AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 76 Tuesday,
No. 65 April 5, 2011

Pages 18631–18860

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Printing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpo@custhelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 76 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 76, No. 65

Tuesday, April 5, 2011

Administrative Conference of the United States
RULES
Disclosure of Records or Information, 18635–18645
NOTICES
Meetings:
Committees on Rulemaking, Regulation, and Adjudication, 18713

Agency for Healthcare Research and Quality
NOTICES
National Advisory Council; Request for Nominations for Public Members, 18765–18766

Agriculture Department
See Forest Service

Antitrust Division
NOTICES
Proposed Final Judgments, Stipulations and Competitive Impact Statements:
United States et al. v. Dean Foods Co., 18783–18796
Pursuant to National Cooperative Research and Production Act of 1993:
IMS Global Learning Consortium, Inc., 18797

Centers for Disease Control and Prevention
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel; Initial Review, 18766

Centers for Medicare & Medicaid Services
NOTICES
Early Retiree Reinsurance Program, 18766–18767

Children and Families Administration
PROPOSED RULES
Federal Monitoring of Child and Family Service Programs; Request for Public Comment and Consultation Meetings, 18677–18679

Coast Guard
PROPOSED RULES
Safety Zones:
Big Rock Blue Marlin Air Show; Bogue Sound, Morehead City, NC, 18672–18674
Newport River; Morehead City, NC, 18669–18672
Security Zones:
Sector Southeastern New England Captain of the Port Zone, 18674–18677
NOTICES
Removal of Conditions of Entry:
Vessels Arriving From Islamic Republic of Mauritania, 18771–18772

Commerce Department
See Industry and Security Bureau
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
NOTICES
Environmental Assessments; Availability, etc.:
Marianas Trench Marine National Monument; Commonwealth of Northern Mariana Islands, etc., 18773–18775
Pacific Remote Islands Marine National Monument; Monument Management Plan, Comprehensive Conservation Plans, 18775–18777

Consumer Product Safety Commission
RULES
Third Party Testing for Certain Children's Products:
Requirements for Accreditation of Third Party Conformity Assessment Bodies—Lead Paint, 18645–18648

Defense Department
See Navy Department
NOTICES
36(b)(1) Arms Sales, 18726–18736
Defense Transportation Regulation, Part IV, 18737
Meetings:
National Defense University Board of Visitors; Date Change, 18737
Reserve Forces Policy Board (RFPB) Member Solicitations, 18737–18738

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18740–18741
Privacy Act; Systems of Records, 18741–18743

Employee Benefits Security Administration
RULES
Actuarial Information on Form 5500 Annual Return/Report for Pension Plans Electing Funding Alternatives:
Technical Revisions, 18649–18650

Employment and Training Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Agricultural Workers Survey, 18798

Employment Standards Administration
See Wage and Hour Division

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Approvals and Promulgations of Implementation Plans and Designations of Areas for Air Quality Planning Purposes:
Rome, GA; Determination of Attaining Data for 1997 Annual Fine Particulate Standard, 18650–18651
NOTICES
Meetings:
Local Government Advisory Committees Small Community Advisory Subcommittee, 18757

Project Waivers of Section 1605 (Buy American Requirement) of 2009 American Recovery and Reinvestment Act:
Bayonne Municipal Utilities Authority, Bayonne, NJ, 18757–18759

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
PROPOSED RULES
Airworthiness Directives:
Boeing Co. Model 767 Airplanes, 18664–18669

Federal Communications Commission
PROPOSED RULES
Draft Environmental Notice Requirements and Interim Procedures Affecting Antenna Structure Registration Program:
Wireless Telecommunications Bureau Invites Comments, 18679–18684
NOTICES
Improving Communications Services for Native Nations, 18759–18761

Federal Emergency Management Agency
NOTICES
Major Disaster Declarations:
New York; Amendment No. 2, 18772

