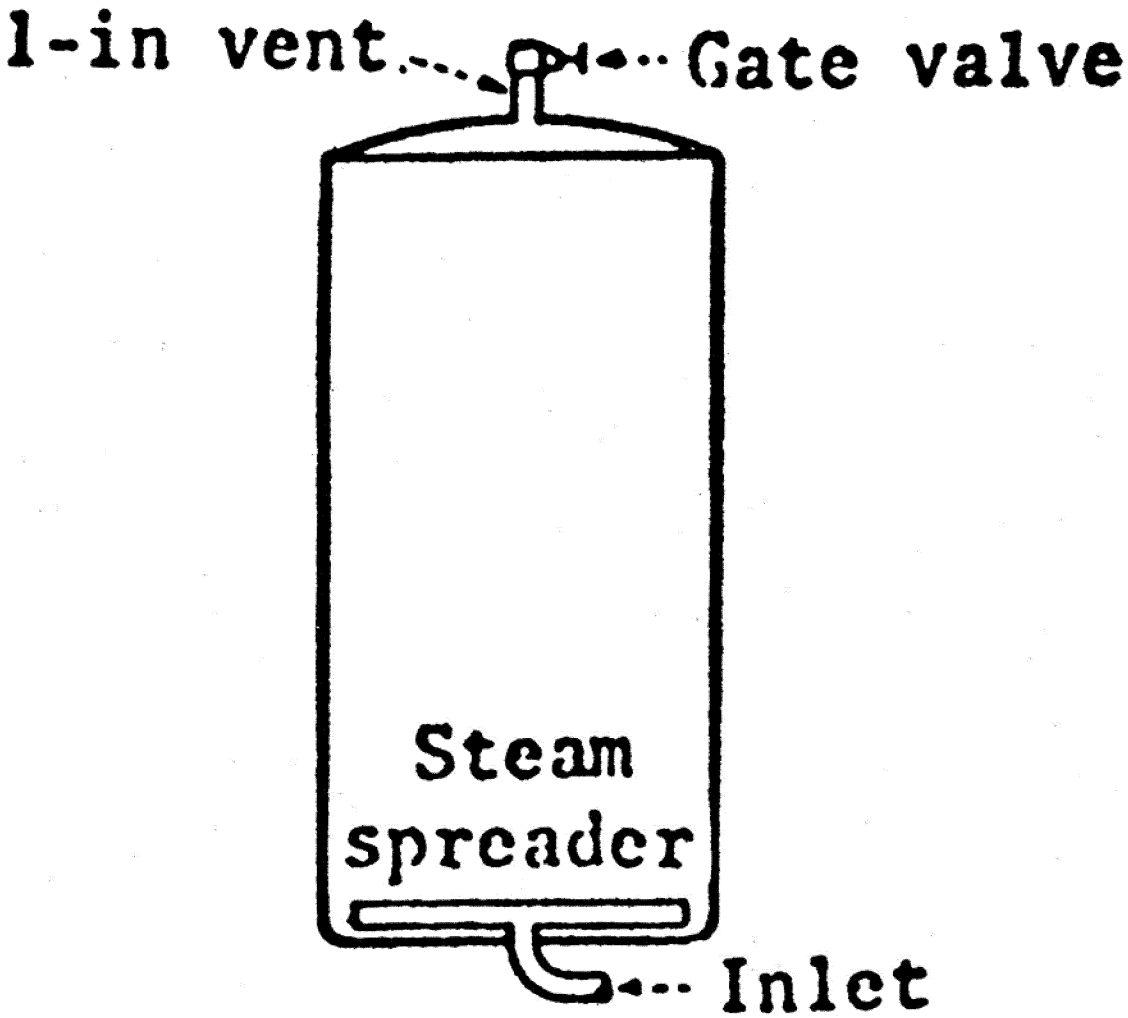
(ii) *Venting vertical retorts.* (A) Venting through a 1.5-inch (3.8 centimeters) overflow.



(*1*) *Specifications.* A 1.5-inch (3.8 centimeters) overflow pipe equipped with a 1.5-inch (3.8 centimeters) gate or plug cock valve and with not more than 6 feet (1.8 meters) of 1.5-inch (3.8 centimeters) pipe beyond the valve before break to the atmosphere or to a manifold header.

(*2*) *Venting method.* Vent gate or plug cock valve should be wide open for at least 4 minutes and to at least 218 °F (103.5 °C), or for at least 5 minutes and to at least 215 °F (102 °C).

(B) Venting through a single 1-inch (2.5 centimeters) side or top vent.



(*1*) *Specifications.* A 1-inch (2.5 centimeters) vent in lid or top side, equipped with a 1-inch (2.5 centimeters) gate or plug cock valve and discharging directly into the atmosphere or to a manifold header.

(*2*) *Venting method.* Vent gate or plug cock valve should be wide open for at least 5 minutes and to at least 230 °F (110 °C), or for at least 7 minutes and to at least 220 °F (104.5 °C).

(iii) *Other procedures.* Other installations and operating procedures that deviate from the requirements in paragraph (a)(12) of this section may be used if there is evidence in the form of heat distribution data, which shall be kept on file, that they accomplish adequate venting of air.

(13) *Critical factors.* Critical factors specified in the scheduled process shall be measured and recorded on the processing record at intervals of sufficient frequency to ensure that the factors are within the limits specified in the scheduled process.

(i) When maximum fill-in or drained weight is specified in the scheduled process, it shall be measured and recorded at intervals of sufficient frequency to ensure that the weight of the product does not exceed the maximum for the given container size specified in the scheduled process.

(ii) Closing machine vacuum in vacuum-packed products shall be observed and recorded at intervals of sufficient frequency to ensure that the vacuum is as specified in the scheduled process.

(iii) Such measurements and recordings should be made at intervals not to exceed 15 minutes.

(iv) When the product style results in stratification or layering of the primary product in the containers, the positioning of containers in the retort shall be according to the scheduled process.

(b) *Equipment and procedures for pressure processing in water in still retorts*—(1) *Temperature-indicating device.* Each retort shall be equipped with at least one temperature-indicating device that accurately indicates the temperature during processing. Each temperature-indicating device shall have a sensor and a display. Each temperature-indicating device and each reference device that is maintained by the processor shall be tested for accuracy against a reference device for which the accuracy is traceable to a National Institute of Standards and Technology (NIST), or other national metrology institute, standard reference device by appropriate standard procedures, upon installation and at least once a year thereafter, or more frequently if necessary, to ensure accuracy during processing. Each temperature-indicating device and each reference device that is maintained by the processor shall have a tag, seal, or other means of identity.

(i) The design of the temperature-indicating device shall ensure that the accuracy of the device is not affected by electromagnetic interference and environmental conditions.

(ii) Records of the accuracy of the temperature-indicating device and of a reference device that is maintained by the processor shall be established and

maintained in accordance with § 113.100(c) and (d).

(iii) A temperature-indicating device that is defective or cannot be adjusted to the accurate calibrated reference device shall be repaired before further use or replaced.

(iv) A temperature-indicating device shall be accurate to 1 °F (0.5 °C). The temperature range of a mercury-in-glass thermometer shall not exceed 17 °F per inch (4 °C per centimeter) of graduated scale. A mercury-in-glass thermometer that has a divided mercury column shall be considered defective.

(v) Each temperature-indicating device shall be installed where it can be accurately and easily read. In both horizontal and vertical retorts, the temperature-indicating device sensor shall be inserted directly into the retort shell or in a separate well or sleeve attached to the retort. The temperature-indicating device sensor shall be located so that it is beneath the surface of the water throughout the process and where there is adequate circulation to ensure accurate temperature measurement. On horizontal retorts, the temperature-indicating device sensor should be located in the side at the center of the retort. The temperature-indicating device—not the temperature-recording device—shall be the reference instrument for indicating the processing temperature.

(2) *Temperature-recording device.* Each retort shall have an accurate temperature-recording device. Each temperature-recording device shall have a sensor and a mechanism for recording temperatures to a permanent record, such as a temperature-recording chart.

(i) *Analog or graphical recordings.* Temperature-recording devices that create analog or graphical recordings may be used. Temperature-recording devices that record to charts shall be used only with the appropriate chart. Each chart shall have a working scale of not more than 55 °F per inch (12 °C per centimeter) within a range of 20 °F (10 °C) of the process temperature. Chart graduations shall not exceed 2 °F (1 °C) within a range of 10 °F (5 °C) of the process temperature. Temperature-recording devices that create multipoint plottings of temperature readings shall record the temperature at intervals that will assure that the parameters of the process time and process temperature have been met.

(ii) *Digital recordings.* Temperature-recording devices, such as data loggers, that record numbers or create other digital records may be used. Such a device shall record the temperature at intervals that will assure that the parameters of the process time and process temperature have been met.

(iii) *Adjustments.* The temperature-recording device shall be adjusted with sufficient frequency to ensure agreement as nearly as possible with, but to be in no event higher than, the temperature-indicating device during processing. A means of preventing unauthorized changes in adjustment shall be provided. A lock or a notice from management posted at or near the temperature-recording device that provides a warning that only authorized persons are permitted to make adjustments is a satisfactory means of preventing unauthorized changes.

(iv) *Temperature controller.* The temperature-recording device may be combined with the steam controller and may be a combination recorder-controller. For a vertical retort equipped with a combination recorder-controller, the temperature recorder-controller sensor shall be located at the bottom of the retort below the lowest crate rest in such a position that the steam does not strike it directly. For a horizontal retort equipped with a combination recorder-controller, the temperature recorder-controller sensor shall be located between the water surface and the horizontal plane passing through the center of the retort so that there is no opportunity for direct steam impingement on the sensor. For all still retort systems that pressure process in water and are equipped with combination recorder-controllers, the temperature recorder-controller sensors shall be located where the recorded temperature is an accurate measurement of the scheduled process temperature and is not affected by the heating media.

(3) *Pressure gages.* (i) Each retort should be equipped with a pressure gage that is accurate to 2 pounds per square inch (13.8 kilopascals) or less.

(ii) Each retort should have an adjustable pressure relief or control valve of a capacity sufficient to prevent an undesired increase in retort pressure when the water valve is wide open and should be installed in the overflow line.

(4) *Steam controller.* Each retort shall be equipped with an automatic steam controller to maintain the retort temperature. The steam controller may be combined with a temperature-recording device and, thus, may be a combination recorder-controller. Air-operated temperature controllers should have adequate filter systems to ensure a supply of clean, dry air.

(5) *Steam introduction.* Steam shall be distributed in the bottom of the retort in a manner adequate to provide uniform heat distribution throughout the retort. In vertical retorts, uniform steam distribution can be achieved by any of several methods. In horizontal retorts, the steam distributor shall run the length of the bottom of the retort with perforations distributed uniformly along the upper part of the pipe.

(6) *Crate supports.* A bottom crate support shall be used in vertical still retorts. Baffle plates shall not be used in the bottom of the retort. Centering guides should be installed so as to ensure that there is about a 1.5-inch (3.8 centimeters) clearance between the side wall of the crate and the retort wall.

(7) *Stacking equipment and position of containers.* Crates, trays, gondolas, *etc.,* for holding containers shall be made of strap iron, adequately perforated sheet metal, or other suitable material. When perforated sheet metal is used for the bottoms, the perforations should be approximately the equivalent of 1-inch (2.5 centimeters) holes on 2-inch (5.1 centimeters) centers. If divider plates are used between the layers of containers, they should be perforated as stated in this paragraph. The positioning of containers in the retort, when specified in the scheduled process, shall be in accordance with that process. Dividers, racks, trays, or other means of positioning of flexible containers shall be designed and employed to ensure even circulation of heating medium around all containers in the retort.

(8) *Drain valve.* A nonclogging, water-tight valve shall be used. A screen shall be installed or other suitable means shall be used on all drain openings to prevent clogging.

(9) *Air supply and controls.* In both horizontal and vertical still retorts for pressure processing in water, a means shall be provided for introducing compressed air at the proper pressure and rate. The proper pressure shall be controlled by an automatic pressure control unit. A check valve shall be provided in the air supply line to prevent water from entering the system. Air or water circulation shall be maintained continuously during the come-up time and during processing and cooling periods. The adequacy of the air or water circulation for uniform heat distribution within the retort shall be established in accordance with procedures recognized by a competent processing authority and records shall be kept on file. If air is used to promote circulation, it shall be introduced into the steam line at a point between the retort and the steam control valve at the bottom of the retort.

(10) *Water level indicator.* There shall be a means of determining the water level in the retort during operation, *e.g.,* by using a sensor, gage, water glass, or petcock(s). Water shall cover the top

layer of containers during the entire come-up time and processing periods and should cover the top layer of containers during the cooling periods. The operator shall check and record the water level at intervals sufficient to ensure its adequacy.

(11) *Water circulation.* When a water circulating system is used for heat distribution, it shall be installed in such a manner that water will be drawn from the bottom of the retort through a suction manifold and discharged through a spreader which extends the length of the top of the retort. The holes in the water spreader shall be uniformly distributed and should have an aggregate area not greater than the cross-sectional area of the outlet line from the pump. The suction outlets shall be protected with nonclogging screens or other suitable means shall be used to keep debris from entering the circulating system. The pump shall be designed to provide proper flow on startup and during operation, such as with a bleeder or other suitable means to remove air during startup and with an appropriate device or design to prevent pump cavitation during operation. The pump shall be equipped with a signaling device to warn the operator when it is not running. Alternative methods for circulation of water in the retort may be used when established by a competent authority as adequate for even heat distribution.

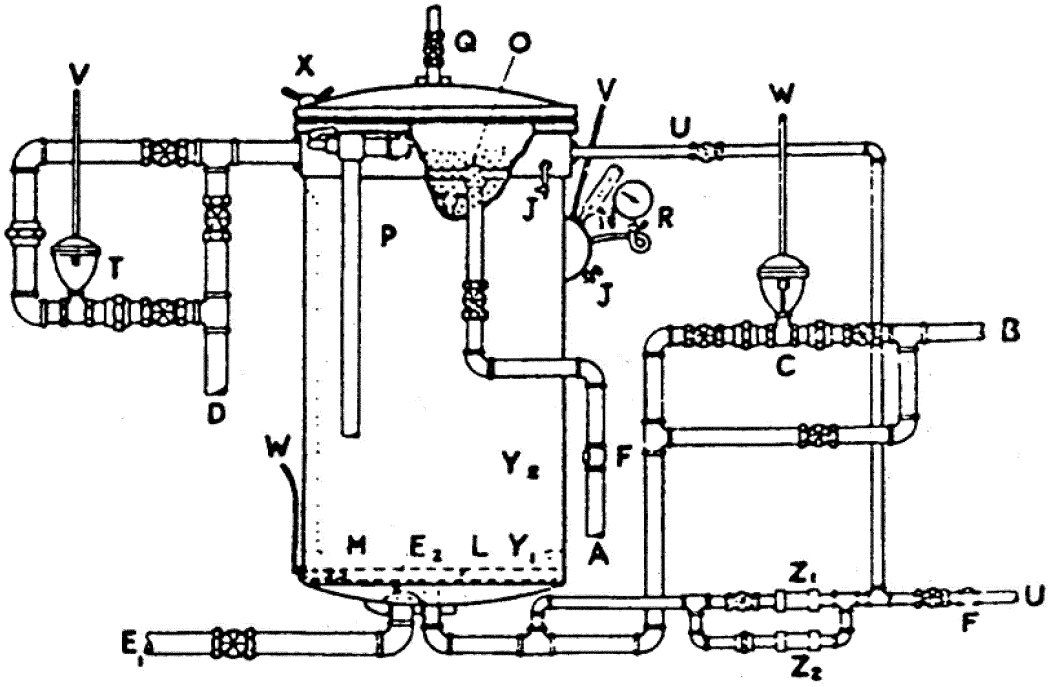
(12) *Cooling water supply.* In vertical retorts, the cooling water should be introduced at the top of the retort between the water and container levels. In horizontal retorts the cooling water should be introduced into the suction side of the pump. A check valve should be included in the cooling water line.

(13) *Retort headspace.* The headspace necessary to control the air pressure should be maintained between the water level and the top of the retort shell.

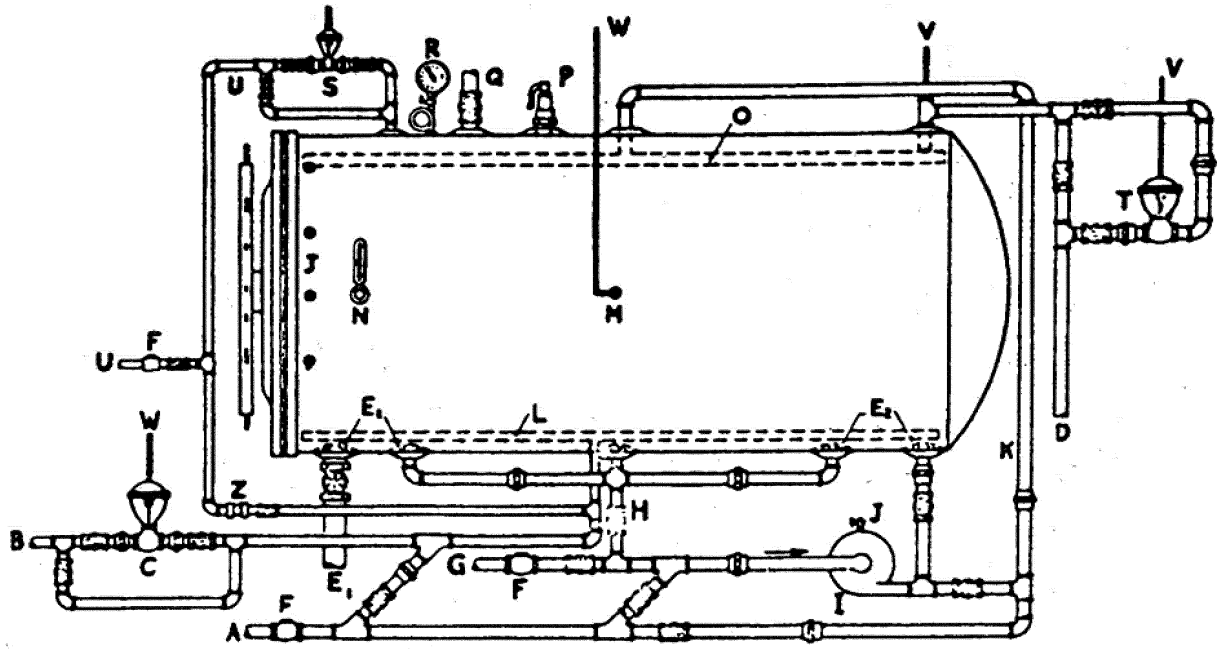
(14) *Vertical and horizontal still retorts.* Vertical and horizontal still retorts should follow the arrangements in the diagrams in this paragraph. Other installation and operating procedures that deviate from these arrangements may be used, as long as there is evidence in the form of heat distribution data or other suitable information, which shall be kept on file, which demonstrates that the heat distribution is adequate.

BILLING CODE 4160–01–P

Vertical Retorts



Horizontal Retorts



BILLING CODE 4160–01–C

Legend for Vertical and Horizontal Still Retorts

A—Water line.
B—Steam line.
C—Temperature control.
D—Overflow line.
E_1—Drain line.
E_2—Screens.
F—Check valves.
G—Line from hot water storage.
H—Suction line and manifold.
I—Circulating pump.
J—Petcocks.

K—Recirculating line.
L—Steam distributor.
M—Temperature-controller sensor.
N—Temperature-indicating device sensor.
O—Water spreader.
P—Safety valve.
Q—Vent valve for steam processing.
R—Pressure gage.
S—Inlet air control.
T—Pressure control.
U—Air line.
V—To pressure control instrument.
W—To temperature control instrument.
X—Wing nuts.
Y_1—Crate support.
Y_2—Crate guides.
Z—Constant flow orifice valve.
Z_1—Constant flow orifice valve used during come-up.
Z_2—Constant flow orifice valve used during cook.

(15) *Critical factors.* Critical factors specified in the scheduled process shall be measured and recorded on the processing record at intervals of sufficient frequency to ensure that the factors are within the limits specified in the scheduled process.