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18743–18744
Applications for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests:
Appalachian Power Co., 18745–18746
Duke Energy Carolinas, LLC, 18744–18745
Union Electric Co., dba AmerenUE, 18746–18747
Applications for Partial Transfer of License, and Soliciting Comments and Motions To Intervene:
Teton Power Funding, LLC; Topsham Hydro Partners Limited Partnership, et al., 18747
Applications:
Gulf South Pipeline Co., LP, 18748–18749
National Fuel Gas Supply Corp., 18749–18750
Tennessee Gas Pipeline Co., 18747–18748
Baseline Filings:
Humble Gas Pipeline Co.; Cobra Pipeline Ltd., 18750
Changes in Docket Numbers:
Ocean Renewable Power Co., LLC, 18750–18751
Environmental Assessments; Availability, etc.:
National Fuel Gas Supply Corp.; Tennessee Gas Pipeline Co., 18751–18753
Filings:
American Midstream (Louisiana Intrastate), LLC, 18753
City of Springfield, Illinois, City Water, Light and Power, 18753
Jefferson Island Storage and Hub, L.L.C., 18753–18754
Memorandums of Understanding; Availability:
Federal Energy Regulatory Commission and U.S. Fish and Wildlife Service To Promote Conservation of Migratory Birds, 18754
Motions for Extension of Rate Case Filing Deadline:
J–W Pipeline Co., 18754
Onsite Environmental Reviews:
Tennessee Gas Pipeline Co.; Dominion Transmission, Inc., 18754–18755
Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, etc.:
Kahawai Power 5, LLC, 18756
Lock Hydro Friends Fund LI, 18755–18756
Lock Hydro Friends Fund LII, 18755
Requests Under Blanket Authorization:
El Paso Natural Gas Co., 18756–18757

Federal Maritime Commission
NOTICES
Orders of Investigations and Hearings:
Worldwide Logistics Co., Ltd., 18761–18762

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 18762

Federal Motor Carrier Safety Administration
NOTICES
Qualifications of Drivers; Exemption Applications:
Epilepsy and Seizure Disorders, 18822–18823
Qualifications of Drivers; Exemption Applications; Vision, 18824–18826
Requests For Nominations:
Unified Carrier Registration Plan Board of Directors, 18826–18827

Federal Trade Commission
NOTICES
Analyses of Proposed Consent Orders To Aid Public Comment:
Google, Inc., 18762–18765

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Bearmouth Mountainsnail, Byrne Resort Mountainsnail, and Meltwater Lednian Stonefly; 12-Month Petition Finding, 18684–18701
Endangered and Threatened Wildlife and Plants; Petitions:
Peary Caribou and Dolphin, and Union Population of Barren-ground Caribou, 18701–18706
NOTICES
Environmental Assessments; Availability, etc.:
Marianas Trench Marine National Monument; Commonwealth of Northern Mariana Islands, etc., 18773–18775
Pacific Remote Islands Marine National Monument; Monument Management Plan, Comprehensive Conservation Plans, 18775–18777

Food and Drug Administration
RULES
Oral Dosages Form New Animal Drugs:
Robenacoxib, 18648
NOTICES
Meetings:
Cellular, Tissue, and Gene Therapies Advisory Committee, 18768
Preparation for International Cooperation on Cosmetics Regulations, 18767–18768

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Malheur National Forest Site-Specific Invasive Plants Treatment Project; Correction, 18713–18715

Meetings:
Prince William Sound Resource Advisory Committee, 18715–18716

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18765

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Public Housing Financial Management Template, 18772–18773

Industry and Security Bureau
NOTICES
Final Decisions and Orders:
Manoj Bhayana, Respondent, 18716–18723

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Reclamation Bureau

International Trade Commission
NOTICES
Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations:
Certain Steel Wheels From China, 18781–18782
Investigations:
Frozen Warmwater Shrimp From Brazil; China; India; Thailand; and Vietnam, 18782

Justice Department
See Antitrust Division
See Antitrust Division
NOTICES
Lodging of Consent Decrees, 18782–18783

Labor Department
See Employee Benefits Security Administration
See Employment and Training Administration
See Occupational Safety and Health Administration
See Wage and Hour Division
RULES
Updating Regulations Issued Under Fair Labor Standards Act, 18832–18860
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Longitudinal Survey of Youth 1997, 18797–18798

Land Management Bureau
NOTICES
Meetings:
John Day–Snake Resource Advisory Council, 18777–18778
State of Arizona Resource Advisory Council, 18777
Proposed Reinstatement of Terminated Oil and Gas Leases:
Montana, 18778
Nevada, 18778