(i) When maximum fill-in or drained weight is specified in the scheduled process, it shall be measured and recorded at intervals of sufficient frequency to ensure that the weight of the product does not exceed the maximum for the given container size specified in the scheduled process.

(ii) Closing machine vacuum in vacuum-packed products shall be observed and recorded at intervals of sufficient frequency to ensure that the vacuum is as specified in the scheduled process.

(iii) Such measurements and recordings should be made at intervals not to exceed 15 minutes.

(iv) When the product style results in stratification or layering of the primary product in the containers, the positioning of containers in the retort shall be according to the scheduled process.

(c) *Equipment and procedures for pressure processing in steam in continuous agitating retorts*—(1) *Temperature-indicating device.* Each retort shall be equipped with at least one temperature-indicating device that accurately indicates the temperature during processing. Each temperature-indicating device shall have a sensor and a display. Each temperature-indicating device and each reference device that is maintained by the processor shall be tested for accuracy against a reference device for which the accuracy is traceable to a National Institute of Standards and Technology (NIST), or other national metrology institute, standard reference device by appropriate standard procedures, upon installation and at least once a year thereafter, or more frequently if necessary, to ensure accuracy during processing. Each temperature-indicating device and each reference device that is maintained by the processor shall have a tag, seal, or other means of identity.

(i) The design of the temperature-indicating device shall ensure that the accuracy of the device is not affected by electromagnetic interference and environmental conditions.

(ii) Records of the accuracy of the temperature-indicating device and of a reference device that is maintained by the processor shall be established and maintained in accordance with § 113.100(c) and (d).

(iii) A temperature-indicating device that is defective or cannot be adjusted to the accurate calibrated reference device shall be repaired before further use or replaced.

(iv) A temperature-indicating device shall be accurate to 1 °F (0.5 °C). The temperature range of a mercury-in-glass thermometer shall not exceed 17 °F per inch (4 °C per centimeter) of graduated scale. A mercury-in-glass thermometer that has a divided mercury column shall be considered defective.

(v) Each temperature-indicating device shall be installed where it can be accurately and easily read. The temperature-indicating device sensor shall be installed either within the retort shell or in external wells attached to the retort. External wells or pipes shall be connected to the retort through at least a ¾-inch (2 centimeters) diameter opening and equipped with a 1/16-inch (1.5 millimeters) or larger bleeder opening so located as to provide a full flow of steam past the length of the temperature-indicating device sensor. The bleeders for external wells shall emit steam continuously during the entire processing period. The temperature-indicating device—not the temperature-recording device—shall be the reference instrument for indicating the processing temperature.

(2) *Temperature-recording device.* Each retort shall have an accurate temperature-recording device. Each temperature-recording device shall have a sensor and a mechanism for recording temperatures to a permanent record, such as a temperature-recording chart. The temperature-recording device sensor shall be installed either within the retort shell or in a well attached to the shell. Each temperature-recording device sensor well shall have a 1/16-inch (1.5 millimeters) or larger bleeder that emits steam continuously during the processing period.

(i) *Analog or graphical recordings.* Temperature-recording devices that create analog or graphical recordings may be used. Temperature-recording devices that record to charts shall be used only with the appropriate chart. Each chart shall have a working scale of not more than 55 °F per inch (12 °C per centimeter) within a range of 20 °F (10 °C) of the process temperature. Chart graduations shall not exceed 2 °F (1 °C) within a range of 10 °F (5 °C) of the process temperature. Temperature-recording devices that create multipoint plottings of temperature readings shall record the temperature at intervals that will assure that the parameters of the process time and process temperature have been met.

(ii) *Digital recordings.* Temperature-recording devices, such as data loggers, that record numbers or create other digital records may be used. Such a device shall record the temperature at intervals that will assure that the parameters of the process time and process temperature have been met.

(iii) *Adjustments.* The temperature-recording device shall be adjusted with sufficient frequency to ensure agreement as nearly as possible with, but to be in no event higher than, the temperature-indicating device during processing. A means of preventing unauthorized changes in adjustment shall be provided. A lock or a notice from management posted at or near the temperature-recording device that provides a warning that only authorized persons are permitted to make adjustments is a satisfactory means of preventing unauthorized changes.

(iv) *Temperature controller.* The temperature-recording device may be combined with the steam controller and may be a recorder-controller.

(3) *Pressure gages.* Each retort should be equipped with a pressure gage that is accurate to 2 pounds per square inch (13.8 kilopascals) or less.

(4) *Steam controller.* Each retort shall be equipped with an automatic steam controller to maintain the retort temperature. This may be a recorder-controller when combined with a temperature-recording device. A steam controller activated by the steam pressure of the retort is acceptable if it is carefully maintained mechanically so that it operates satisfactorily. Air-operated temperature controllers should have adequate filter systems to ensure a supply of clean, dry air.

(5) *Bleeders.* Bleeders, except those for temperature-indicating device wells, shall be 1/8-inch (3 millimeters) or larger and shall be wide open during the entire process, including the come-up time. Bleeders shall be located within approximately 1 foot (30.5 centimeters) of the outermost location of containers

at each end along the top of the retort. Additional bleeders shall be located not more than 8 feet (2.4 meters) apart along the top of the retort. All bleeders shall be arranged so that the operator can observe that they are functioning properly. The condensate bleeder shall be checked with sufficient frequency to ensure adequate removal of condensate or shall be equipped with an automatic alarm system(s) that would serve as a continuous monitor of condensate-bleeder functioning. Visual checks should be done at intervals of not more than 15 minutes. A record of such checks should be kept to show that the bleeder is functioning properly.

(6) *Venting and condensate removal.* Vents shall be located in that portion of the retort opposite the steam inlet. Air shall be removed before processing is started. Heat distribution data or documentary proof from the manufacturer or from a competent processing authority, demonstrating that adequate venting is achieved, shall be kept on file. At the time steam is turned on, the drain should be opened for a time sufficient to remove steam condensate from the retort, and provision shall be made for continuing drainage of condensate during the retort operation. The condensate bleeder in the bottom of the shell serves as an indicator of continuous condensate removal.

(7) *Retort speed timing.* The rotational speed of the retort shall be specified in the scheduled process. The speed shall be adjusted and recorded when the retort is started, at any time a speed change is made, and at intervals of sufficient frequency to ensure that the retort speed is maintained as specified in the scheduled process. These adjustments and recordings should be made every 4 hours or less. Alternatively, a recording tachometer may be used to provide a continuous record of the speed. A means of preventing unauthorized speed changes on retorts shall be provided. A lock or a notice from management posted at or near the speed adjustment device that provides a warning that only authorized persons are permitted to make adjustments is a satisfactory means of preventing unauthorized changes.

(8) *Emergency stops.* If a retort jams or breaks down during processing operations, necessitating cooling the retort for repairs, the retort shall be operated in such a way that ensures that the product is commercially sterile, or the retort is to be cooled promptly and all containers either reprocessed, repacked and reprocessed, or discarded. When operated as a still retort, all containers shall be given a full still retort process before the retort is cooled. If, in such an emergency, a scheduled still process or another process established to ensure commercial sterility is to be used, it shall be made readily available to the retort operator.

(i) Any containers in the retort intake valve or in transfer valves between cooker shells of a continuous retort at the time of breakdown shall either be reprocessed, repacked and reprocessed, or discarded.

(ii) Both the time at which the reel stopped and the time the retort was used for a still retort process, if so used, shall be indicated on the temperature-recording device record and entered on the other production records required in this chapter. If the alternative procedure of prompt cooling is followed, the subsequent handling methods used for the containers in the retort at the time of stopping and cooling shall be entered on the production records.

(9) *Temperature drop.* If the temperature of the continuous retort drops below the temperature specified in the scheduled process while containers are in the retort, the retort reel shall be stopped promptly. An automatic device should be used to stop the reel when the temperature drops below the specified process temperature. Before the reel is restarted, all containers in the retort shall be given a complete scheduled still retort process if the temperature drop was 10 °F (5 °C) or more below the specified temperature, or alternatively, container entry to the retort shall be stopped and the reel restarted to empty the retort. The discharged containers shall be either reprocessed, repacked and reprocessed, or discarded. Both the time at which the reel stopped and the time the retort was used for a still retort process, if so used, shall be indicated on the temperature-recording device record and entered on the other production records required in this chapter. If the alternative procedure of emptying the retort is followed, the subsequent handling methods used for the containers in the retort at the time of the temperature drop shall be entered on the production records. If the temperature drop was less than 10 °F (5 °C), a scheduled authorized emergency still process approved by a qualified person(s) having expert knowledge of thermal processing requirements may be used before restarting the retort reel. Alternatively, container entry to the retort shall be stopped and an authorized emergency agitating process may be used before container entry to the retort is restarted. When emergency procedures are used, no containers may enter the retort and the process and procedures used shall be noted on the production records.

(10) *Critical factors.* Critical factors specified in the scheduled process shall be measured and recorded on the processing record at intervals of sufficient frequency to ensure that the factors are within the limits specified in the scheduled process. The minimum headspace of containers, if specified in the scheduled process, shall be measured and recorded at intervals of sufficient frequency to ensure that the headspace is as specified in the scheduled process. The headspace of solder-tipped, lapseam (vent hole) cans may be measured by net weight determinations. The headspace of double seamed cans may also be measured by net weight determinations for homogenous liquids, taking into account the specific can end profile and other factors which affect the headspace, if proof of the accuracy of such measurements is maintained and the procedure and resultant headspace is in accordance with the scheduled process. When the product consistency is specified in the scheduled process, the consistency of the product shall be determined by objective measurements on the product taken from the filler before processing and recorded at intervals of sufficient frequency to ensure that the consistency is as specified in the scheduled process. Minimum closing machine vacuum in vacuum-packed products, maximum fill-in or drained weight, minimum net weight, and percent solids shall be as specified in the scheduled process for all products when deviations from such specifications may affect the scheduled process. All measurements and recordings of critical factors should be made at intervals not to exceed 15 minutes.

(d) *Equipment and procedures for pressure processing in steam in discontinuous agitating retorts*—(1) *Temperature-indicating device.* Each retort shall be equipped with at least one temperature-indicating device that accurately indicates the temperature during processing. Each temperature-indicating device shall have a sensor and a display. Each temperature-indicating device and each reference device that is maintained by the processor shall be tested for accuracy against a reference device for which the accuracy is traceable to a National Institute of Standards and Technology (NIST), or other national metrology institute, standard reference device by appropriate standard procedures, upon installation and at least once a year thereafter, or more frequently if necessary, to ensure accuracy during

processing. Each temperature-indicating device and each reference device that is maintained by the processor shall have a tag, seal, or other means of identity.

(i) The design of the temperature-indicating device shall ensure that the accuracy of the device is not affected by electromagnetic interference and environmental conditions.

(ii) Records of the accuracy of the temperature-indicating device and of a reference device that is maintained by the processor shall be established and maintained in accordance with § 113.100(c) and (d).

(iii) A temperature-indicating device that is defective or cannot be adjusted to the accurate calibrated reference device shall be repaired before further use or replaced.

(iv) A temperature-indicating device shall be accurate to 1 °F (0.5 °C). The temperature range of a mercury-in-glass thermometer shall not exceed 17 °F per inch (4 °C per centimeter) of graduated scale. A mercury-in-glass thermometer that has a divided mercury column shall be considered defective.

(v) Each temperature-indicating device shall be installed where it can be accurately and easily read. The temperature-indicating device sensor shall be installed either within the retort shell or in external wells attached to the retort. External wells or pipes shall be connected to the retort through at least a ¾-inch (2 centimeters) diameter opening and equipped with a 1/16-inch (1.5 millimeters) or larger bleeder opening so located as to provide a full flow of steam past the length of the temperature-indicating device sensor. The bleeders for external wells shall emit steam continuously during the entire processing period. The temperature-indicating device—not the temperature-recording device—shall be the reference instrument for indicating the processing temperature.

(2) *Temperature-recording device.* Each retort shall have an accurate temperature-recording device. Each temperature-recording device shall have a sensor and a mechanism for recording temperatures to a permanent record, such as a temperature-recording chart. The temperature-recording device sensor shall be installed either within the retort shell or in a well attached to the shell. Each temperature-recording device sensor well shall have a 1/16-inch (1.5 millimeters) or larger bleeder that emits steam continuously during the processing period.

(i) *Analog or graphical recordings.* Temperature-recording devices that create analog or graphical recordings may be used. Temperature-recording devices that record to charts shall be used only with the appropriate chart. Each chart shall have a working scale of not more than 55 °F per inch (12 °C per centimeter) within a range of 20 °F (10 °C) of the process temperature. Chart graduations shall not exceed 2 °F (1 °C) within a range of 10 °F (5 °C) of the process temperature. Temperature-recording devices that create multipoint plottings of temperature readings shall record the temperature at intervals that will assure that the parameters of the process time and process temperature have been met.

(ii) *Digital recordings.* Temperature-recording devices, such as data loggers, that record numbers or create other digital records may be used. Such a device shall record the temperature at intervals that will assure that the parameters of the process time and process temperature have been met.

(iii) *Adjustments.* The temperature-recording device shall be adjusted with sufficient frequency to ensure agreement as nearly as possible with, but to be in no event higher than, the temperature-indicating device during processing. A means of preventing unauthorized changes in adjustment shall be provided. A lock or a notice from management posted at or near the temperature-recording device that provides a warning that only authorized persons are permitted to make adjustments is a satisfactory means of preventing unauthorized changes.

(iv) *Temperature controller.* The temperature-recording device may be combined with the steam controller and may be a recorder-controller.

(3) *Pressure gages.* Each retort should be equipped with a pressure gage that is accurate to 2 pounds per square inch (13.8 kilopascals) or less.

(4) *Steam controller.* Each retort shall be equipped with an automatic steam controller to maintain the retort temperature. This may be a recorder-controller when combined with a temperature-recording device. A steam controller activated by the steam pressure of the retort is acceptable if it is mechanically maintained so that it operates satisfactorily. Air-operated temperature controllers should have adequate filter systems to ensure a supply of clean, dry air.

(5) *Bleeders.* Bleeders, except those for temperature-indicating device wells, shall be 1/8-inch (3 millimeters) or larger and shall be wide open during the entire process, including the come-up time. Bleeders shall be located within approximately 1 foot (30.5 centimeters) of the outermost location of containers, at each end along the top of the retort; additional bleeders shall be located not more than 8 feet (2.4 meters) apart along the top. Bleeders may be installed at positions other than those specified in this paragraph, as long as there is evidence in the form of heat distribution data that they accomplish adequate removal of air and circulation of heat within the retort. In retorts having top steam inlet and bottom venting, a bleeder shall be installed in the bottom of the retort to remove condensate. All bleeders shall be arranged in a way that enables the operator to observe that they are functioning properly.

(6) *Venting and condensate removal.* The air in each retort shall be removed before processing is started. Heat distribution data or documentary proof from the manufacturer or from a competent processing authority, demonstrating that adequate venting is achieved, shall be kept on file. At the time steam is turned on, the drain should be opened for a time sufficient to remove steam condensate from the retort and provision should be made for continuing drainage of condensate during the retort operation.

(7) *Retort speed timing.* The rotational speed of the retort shall be specified in the scheduled process. The speed shall be adjusted, as necessary, to ensure that the speed is as specified in the scheduled process. The rotational speed as well as the process time shall be recorded for each retort load processed. Alternatively, a recording tachometer may be used to provide a continuous record of the speed. A means of preventing unauthorized speed changes on retorts shall be provided. A lock or a notice from management posted at or near the speed-adjustment device that provides a warning that only authorized persons are permitted to make adjustments is a satisfactory means of preventing unauthorized changes.

(8) *Critical factors.* Critical factors specified in the scheduled process shall be measured and recorded on the processing record at intervals of sufficient frequency to ensure that the factors are within the limits specified in the scheduled process. The minimum headspace of containers in each retort load to be processed, if specified in the scheduled process, shall be measured and recorded at intervals of sufficient frequency to ensure that the headspace is as specified in the scheduled process. The headspace of solder-tipped, lap seam (vent hole) cans may be measured by net weight determinations. When the product consistency is specified in the scheduled process, the consistency of the product shall be determined by objective measurements on the product taken from the filler before processing and recorded at intervals of sufficient frequency to ensure that the consistency

is as specified in the scheduled process. Minimum closing machine vacuum in vacuum-packed products, maximum fill-in or drained weight, minimum net weight, and percent solids shall be as specified in the scheduled process for all products for which deviations from such specifications may affect the scheduled process. All measurements and recordings of critical factors should be made at intervals not to exceed 15 minutes.

(e) *Equipment and procedures for pressure processing in water in discontinuous agitating retorts*—(1) *Temperature-indicating device.* Each retort shall be equipped with at least one temperature-indicating device that accurately indicates the temperature during processing. Each temperature-indicating device shall have a sensor and a display. Each temperature-indicating device and each reference device that is maintained by the processor shall be tested for accuracy against a reference device for which the accuracy is traceable to a National Institute of Standards and Technology (NIST), or other national metrology institute, standard reference device by appropriate standard procedures, upon installation and at least once a year thereafter, or more frequently if necessary, to ensure accuracy during processing. Each temperature-indicating device and each reference device that is maintained by the processor shall have a tag, seal, or other means of identity.

(i) The design of the temperature-indicating device shall ensure that the accuracy of the device is not affected by electromagnetic interference and environmental conditions.

(ii) Records of the accuracy of the temperature-indicating device and of a reference device that is maintained by the processor shall be established and maintained in accordance with § 113.100(c) and (d).

(iii) A temperature-indicating device that is defective or cannot be adjusted to the accurate calibrated reference device shall be repaired before further use or replaced.

(iv) A temperature-indicating device shall be accurate to 1 °F (0.5 °C). The temperature range of a mercury-in-glass thermometer shall not exceed 17 °F per inch (4 °C per centimeter) of graduated scale. A mercury-in-glass thermometer that has a divided mercury column shall be considered defective.

(v) Each temperature-indicating device shall be installed where it can be accurately and easily read. In both horizontal and vertical retorts, the temperature-indicating device sensor shall be inserted directly into the retort shell or in a separate well or sleeve attached to the retort. The temperature-indicating device sensor shall be located so that it is beneath the surface of the water throughout the process and where there is adequate circulation to ensure accurate temperature measurement. On horizontal retorts, the temperature-indicating device sensor should be located in the side at the center of the retort. The temperature-indicating device—not the temperature-recording device—shall be the reference instrument for indicating the processing temperature.

(2) *Temperature-recording device.* Each retort shall have an accurate temperature-recording device. Each temperature-recording device shall have a sensor and a mechanism for recording temperatures to a permanent record, such as a temperature-recording chart. The temperature-recording device sensor shall be installed either within the retort shell or in a well attached to the shell.

(i) *Analog or graphical recordings.* Temperature-recording devices that create analog or graphical recordings may be used. Temperature-recording devices that record to charts shall be used only with the appropriate chart. Each chart shall have a working scale of not more than 55 °F per inch (12 °C per centimeter) within a range of 20 °F (10 °C) of the process temperature. Chart graduations shall not exceed 2 °F (1 °C) within a range of 10 °F (5 °C) of the process temperature. Temperature-recording devices that create multipoint plottings of temperature readings shall record the temperature at intervals that will assure that the parameters of the process time and process temperature have been met.

(ii) *Digital recordings.* Temperature-recording devices, such as data loggers, that record numbers or create other digital records may be used. Such a device shall record the temperature at intervals that will assure that the parameters of the process time and process temperature have been met.

(iii) *Adjustments.* The temperature-recording device shall be adjusted with sufficient frequency to ensure agreement as nearly as possible with, but to be in no event higher than, the temperature-indicating device during processing. A means of preventing unauthorized changes in adjustment shall be provided. A lock or a notice from management posted at or near the temperature-recording device that provides a warning that only authorized persons are permitted to make adjustments is a satisfactory means of preventing unauthorized changes.

(iv) *Temperature controller.* The temperature-recording device may be combined with the steam controller and may be a recorder-controller. Air-operated temperature controllers should have adequate filter systems to ensure a supply of clean, dry air.

(3) *Pressure gages.* Each retort should be equipped with a pressure gage that is accurate to 2 pounds per square inch (13.8 kilopascals) or less.