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

National Aeronautics and Space Administration
NOTICES
Meetings:
NASA Advisory Council Exploration Committee, 18800
NASA Advisory Council, Information Technology Infrastructure Committee, 18800–18801

National Institutes of Health
NOTICES
Meetings:
National Institute of Environmental Health Sciences, 18769
Prospective Grants of Exclusive Licenses:
Device and System for Two Dimensional Analysis of Biomolecules From Tissue and Other Samples, 18769–18770

National Labor Relations Board
NOTICES
Meetings; Sunshine Act, 18801

National Oceanic and Atmospheric Administration
RULES
Atlantic Highly Migratory Species:
Bluefin Tuna Bycatch Reduction in Gulf of Mexico Pelagic Longline Fishery, 18653–18661
Fisheries of Exclusive Economic Zone Off Alaska:
Pacific Cod by Catcher Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area; Closure, 18663
Fisheries of Northeastern United States:
Northeast Multispecies Fishery; Trip Limit Adjustments for Common Pool Fishery, 18661–18663
PROPOSED RULES
Fisheries in the Eastern Pacific Ocean:
Pelagic Fisheries; Vessel Identification Requirements, 18706–18709
Magnuson–Stevens Act Provisions; Fisheries Off West Coast States:
Pacific Coast Groundfish Fishery, 2011 Tribal Fishery for Pacific Whiting, 18709–18712
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Cooperative Charting Programs, 18724
Southeast Region Gulf of Mexico Red Snapper IFQ Program, 18723–18724
Weather Modification Activities Reports, 18723
Marine Mammals; Issuances of Permit Amendments:
File No. 14334, 18724–18725
File Nos. 14330 and 14335, 18725
Receipt of Application:
Endangered Species, 18725–18726

National Park Service
NOTICES
Meetings:
Cape Cod National Seashore Advisory Commission, 18778–18779
Flight 93 National Memorial Advisory Commission, 18778
National Register of Historic Places; Pending Nominations and Related Actions, 18779–18780

National Telecommunications and Information Administration

RULES
Revision to the Manual of Regulations and Procedures for Federal Radio Frequency Management, 18652–18653

Navy Department
NOTICES
Privacy Act; Systems of Records, 18738–18740

Nuclear Regulatory Commission
NOTICES
Applications and Amendments to Facility Operating Licenses, 18801–18807
Licensee Justification of Long-Term Surveillance Charge, 18807–18809
Meetings; Sunshine Act, 18809–18810

Occupational Safety and Health Administration
NOTICES
Meetings:
Maritime Advisory Committee for Occupational Safety and Health, 18798–18800

Personnel Management Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18810
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Disabled Dependent Questionnaire, 18812–18813
Letter Reply to Request for Information; Former Spouse Survivor Annuity Election, etc., 18811–18812
Request to Change Federal Employees Health Benefits Enrollment, etc., 18810–18811
We Need Social Security Number of Person Named Below, 18812

Presidential Documents
PROCLAMATIONS
Special Observances:
National Donate Life Month (Proc. 8642), 18631–18632
National Sexual Assault Awareness and Prevention Month (Proc. 8643), 18633–18634

Reclamation Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Yakima River Basin Water Enhancement Project, Benton, Kittitas, Klickitat, and Yakima Counties, WA, 18780–18781

Securities and Exchange Commission
NOTICES
Orders of Suspension of Trading:
China Changjiang Mining and New Energy Co., Ltd., 18813
Self-Regulatory Organizations; Proposed Rule Changes:
CBOE Futures Exchange, LLC, 18816–18821
NASDAQ OMX PHLX LLC, 18813–18818

Small Business Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18821
Exemption Under Section 312 of Small Business Investment Act, Conflicts of Interest:
Convergent Capital Partners II, L.P., 18821
Interest Rates, 18821

State Department
NOTICES
Persons and Entities on Whom Sanctions Have Been Imposed Under the Iran Sanctions Act of 1996, 18821–18822

Substance Abuse and Mental Health Services Administration

NOTICES
Current List of Laboratories and Instrumented Initial Testing Facilities that Meet Minimum Standards, etc., 18770–18771

Surface Transportation Board
NOTICES
Temporary Trackage Rights Exemptions:
BNSF Railway Co.—Union Pacific Railroad Co.; Partial Revocation, 18827

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Surface Transportation Board

Treasury Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18827–18829
Meetings:
Presidents Advisory Council on Financial Capability, 18829

Wage and Hour Division
RULES
Updating Regulations Issued Under Fair Labor Standards Act, 18832–18860

Separate Parts In This Issue

Part II
Labor Department, Wage and Hour Division, 18832–18860
Labor Department, 18832–18860

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

1 CFR
304 18635

3 CFR
Proclamations:
8642 18631
8643 18633

14 CFR
Proposed Rules:
39 18664

16 CFR
1303 18645

21 CFR
520 18648

29 CFR
4 18832
516 18832
531 18832
553 18832
778 18832
779 18832
780 18832
785 18832
786 18832
790 18832
2520 18649

33 CFR
Proposed Rules:
165 (3 documents) 18669, 18672, 18674

40 CFR
52 18650

45 CFR
Proposed Rules:
1355 18677
1356 18677
1357 18677

47 CFR
300 18652
Proposed Rules:
1 18679
17 18679
22 18679
24 18679
25 18679
27 18679
80 18679
87 18679
90 18679

50 CFR
635 18653
648 18661
679 18663
Proposed Rules:
17 (2 documents) 18684, 18701
300 18706
660 (2 documents) 18706, 18709

Federal Register
Vol. 76, No. 65
Tuesday, April 5, 2011

Presidential Documents

Title 3—

The President

Proclamation 8642 of March 31, 2011

National Donate Life Month, 2011

By the President of the United States of America

A Proclamation

Americans have always been a generous people, willing to give to others in need. In these challenging times, that spirit of service has been abundantly evident and has made a real difference in many lives. As we observe National Donate Life Month, we reflect on an important opportunity to aid others—bestowing the gift of life through organ and tissue donation.

More than 110,000 individuals are now on the national waiting list for organ transplants, and the list continues to grow. Each year, the number of Americans needing life-saving donations has far outstripped the number of available donors. As a result, people lose their lives each day while waiting.

When each donation can touch dozens of lives, it has never been more important to make the decision to be an organ and tissue donor. I encourage all Americans to say yes to donation by giving blood regularly and joining their State-based donor registry. Individuals can register online or through the registration or renewal process for a driver's license or identification card. When considering organ donation, Americans should consult their family members, doctor, or faith leader about the decision to donate life. To find out more about donation and how you can register in your State, be sure to visit: www.OrganDonor.gov.

Together, we can all make the choice to save and improve the lives of Americans across our country.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 2011 as National Donate Life Month. I call upon health care professionals, volunteers, educators, government agencies, faith-based and community groups, and private organizations to join forces to boost the number of organ and tissue donors throughout our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of March, 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. 2011–8138
Filed 4–4–11; 8:45 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8643 of March 31, 2011

National Sexual Assault Awareness and Prevention Month, 2011

By the President of the United States of America

A Proclamation

Our Nation must continue to confront rape and other forms of sexual violence as a deplorable crime. Too many victims suffer unaided, and too many offenders elude justice. As we mark National Sexual Assault Awareness and Prevention Month, we recommit to building a society where no woman, man, or child endures the fear of assault or the pain of an attack on their physical well-being and basic human dignity.

Despite reforms to our legal system, sexual violence remains pervasive and largely misunderstood. Nearly one in six American women will experience an attempted or completed rape at some point in her life, and for some groups, rates of sexual violence are even higher. Almost one in three American Indian and Alaska Native women will be sexually assaulted. Young women ages 16 to 24 are at greatest risk, and an alarming number of young women are sexually assaulted while in college. Too many men and boys are also affected. With each new victim and each person still suffering from an attack, we are called with renewed purpose to respond to and rid our Nation of all forms of sexual violence.

Sexual assault is considered to be the most underreported violent crime in America, and criminal justice responses vary widely across our country. Some communities have developed highly trained, coordinated teams who understand the nature of sexual assault and can respond with compassionate understanding. In other places, victims hesitate to report these crimes because they fear the criminal justice system will respond with skepticism or fail to bring the perpetrator to justice. We must ensure our police, prosecutors, and courts treat victims with the seriousness and respect they need and deserve. We must do more to provide services that help victims recover from the trauma of sexual assault. And ultimately, we must prevent sexual assault before it happens.