(4) *Steam controller.* Each retort shall be equipped with an automatic steam controller to maintain the retort temperature. This may be a recorder-controller when combined with a temperature-recording device. Air-operated temperature controllers should have adequate filter systems to ensure a supply of clean, dry air.

(5) *Retort speed timing.* The rotational speed of the retort shall be specified in the scheduled process. The speed shall be adjusted, as necessary, to ensure that the speed is as specified in the scheduled process. The rotational speed as well as the process time shall be recorded for each retort load processed. Alternatively, a recording tachometer may be used to provide a continuous record of the speed. A means of preventing unauthorized speed changes shall be provided. A lock or a notice from management posted at or near the speed adjustment device that provides a warning that only authorized persons are permitted to make adjustment is a satisfactory means of preventing unauthorized changes.

(6) *Air supply and controls.* When air is used to provide overpressure:

(i) A means shall be provided for introducing compressed air at the proper pressure and rate. The proper pressure shall be controlled by an automatic pressure control unit. A check valve shall be provided in the air supply line to prevent water from entering the system.

(ii) A water level indicator, *e.g.,* sensor, gage, water glass, or petcock(s), shall be used for determining the water level in the retort during operation. Water shall cover the top layer of containers during the entire come-up time and processing periods and should also cover the top layer of containers during the cooling periods. The operator shall check and record the water level at intervals sufficient to ensure its adequacy.

(7) *Water circulation.* When a water circulating system is used for heat distribution, it shall be installed in such a manner that water will be drawn from the bottom of the retort through a suction manifold and discharged through a spreader which extends the length of the top of the retort. The holes in the water spreader shall be uniformly distributed and should have an

aggregate area not greater than the cross-sectional area of the outlet line from the pump. The suction outlets shall be protected with nonclogging screens or other suitable means shall be used to keep debris from entering the circulating system. The pump shall be designed to provide proper flow on startup and during operation, such as with a bleeder or other suitable means to remove air during startup and with an appropriate device or design to prevent pump cavitation during operation. The pump shall be equipped with a signaling device to warn the operator when it is not running. Alternative methods for circulation of water in the retort may be used when established by a competent authority as adequate for even heat distribution.

(8) *Drain valve.* A nonclogging, water-tight valve shall be used. A screen shall be installed or other suitable means shall be used on all drain openings to prevent clogging.

(9) *Critical factors.* Critical factors specified in the scheduled process shall be measured and recorded on the processing record at intervals of sufficient frequency to ensure that the factors are within the limits specified in the scheduled process. The minimum headspace of containers, if specified in the scheduled process, shall be measured and recorded at intervals of sufficient frequency to ensure that the headspace is as specified in the scheduled process. The headspace of solder-tipped, lap seam (vent hole) cans may be measured by net weight determinations. When the product consistency is specified in the scheduled process, the consistency of the product shall be determined by objective measurements on the product taken from the filler before processing and recorded at intervals of sufficient frequency to ensure that the consistency is as specified in the scheduled process. Minimum closing machine vacuum in vacuum-packed products, maximum fill-in or drained weight, minimum net weight, and percent solids shall be as specified in the scheduled process for all products when deviations from such specifications may affect the scheduled process. All measurements and recordings of critical factors should be made at intervals not to exceed 15 minutes.

(f) *Equipment and procedures for pressure processing in steam in hydrostatic retorts*—(1) *Temperature-indicating device.* Each retort shall be equipped with at least one temperature-indicating device that accurately indicates the temperature during processing. Each temperature-indicating device shall have a sensor and a display. Each temperature-indicating device and each reference device that is maintained by the processor shall be tested for accuracy against a reference device for which the accuracy is traceable to a National Institute of Standards and Technology (NIST), or other national metrology institute, standard reference device by appropriate standard procedures, upon installation and at least once a year thereafter, or more frequently if necessary, to ensure accuracy during processing. Each temperature-indicating device and each reference device that is maintained by the processor shall have a tag, seal, or other means of identity.

(i) The design of the temperature-indicating device shall ensure that the accuracy of the device is not affected by electromagnetic interference and environmental conditions.

(ii) Records of the accuracy of the temperature-indicating device and of a reference device that is maintained by the processor shall be established and maintained in accordance with § 113.100(c) and (d).

(iii) A temperature-indicating device that is defective or cannot be adjusted to the accurate calibrated reference device shall be repaired before further use or replaced.

(iv) A temperature-indicating device shall be accurate to 1 °F (0.5 °C). The temperature range of a mercury-in-glass thermometer shall not exceed 17 °F per inch (4 °C per centimeter) of graduated scale. A mercury-in-glass thermometer that has a divided mercury column shall be considered defective.

(v) Each temperature-indicating device shall be installed where it can be accurately and easily read. The temperature-indicating device sensor shall be located in the steam dome near the steam-water interface. When the scheduled process specifies maintenance of particular temperatures in the hydrostatic water legs, a temperature-indicating device sensor shall be located in each hydrostatic water leg in a position near the bottom temperature-recording device sensor. The temperature-indicating device—not the temperature-recording device—shall be the reference instrument for indicating the processing temperature.

(2) *Temperature-recording device.* Each retort shall have an accurate temperature-recording device. Each temperature-recording device shall have a sensor and a mechanism for recording temperatures to a permanent record, such as a temperature-recording chart. The temperature-recording device sensor shall be installed either within the steam dome or in a well attached to the dome. Each temperature-recording device sensor well shall have a 1/16-inch (1.5 millimeters) or larger bleeder that emits steam continuously during the processing period. Additional temperature-recording device sensors shall be installed in the hydrostatic water legs in situations where the scheduled process specifies maintenance of particular temperatures in the hydrostatic water legs.

(i) *Analog or graphical recordings.* Temperature-recording devices that create analog or graphical recordings may be used. Temperature-recording devices that record to charts shall be used only with the appropriate chart. Each chart shall have a working scale of not more than 55 °F per inch (12 °C per centimeter) within a range of 20 °F (10 °C) of the process temperature. Chart graduations shall not exceed 2 °F (1 °C) within a range of 10 °F (5 °C) of the process temperature. Temperature-recording devices that create multipoint plottings of temperature readings shall record the temperature at intervals that will assure that the parameters of the process time and process temperature have been met.

(ii) *Digital recordings.* Temperature-recording devices, such as data loggers, that record numbers or create other digital recordings may be used. Such a device shall record the temperature at intervals that will assure that the parameters of the process time and process temperature have been met.

(iii) *Adjustments.* The temperature-recording device shall be adjusted with sufficient frequency to ensure agreement as nearly as possible with, but to be in no event higher than, the temperature-indicating device during processing. A means of preventing unauthorized changes in adjustment shall be provided. A lock or a notice from management posted at or near the temperature-recording device that provides a warning that only authorized persons are permitted to make adjustments is a satisfactory means of preventing unauthorized changes.

(iv) *Temperature controller.* The temperature-recording device may be combined with the steam controller and may be a recorder-controller.

(3) *Pressure gages.* Each retort should be equipped with a pressure gage that is accurate to 2 pounds per square inch (13.8 kilopascals) or less.

(4) *Recording of temperatures.* Temperatures indicated by the temperature-indicating device or devices shall be entered on a suitable form during processing operations. Temperatures shall be recorded by an accurate temperature-recording device or devices at the following points:

(i) In the steam chamber between the steam-water interface and the lowest container position.

(ii) Near the top and the bottom of each hydrostatic water leg if the scheduled process specifies maintenance of particular temperatures in the legs.

(5) *Steam controller.* Each retort shall be equipped with an automatic steam controller to maintain the retort temperature. This may be a recorder-controller when combined with a temperature-recording device. A steam controller activated by the steam pressure of the retort is acceptable if it is carefully mechanically maintained so that it operates satisfactorily. Air-operated temperature controllers should have adequate filter systems to ensure a supply of clean, dry air.

(6) *Venting.* Before the start of processing operations, the retort steam chamber or chambers shall be vented to ensure removal of air.

(7) *Bleeders.* Bleeder openings ¼-inch (6 millimeters) or larger shall be located at the top of the steam chamber or chambers opposite the point of steam entry. Bleeders shall be wide open and shall emit steam continuously during the entire process, including the come-up time. All bleeders shall be arranged in such a way that the operator can observe that they are functioning properly.

(8) *Retort speed.* The speed of the container-conveyor chain shall be specified in the scheduled process and shall be determined and recorded at the start of processing and at intervals of sufficient frequency to ensure that the retort speed is maintained as specified. The speed should be determined and recorded every 4 hours. An automatic device should be used to stop the chain when the temperature drops below that specified in the scheduled process. A means of preventing unauthorized speed changes shall be provided. A lock or a notice from management posted at or near the speed-adjusting device that provides a warning that only authorized persons are permitted to make adjustments is a satisfactory means of preventing unauthorized changes.

(9) *Critical factors.* Critical factors specified in the scheduled process shall be measured and recorded on the processing record at intervals of sufficient frequency to ensure that the factors are within the limits specified in the scheduled process.

(i) When maximum fill-in or drained weight is specified in the scheduled process, it shall be measured and recorded at intervals of sufficient frequency to ensure that the weight of the product does not exceed the maximum for the given container size specified in the scheduled process.

(ii) Closing machine vacuum in vacuum-packed products shall be observed and recorded at intervals of sufficient frequency to ensure that the vacuum is as specified in the scheduled process.

(iii) Such measurements and recordings should be made at intervals not to exceed 15 minutes.

(g) *Aseptic processing and packaging systems*—(1) *Product sterilizer*—(i) *Equipment*—(A) *Temperature-indicating device.* Each product sterilizer shall be equipped with at least one temperature-indicating device that accurately indicates the temperature during processing. Each temperature-indicating device shall have a sensor and a display. Each temperature-indicating device and each reference device that is maintained by the processor shall be tested for accuracy against a reference device for which the accuracy is traceable to a National Institute of Standards and Technology (NIST), or other national metrology institute, standard reference device by appropriate standard procedures, upon installation and at least once a year thereafter, or more frequently if necessary, to ensure accuracy during processing. Each temperature-indicating device and each reference device that is maintained by the processor shall have a tag, seal, or other means of identity.

(*1*) The design of the temperature-indicating device shall ensure that the accuracy of the device is not affected by electromagnetic interference and environmental conditions.

(*2*) Records of the accuracy of the temperature-indicating device and of a reference device that is maintained by the processor shall be established and maintained in accordance with § 113.100(c) and (d).

(*3*) A temperature-indicating device that is defective or cannot be adjusted to the accurate calibrated reference device shall be repaired before further use or replaced.

(*4*) A temperature-indicating device shall be accurate to 1 °F (0.5 °C). The temperature range of a mercury-in-glass thermometer shall not exceed 17 °F per inch (4 °C per centimeter) of graduated scale. A mercury-in-glass thermometer that has a divided mercury column shall be considered defective.

(*5*) Each temperature-indicating device shall be installed where it can be accurately and easily read. The temperature-indicating device—not the temperature-recording device—shall be the reference instrument for indicating the processing temperature.

(B) *Temperature-recording device.* Each product sterilizer shall have an accurate temperature-recording device. Each temperature-recording device shall have a sensor and a mechanism for recording temperatures to a permanent record, such as a temperature-recording chart. A temperature-recording device sensor shall be installed in the product at the holding-tube outlet between the holding tube and the inlet to the cooler. Additional temperature-recording device sensors shall be located at each point where temperature is specified as a critical factor in the scheduled process.

(*1*) *Analog or graphical recordings.* Temperature-recording devices that create analog or graphical recordings may be used. Temperature-recording devices that record to charts shall be used only with the appropriate chart. Each chart shall have a working scale of not more than 55 °F per inch (12 °C per centimeter) within a range of 20 °F (10 °C) of the desired product sterilization temperature. Chart graduations shall not exceed 2 °F (1 °C) within a range of 10 °F (5 °C) of the process temperature. Temperature-recording devices that create multipoint plottings of temperature readings shall record the temperature at intervals that will assure that the parameters of the process time and process temperature have been met.

(*2*) *Digital recordings.* Temperature-recording devices, such as data loggers, that record numbers or create other digital recordings may be used. Such a device shall record the temperature at intervals that will assure that the parameters of the process time and process temperature have been met.

(*3*) *Adjustments.* The temperature-recording device shall be adjusted with sufficient frequency to ensure agreement as nearly as possible with, but to be in no event higher than, the temperature-indicating device during processing. A means of preventing unauthorized changes in adjustment shall be provided. A lock or a notice from management posted at or near the temperature-recording device that provides a warning that only authorized persons are permitted to make adjustments is a satisfactory means of preventing unauthorized changes.

(C) *Temperature controller.* An accurate temperature controller shall be installed and capable of ensuring that the desired product sterilization temperature is maintained. Air-operated temperature controllers should have adequate filter systems to ensure a supply of clean, dry air.

(D) *Product-to-product regenerators.* When a product-to-product regenerator

is used to heat the cold unsterilized product entering the sterilizer by means of a heat exchange system, it shall be designed, operated, and controlled so that the pressure of the sterilized product in the regenerator is greater than the pressure of any unsterilized product in the regenerator to ensure that any leakage in the regenerator is from the sterilized product into the unsterilized product.

(E) *Differential pressure recorder-controller.* When a product-to-product regenerator is used, it shall be equipped with an accurate differential pressure recorder-controller. The differential pressure recorder-controller shall be accurate to within 2 pounds per square inch (13.8 kilopascals). One pressure sensor shall be installed at the sterilized product regenerator outlet and the other pressure sensor shall be installed at the unsterilized product regenerator inlet. The sensor and recorder of the differential pressure recorder-controller shall be tested for accuracy against an accurate reference device upon installation and at least once every 3 months of operation thereafter, or more frequently if necessary, to ensure its accuracy.

(*1*) *Analog or graphical recordings.* Differential pressure recorder-controllers that create analog or graphical recordings may be used. Differential pressure recorder-controllers that record to charts shall be used only with the appropriate chart. The scale divisions of the chart shall not exceed 2 pounds per square inch (13.8 kilopascals) on a working scale of not more than 20 pounds per square inch per inch of scale (55 kilopascals per centimeter).

(*2*) *Digital recordings.* Differential pressure recorder-controllers, such as data loggers, that record numbers or create other digital recordings may be used. Such differential pressure recorder-controllers shall record the differential pressure at intervals that will assure that the minimum differential pressure is maintained.

(F) *Flow control.* A flow control device shall be located upstream from the holding tube and shall be operated to maintain the required rate of product flow. A means of preventing unauthorized flow adjustments shall be provided. A lock or a notice from management posted at or near the flow controlling device that provides a warning that only authorized persons are permitted to make adjustments is a satisfactory means of preventing unauthorized changes.

(G) *Product holding tube.* The product-sterilizing holding tube shall be designed to give continuous holding of every particle of food for at least the minimum holding time specified in the scheduled process. The holding tube shall be designed so that no portion of the tube between the product inlet and the product outlet can be heated, and it must be sloped upward at least ¼-inch per foot (2.1 centimeters per meter).

(H) *Flow-diversion systems.* If a processor elects to install a flow-diversion system, it should be installed in the product piping located between the product cooler and the product filler or aseptic surge tank and should be designed to divert flow away from the filler or aseptic surge tank automatically. Controls and/or warning systems should be designed and installed with necessary sensors and actuators to operate whenever the sterilizing temperature in the holding tube or pressure differential in the product regenerator drops below specified limits. Flow-diversion systems should be designed and operated in accordance with recommendations of an aseptic processing and packaging authority.

(I) *Equipment downstream from the holding tube.* Product coolers, aseptic surge tanks, or any other equipment downstream from the holding tube, with rotating or reciprocating shafts, valve stems, instrument connections, or other such points, are subject to potential entry of microorganisms into the product. Such locations in the system should be equipped with steam seals or other effective barriers at the potential access points. Appropriate means should be provided to permit the operator to monitor the performance of the seals or barriers during operations.

(ii) *Operation*—(A) *Startup.* Before the start of aseptic processing operations the product sterilizer and all product-contact surfaces downstream shall be brought to a condition of commercial sterility.

(B) *Temperature drop in product-sterilizing holding tube.* When product temperature in the holding tube drops below the temperature specified in the scheduled process, product flow should be diverted away from the filler or aseptic surge tank by means of a flow-diversion system. If for any reason product subjected to a temperature drop below the scheduled process is filled into containers, the product shall be segregated from product that received the scheduled process. The processing deviation shall be handled in accordance with § 113.89. The product holding tube and any further system portions affected shall be returned to a condition of commercial sterility before product flow is resumed to the filler or to the aseptic surge tank.

(C) *Loss of proper pressures in the regenerator.* When a regenerator is used, the product may lose sterility whenever the pressure of sterilized product in the regenerator is less than 1 pound per square inch (6.9 kilopascals) greater than the pressure of unsterilized product in the regenerator. In this case, product flow should be diverted away from the filler or aseptic surge tank by means of the flow-diversion system. If for any reason the product is filled into containers, the product shall be segregated from product that received the scheduled process. The processing deviation shall be handled in accordance with § 113.89. Product flow to the filler or to the aseptic surge tank shall not be resumed until the cause of the improper pressure relationships in the regenerator has been corrected and the affected system(s) has been returned to a condition of commercial sterility.

(D) *Loss of sterile air pressure or other protection level in the aseptic surge tank.* When an aseptic surge tank is used, conditions of commercial sterility may be lost when the sterile air overpressure or other means of protection drops below the scheduled process value. Product flow to and/or from the aseptic surge tank shall not be resumed until the potentially contaminated product in the tank is removed, and the aseptic surge tank has been returned to a condition of commercial sterility.

(E) *Records.* Readings at the following points shall be observed and recorded at the start of aseptic packaging operations and at intervals of sufficient frequency to ensure that these values are as specified in the scheduled process: Temperature-indicating device in holding tube outlet; temperature-recording device in holding tube outlet; differential pressure recorder-controller, if a product-to-product regenerator is used; product flow rate as established by the flow control device or as determined by filling and closing rates and, if an aseptic surge tank is used, sterile air pressure or other protection means; and proper performance of steam seals or other similar devices. The measurements and recordings should be made at intervals not to exceed 1 hour.

(2) *Container sterilizing, filling, and closing operation*—(i) *Equipment*—(A) *Recording device.* The container and closure sterilization system and product filling and closing system shall be implemented to demonstrate that the required sterilization is being accomplished continuously. Recording devices shall be used to record, when applicable, the sterilization media flow rates, temperature, concentration, or other factors. When a batch system is

used for container sterilization, the sterilization conditions shall be recorded.

(B) *Timing method(s).* A method(s) shall be used either to give the retention time of containers, and closures if applicable, in the sterilizing environment specified in the scheduled process, or to control the sterilization cycle at the rate specified in the scheduled process. A means of preventing unauthorized speed changes must be provided. A lock or a notice from management posted at or near the speed adjusting device that provides a warning that only authorized persons are permitted to make adjustments is a satisfactory means of preventing unauthorized changes.

(ii) *Operation*—(A) *Startup.* Before the start of packaging operations, both the container and closure sterilizing system and the product filling and closing system shall be brought to a condition of commercial sterility.

(B) *Loss of sterility.* A system shall be provided to stop packaging operations, or alternatively to ensure segregation of any product packaged when the packaging conditions fall below scheduled processes. Compliance with this requirement may be accomplished by diverting product away from the filler, by preventing containers from entering the filler, or by other suitable means. In the event product is packaged under conditions below those specified in the scheduled process, all such product shall be segregated from product that received the scheduled process. The processing deviation shall be handled in accordance with § 113.89. In the event of loss of sterility, the system(s) shall be returned to a condition of commercial sterility before resuming packaging operations.

(C) *Records.* Observations and measurements of operating conditions shall be made and recorded at intervals of sufficient frequency to ensure that commercial sterility of the food product is being achieved; such measurements shall include the sterilization media flow rates, temperatures, the container and closure rates (if applicable) through the sterilizing system, and the sterilization conditions if a batch system is used for container sterilization. The measurements and recordings should be made at intervals not to exceed 1 hour.

(3) *Incubation.* Incubation tests should be conducted on a representative sample of containers of product from each code; records of the test results should be maintained.