Under Vice President Joe Biden's leadership, my Administration is committed to engaging a broad spectrum of Federal agencies and community partners to prevent sexual assault, support victims, and hold offenders accountable. The Department of Justice's Office on Violence Against Women is leading the Sexual Assault Demonstration Initiative to improve the way sexual assault survivors are served. The Centers for Disease Control and Prevention is funding innovative prevention campaigns that engage bystanders in reducing sexual assault, and the Department of Education is working to combat sexual violence at schools and universities. We will continue to support new approaches that show promise in changing cultural attitudes toward sexual violence and preventing these crimes.

Each victim of sexual assault represents a sister or a daughter, a nephew or a friend. We must break the silence so no victim anguishes without resources or aid in their time of greatest need. We must continue to reinforce that America will not tolerate sexual violence within our borders. Likewise, we will partner with countries across the globe as we work toward a common vision of a world free from the threat of sexual violence, including as

a tool of conflict. Working together, we can reduce the incidence of sexual assault and heal lives that have already been devastated by this terrible crime.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 2011 as National Sexual Assault Awareness and Prevention Month. I urge all Americans to support victims and work together to prevent these crimes in their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of March, 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. 2011–8139
Filed 4–4–11; 8:45 am]
Billing code 3195–W1–P

Rules and Regulations

Federal Register
Vol. 76, No. 65
Tuesday, April 5, 2011

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

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

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 304

Disclosure of Records or Information

AGENCY: Administrative Conference of the United States.

ACTION: Final rule.

SUMMARY: The Administrative Conference of the United States (ACUS or the Conference) is promulgating updated rules identifying its procedures for disclosure of records under the Freedom of Information Act and its procedures for protection of privacy and access to individual records under the Privacy Act of 1974.

DATES: Effective April 5, 2011.

FOR FURTHER INFORMATION CONTACT: Shawne C. McGibbon, General Counsel, at 202–480–2088 or *smcgibbon@acus.gov.*

SUPPLEMENTARY INFORMATION: ACUS was established by the Administrative Conference Act, 5 U.S.C. 591–96. Following the loss of its funding in 1995, ACUS ceased operations. In 1996, its prior regulations (including Part 304) were eliminated. 61 FR 3539 (1996). Congress has now reauthorized and refunded ACUS, which has now reinitiated operations. These regulations provide the agency's procedures for disclosure of records, as required by the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, and its procedures for protection of privacy and access to individual records, as required by the Privacy Act of 1974, 5 U.S.C. 552a, as amended. These regulations also reflect the principles established by President Obama's Presidential Memoranda on "Transparency and Open Government" and "Freedom of Information Act" issued on January 21, 2009 and Attorney General Holder's Memorandum on "The Freedom of Information Act (FOIA)" issued on March 19, 2009. Additionally, the regulations reflect the Conference's commitment to providing the fullest possible disclosure of records to the public. The proposed rule was published in the **Federal Register** on January 11, 2011 (76 FR 1542) for public comments.

Public Comment

ACUS received a single set of comments from one person, which suggested numerous technical corrections or clarifications, most of which were accepted and incorporated into the final rule. The final rule provides that, in general, e-mail may be used by requesters and the agency for submission of requests or agency responses. The more significant suggestions were addressed as follows.

The commenter suggested revising the procedure for handling appeals to ensure that a requester who receives an adverse determination on either a FOIA or Privacy Act request will always have a right to an administrative appeal. We have revised this provision to preserve appeal rights within the agency.

We have also accepted the commenter's suggestion to modify the fees section, so as to permit agency discretionary waivers where appropriate.

The commenter suggested that we omit multi-track processing because the agency is very small. We have retained the option of using more than one track to enable more efficient processing of simple requests.