(4) *Critical factors.* Critical factors specified in the scheduled process shall be measured and recorded on the processing record at intervals of sufficient frequency to ensure that the factors are within the limits specified in the scheduled process. Such measurements and recordings should be done at intervals not to exceed 15 minutes.

(h) *Equipment and procedures for flame sterilizers.* The container conveyor speed shall be specified in the scheduled process. The container conveyor speed shall be measured and recorded at the start of operations and at intervals of sufficient frequency to ensure that the conveyor speed is as specified in the scheduled process. Such measurements and recordings should be done at 1-hour intervals. Alternatively, a recording tachometer may be used to provide a continuous record of the speed. A means of preventing changes in flame intensity and unauthorized speed changes on the conveyor shall be provided. A lock or a notice from management posted at or near the speed adjusting device that provides a warning that only authorized persons are permitted to make adjustments is a satisfactory means of preventing unauthorized changes. The surface temperature of at least one container from each conveyor channel shall be measured and recorded at the entry and at the end of the holding period at intervals of sufficient frequency to ensure that the temperatures specified in the scheduled process are maintained. Such measurements and recordings should be done at intervals not to exceed 15 minutes.

(1) *Process interruption.* In the event of process interruption wherein the temperature of the product may have dropped, an authorized, scheduled emergency plan approved by a qualified person having expert knowledge of the process requirements may be used.

(2) *Critical factors.* Critical factors specified in the scheduled process shall be measured and recorded on the processing record at intervals of sufficient frequency to ensure that the factors are within the limits specified in the scheduled process.

(i) *Equipment and procedures for thermal processing of foods wherein critical factors such as water activity are used in conjunction with thermal processing.* The methods and controls used for the manufacture, processing, and packing of such foods shall be as established in the scheduled process and shall be operated or administered in a manner adequate to ensure that the product is safe. The time and temperature of processing and other critical factors specified in the scheduled process shall be measured with instruments having the accuracy and dependability adequate to ensure that the requirements of the scheduled process are met. All measurements shall be made and recorded at intervals of sufficient frequency to ensure that the critical factors are within the limits specified in the scheduled process.

(j) *Other systems.* All systems, whether or not specifically mentioned in this part, for the thermal processing of low-acid foods in hermetically sealed containers shall conform to the applicable requirements of this part and the methods and controls used for the manufacture, processing, and packing of these foods shall be as established in the scheduled process. These systems shall be operated or administered in a manner adequate to ensure that commercial sterility is achieved. Critical factors specified in the scheduled process shall be measured and recorded at intervals of sufficient frequency to ensure that the critical factors are within the limits specified in the scheduled process.

■ 3. Amend § 113.60 by revising paragraph (d) to read as follows:

§ 113.60 Containers.

* * * * *

(d) *Postprocess handling.* Container handling equipment used in handling filled containers shall be designed, constructed, and operated to preserve the can seam or other container closure integrity. Container handling equipment, including automated and non-automated equipment, shall be checked with sufficient frequency and repaired or replaced as necessary to prevent damage to containers and container closures. When cans are handled on belt conveyors, the conveyors should be constructed to minimize contact by the belt with the double seam, *i.e.,* cans should not be rolled on the double seam. All worn and frayed belting, can retarders, cushions, *etc.* should be replaced with new nonporous material. All tracks and belts that come into contact with the can seams should be thoroughly scrubbed and sanitized at intervals of sufficient frequency to avoid product contamination.

■ 4. Revise § 113.83 to read as follows:

§ 113.83 Establishing scheduled processes.

Scheduled processes for low-acid foods shall be established by qualified persons having expert knowledge of thermal processing requirements for low-acid foods in hermetically sealed containers and having adequate facilities for making such determinations. The type, range, and combination of variations encountered in commercial production shall be

adequately provided for in establishing the scheduled process. Variations include those that occur due to seasonal or growing fluctuations, variety differences, supplier processes, reprocessing, and mixing a batch of processed product with the same unprocessed product before it is processed. Critical factors, *e.g.,* minimum headspace, consistency, maximum fill-in or drained weight, a_w, *etc.,* that may affect the scheduled process, shall be specified in the scheduled process. Acceptable scientific methods of establishing heat sterilization processes shall include, when necessary, but shall not be limited to, the use of microbial thermal death time data, process calculations based on product heat penetration data, and inoculated packs. Calculation shall be performed according to procedures recognized by competent processing authorities. If incubation tests are necessary for process confirmation, they shall include containers from test trials and from actual commercial production runs during the period of instituting the process. The incubation tests for confirmation of the scheduled processes should include the containers from the test trials and a number of containers from each of four or more actual commercial production runs. The number of containers from actual commercial production runs should be determined on the basis of recognized scientific methods to be of a size sufficient to ensure the adequacy of the process. Complete records covering all aspects of the establishment of the process and associated incubation tests shall be prepared and shall be permanently retained by the person or organization making the determination.

■ 5. Amend § 113.87 by revising paragraphs (b), (c), and (e) to read as follows:

§ 113.87 Operations in the thermal processing room.

* * * * *

(b) A system for product traffic control in the retort room shall be established to prevent unretorted product from bypassing the retort process. Each retort basket, truck, car, or crate used to hold containers in a retort, or one or more containers therein, shall, if it contains any retorted food product, be plainly and conspicuously marked with a heat-sensitive indicator, or by other effective means that will indicate visually, to thermal processing personnel, those units that have been retorted. A visual check shall be performed to determine whether or not the appropriate change has occurred in the heat-sensitive indicator as a result of retorting for all retort baskets, trucks, cars, or crates, to ensure that each unit of product has been retorted. A record of these checks should be made.

(c) The initial temperature of the contents of the containers to be processed shall be accurately determined and recorded with sufficient frequency to ensure that the temperature of the product is no lower than the minimum initial temperature specified in the scheduled process. For those operations that use water during the filling of the retort or during processing, provision shall be made to ensure that the water will not, before the start of each thermal process, lower the initial temperature of the product below that specified in the scheduled process. The temperature-indicating device used to determine the initial temperature shall be tested for accuracy against a reference device for which the accuracy is traceable to a National Institute of Standards and Technology (NIST), or other national metrology institute, standard reference device, by appropriate standard procedures, with sufficient frequency to ensure that initial temperature measurements are accurate. Records of the accuracy of the temperature-indicating device and of a reference device that is maintained by the processor shall be established and maintained in accordance with § 113.100(c) and (d).

* * * * *

(e) Clock times on temperature-recording device records shall reasonably correspond to the time of day on the processing records to provide correlation of these records.

* * * * *

■ 6. Section 113.100 is amended by:

■ a. Revising paragraphs (a) introductory text, (a)(4), (b);

■ b. Redesignating paragraphs (c), (d), and (e), as paragraphs (e), (f), and (g), respectively;

■ c. Adding new paragraphs (c), (d), and (h); and

■ d. Revising newly redesignated paragraph (e).

The revisions and additions read as follows:

§ 113.100 Processing and production records.

(a) Processing and production information shall be entered at the time it is observed by the retort or processing system operator, or other designated person, on forms that include the product, the code number, the date, the retort or processing system number, the size of container, the approximate number of containers per coding interval, the initial temperature, the actual processing time, the temperature-indicating device and temperature-recording device readings, and other appropriate processing data. Closing machine vacuum in vacuum-packed products, maximum fill-in or drained weight, or other critical factors specified in the scheduled process shall also be recorded. In addition, the following records shall be maintained:

* * * * *

(4) *Aseptic processing and packaging systems.* Product temperature in the holding tube outlet as indicated by the temperature-indicating device and the temperature-recording device; differential pressure as indicated by the differential pressure recorder-controller, if a product-to-product regenerator is used; product flow rate, as determined by the flow controlling device or by filling and closing rates; sterilization media flow rate or temperature or both; retention time of containers, and closures when applicable, in the sterilizing environment; and, when a batch system is used for container and/or closure sterilization, sterilization cycle times and temperatures.

* * * * *

(b) Temperature-recording device records shall be identified by date, retort number, and other data as necessary, so they can be correlated with the record of lots processed. Each entry on the processing and production records shall be made by the retort or processing system operator, or other designated person, at the time the specific retort or processing system condition or operation occurs, and this retort or processing system operator or other designated person shall sign or initial each record form. Not later than 1 working day after the actual process, and before shipment or release for distribution, a representative of plant management who is qualified by suitable training or experience shall review all processing and production records for completeness and to ensure that the product received the scheduled process. The records, including temperature-recording device records, shall be signed or initialed and dated by the reviewer.

(c) Records of the accuracy of a temperature-indicating device shall include:

(1) A reference to the tag, seal, or other means of identity used by the processor to identify the temperature-indicating device;

(2) The name of the manufacturer of the temperature-indicating device;

(3) The identity of the reference device, equipment, and procedures used for the accuracy test and to adjust the

temperature-indicating device or, if an outside facility is used to conduct the accuracy test for the temperature-indicating device, a guarantee, certificate of accuracy, certificate of calibration, or other document from the facility that includes a statement or other documentation regarding the traceability of the accuracy to a National Institute of Standards and Technology (NIST) or other national metrology institute standard;

(4) The identity of the person or facility that performed the accuracy test and adjusted or calibrated the temperature-indicating device;

(5) The date and results of each accuracy test, including the amount of calibration adjustment; and

(6) The date on or before which the next accuracy test must be performed.

(d) Records of the accuracy of a reference device maintained by the processor shall include:

(1) A reference to the tag, seal, or other means of identity used by the processor to identify the reference device;

(2) The name of the manufacturer of the reference device;

(3) The identity of the equipment and reference to procedures used for the accuracy test and to adjust or calibrate the reference device or, if an outside facility is used to conduct the accuracy test for the reference device, a guarantee, certificate of accuracy, certificate of calibration, or other document from the facility that includes a statement or other documentation regarding the traceability of the accuracy to a NIST or other national metrology institute standard;

(4) The identity of the person or facility that performed the accuracy test and adjusted or calibrated the reference device;

(5) The date and results of each accuracy test, including the amount of calibration adjustment; and

(6) The date on or before which the next accuracy test must be performed.

(e) Records of all container closure examinations shall specify the product code, the date and time of container closure inspections, the measurements obtained, and all corrective actions taken. Records shall be signed or initialed by the container closure inspector and reviewed by management with sufficient frequency to ensure that the containers are hermetically sealed. The records shall be signed or initialed and dated by the reviewer.

* * * * *

(h) Records of this part may be maintained electronically, provided they are in compliance with part 11 of this chapter.

Dated: February 23, 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

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The President

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Title 3—

The President

Proclamation 8628 of February 28, 2011

American Red Cross Month, 2011

By the President of the United States of America

A Proclamation

For over a century, the American Red Cross has harnessed the generosity of the American people, mobilizing us to offer assistance in the wake of disaster. Whether aiding towns fighting rising floodwaters or nations struggling with starvation and disease, the American Red Cross and its international partners have served during crises across the United States and around the world. During American Red Cross Month, we celebrate our Nation's humanitarian spirit, and we recommit to providing relief and hope in times of crisis.

The American Red Cross has a long history of partnering with Presidents of the United States to confront the world's most pressing challenges. During World War I, President Woodrow Wilson called on our citizens to help the American Red Cross "respond effectively and universally to the needs of humanity under stress of war." This relationship continued in 1943, when President Franklin D. Roosevelt proclaimed March as Red Cross Month, urging the public to support the efforts of the American Red Cross to provide resources and medical care to troops, allies, and peoples around the world.

Emergency response organizations like the American Red Cross play a vital role in relief operations by deploying scores of volunteers to rebuild communities hit by disaster and by providing critical support and resources at home and abroad. When a devastating earthquake struck Haiti last year, the American people responded with an outpouring of compassion, prompting an unprecedented international response and relief effort by the American Red Cross. These efforts reflect our country's noblest ideals, and they contribute to a climate of international trust and cooperation.

Volunteers play an essential part in every American Red Cross effort, from traveling to disaster zones around the world to donating blood at local community centers. Through their service, ordinary citizens have done extraordinary things, upholding the humanitarian mission of service and relief organizations and keeping our Nation strong and resilient. Though we can never fully know the challenges we will face, American Red Cross Month reminds us that Americans will always pull together in times of need and will always look to the future with hope and determination.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2011 as American Red Cross Month. I encourage all Americans to observe this month with appropriate programs, ceremonies, and activities, and by supporting the work of service and relief organizations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

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Presidential Documents

Proclamation 8629 of February 28, 2011

Irish-American Heritage Month, 2011

By the President of the United States of America

A Proclamation

Our diverse Nation has been shaped by the sacrifices and successes of those who crossed both land and sea in pursuit of a common dream. For millions of Americans, this journey began in Ireland. In the wake of the Great Hunger, many sons and daughters of Erin came to our shores seeking a brighter day, with only courage and the enduring values of faith and family to sustain them. Alongside many others who sought a better life in a new Nation, these intrepid immigrants built strong communities and helped forge our country's future. During Irish-American Heritage Month, we honor the contributions Irish Americans have made, and celebrate the nearly 40 million among us who proudly trace their roots back to Ireland.

From the earliest days of our Republic, the Irish have overcome discrimination and carved out a place for themselves in the American story. Through hard work, perseverance, and patriotism, women and men of Irish descent have given their brawn, brains, and blood to make and remake this Nation—pulling it westward, pushing it skyward, and moving it forward. Half a century ago, John F. Kennedy became our first Irish-American Catholic President and summoned an expectant citizenry to greatness. This year, as we commemorate the 50th anniversary of President Kennedy's inauguration, we recognize our 35th President and the countless other Irish Americans whose leadership and service have steered the course of our Nation.

Seldom in this world has a country so small had so large an impact on another. Today, the rich culture of Ireland touches all aspects of American society, and the friendship that binds Ireland and the United States is marked by a shared past and a common future. As communities across our country celebrate Irish-American Heritage Month and St. Patrick's Day, our Nation pays tribute to the proud lineage passed down to so many Americans from the Emerald Isle.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2011 as Irish-American Heritage Month. I call upon all Americans to observe this month by celebrating the contributions of Irish Americans to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

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Presidential Documents

Proclamation 8630 of February 28, 2011

Women's History Month, 2011

By the President of the United States of America

A Proclamation

During Women's History Month, we reflect on the extraordinary accomplishments of women and honor their role in shaping the course of our Nation's history. Today, women have reached heights their mothers and grandmothers might only have imagined. Women now comprise nearly half of our workforce and the majority of students in our colleges and universities. They scale the skies as astronauts, expand our economy as entrepreneurs and business leaders, and serve our country at the highest levels of government and our Armed Forces. In honor of the pioneering women who came before us, and in recognition of those who will come after us, this month, we recommit to erasing the remaining inequities facing women in our day.

This year, we commemorate the 100th anniversary of International Women's Day, a global celebration of the economic, political, and social achievements of women past, present, and future. International Women's Day is a chance to pay tribute to ordinary women throughout the world and is rooted in women's centuries-old struggle to participate in society on an equal footing with men. This day reminds us that, while enormous progress has been made, there is still work to be done before women achieve true parity.

My Administration has elevated the rights of women and girls abroad as a critical aspect of our foreign and national security policy. Empowering women across the globe is not simply the right thing to do, it is also smart foreign policy. This knowledge is reflected in the National Security Strategy of the United States, which recognizes that countries are more peaceful and prosperous when their female citizens enjoy equal rights, equal voices, and equal opportunities. Today, we are integrating a focus on women and girls in all our diplomatic efforts, and incorporating gender considerations in every aspect of our development assistance. We are working to build the participation of women into all aspects of conflict prevention and resolution, and we are continuing to lead in combating the scourge of conflict-related sexual violence, both bilaterally and at the United Nations.

In America, we must lead by example in protecting women's rights and supporting their empowerment. Despite our progress, too many women continue to be paid less than male workers, and women are significantly underrepresented in the science, technology, engineering, and mathematics (STEM) fields. By tapping into the potential and talents of all our citizens, we can utilize an enormous source of economic growth and prosperity. The White House Council on Women and Girls has continued to remove obstacles to achievement by addressing the rate of violence against women, supporting female entrepreneurs, and prioritizing the economic security of women. American families depend largely on the financial stability of women, and my Administration continues to prioritize policies that promote workplace flexibility, access to affordable, quality health care and child care, support for family caregivers, and the enforcement of equal pay laws. I have also called on every agency in the Federal Government to be part of the solution to ending violence against women, and they have responded with unprecedented cooperation to protect victims of domestic and sexual violence and enable survivors to break the cycle of abuse.

As we reflect on the triumphs of the past, we must also look to the limitless potential that lies ahead. To win the future, we must equip the young women of today with the knowledge, skills, and equal access to reach for the promise of tomorrow. My Administration is making unprecedented investments in education and is working to expand opportunities for women and girls in the STEM fields critical for growth in the 21st-century economy.

As we prepare to write the next chapter of women's history, let us resolve to build on the progress won by the trailblazers of the past. We must carry forward the work of the women who came before us and ensure our daughters have no limits on their dreams, no obstacles to their achievements, and no remaining ceilings to shatter.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2011 as Women's History Month. I call upon all Americans to observe this month and to celebrate International Women's Day on March 8, 2011 with appropriate programs, ceremonies, and activities that honor the history, accomplishments, and contributions of American women. I also invite all Americans to visit www.WomensHistoryMonth.gov to learn more about the generations of women who have shaped our history.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2011–5030
Filed 3–2–11; 11:15 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8631 of February 28, 2011

50th Anniversary of the Peace Corps

By the President of the United States of America

A Proclamation

In 1961, President John F. Kennedy signed an Executive Order establishing the Peace Corps, forever changing the way America sees the world and the world sees us. Today, one of President Kennedy's most enduring legacies can be found in the over 200,000 current and returned Peace Corps Volunteers who have collectively given over a half-century of service to the cause of peace. On its 50th anniversary, the United States Peace Corps remains an enduring symbol of our Nation's commitment to encouraging progress, creating opportunity, and fostering mutual respect and understanding throughout the world.

Over the past five decades, Peace Corps Volunteers have served in nearly 140 countries, bringing a wealth of practical assistance to those working to build better lives for themselves and their communities. From the first group of volunteers to arrive in Ghana and Tanzania in August 1961, they have been emissaries of hope and goodwill to the far corners of our world, strengthening the ties of friendship between the people of the United States and those of other countries. Living and working alongside those they serve, volunteers help address changing and complex global needs in education, health and HIV/AIDS, business and information technology, agriculture, environmental protection, and youth development. With each village that now has access to clean water, each young woman who has received an education, and each family empowered to prevent disease because of the service of a Peace Corps Volunteer, President Kennedy's noble vision lives on.

In our increasingly interconnected world, the mission of the Peace Corps is more relevant today than ever. Returned volunteers, enriched by their experiences overseas, bring a deeper understanding of other cultures and traditions back to their home communities in the United States. The lasting accomplishments of the Peace Corps continue to strengthen partnerships with leaders and countries around the world. This year, we also mourn the loss and pay tribute to the extraordinary life of Sargent Shriver, the founding director of the Peace Corps. The impact of his decades of public service will echo forever in countless places across the globe that have been touched by the Peace Corps.

On this anniversary, we honor the men and women from across the country who have carried forward our Nation's finest tradition of service, and we rededicate ourselves to fulfilling the dream and continuing the work of all those who aspire and yearn for peace.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 1, 2011, as the 50th Anniversary of the Peace Corps. I call upon all Americans to observe this day with appropriate programs, ceremonies, and activities that honor the Peace Corps and its volunteers, past and present, for their many contributions to the cause of global peace and friendship.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2011–5031
Filed 3–2–11; 11:15 am]
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Presidential Documents

Proclamation 8632 of February 28, 2011

Death of Army Corporal Frank W. Buckles, the Last Surviving American Veteran of World War I

By the President of the United States of America

A Proclamation

As a mark of respect for the memory of Army Corporal Frank W. Buckles, the last surviving American veteran of World War I, and in remembrance of the generation of American veterans of World War I, I hereby order, by the authority vested in me by the Constitution and the laws of the United States of America, that, on the day of his interment, the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset on such day. I further direct that the flag shall be flown at half-staff for the same period at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2011–5032
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