Required Reviews

a. Paperwork Reduction Act

ACUS has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* does not apply because these regulations do not contain any information collection requirements.

b. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires agencies to perform regulatory flexibility analyses when promulgating rules through notice and comment procedures. ACUS has determined that these regulations do not have a significant economic impact on a substantial number of small entities. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing and duplicating the records processed for certain categories of requesters. The Conference's proposed fee structure is in accordance with Department of Justice guidelines and based upon OMB fee schedules, which calculate costs based on the category of requester and kind of employee duplicating the records. Under the Privacy Act, agencies may recover the cost of duplication only. The agency will provide free duplication and search time (up to a certain amount) in certain cases. Where anticipated fees exceed $50, an opportunity is given to the requester to refine the request in order to lower cost. Thus, fees assessed by ACUS are nominal. The agency certifies that these regulations will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

c. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), these regulations will not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation).

d. Executive Order 12866

In issuing these regulations, ACUS has adhered to the regulatory philosophy and the applicable principles of regulation as set forth in Section 1 of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735. These regulations have not been reviewed by the Office of Management and Budget under the Executive Order since they are not a significant regulatory action within the meaning of the Executive Order.

List of Subjects in 1 CFR Part 304

Administrative practice and procedure, Freedom of information, Privacy.

For the reasons stated in the preamble, under the authority at 5 U.S.C. 552, 552a, and 591–96, the Administrative Conference of the United States amends 1 CFR Chapter III to add part 304 as set forth below:

PART 304—DISCLOSURE OF RECORDS OR INFORMATION

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.
304.1 General provisions.
304.2 Public reading room.
304.3 Requirements for making requests.
304.4 Responsibility for responding to requests.
304.5 Timing of responses to requests.
304.6 Responses to requests.
304.7 Business information.
304.8 Appeals.
304.9 Fees.
304.10 Preservation of records.
304.11 Other rights and services.

Subpart B—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

304.20 General provisions.
304.21 Requests for access to records.
304.22 Responsibility for responding to requests for access to records.
304.23 Responses to requests for access to records.
304.24 Appeals from denials of requests for access to records.
304.25 Requests for amendment or correction of records.
304.26 Requests for an accounting of record disclosures.
304.27 Fees.
304.28 Notice of court-ordered and emergency disclosures.
304.29 Security of systems of records.
304.30 Contracts for the operation of record systems.
304.31 Use and collection of social security numbers and other information.
304.32 Employee standards of conduct.
304.33 Preservation of records.
304.34 Other rights and services.

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Authority: 5 U.S.C. 552, 591–96.

§ 304.1 General provisions.

(a) This subpart contains the rules that the Administrative Conference of the United States ("ACUS" or "the agency") follows in processing requests for disclosure of records under the Freedom of Information Act ("FOIA" or "the Act"), 5 U.S.C. 552, as amended, and in meeting its responsibilities under the Act. Note that electronic records are treated as records for the purposes of the FOIA. These rules should be read together with the text of the FOIA itself, which provides additional information about access to records maintained by the agency. They also may be read in conjunction with the agency's "Freedom of Information Act Reference Guide," which provides basic information about use of the Act in relation to the agency's records. Requests made by individuals for access to records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a (2006 & Supp. II 2008), which are processed under subpart B of this part, are also processed under this subpart. The agency will automatically process the request under both provisions in order to provide the maximum possible records to the requester. Information routinely provided to the public as part of a regular agency activity (for example, press releases or recommendations adopted by the agency pursuant to the Administrative Conference Act, 5 U.S.C. 591 *et seq.*) may be provided to the public without following this subpart.

(b) As a matter of policy, ACUS makes discretionary disclosures of records or information exempt from disclosure under the FOIA whenever it is determined that disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(c) The agency has designated its General Counsel as its Chief FOIA Officer, who has agency-wide responsibility for efficient and appropriate compliance with the FOIA and these implementing regulations. The General Counsel has designated the agency's Deputy General Counsel as its FOIA Public Liaison.

§ 304.2 Public reading room.

(a) ACUS maintains a public reading room that affords access to the records that the FOIA requires it to make regularly available for public inspection and copying even in the absence of a FOIA request, including a current subject-matter index of its reading room records that will be updated quarterly with respect to newly included records.

(b) ACUS also makes all reading room records that have been created by the agency regularly available to the public electronically on its Web site (*http://www.acus.gov*).

§ 304.3 Requirements for making requests.

(a) *How made and addressed.* You may make a request for records by sending an e-mail message addressed to *info@acus.gov,* or by using the FOIA Request form on the ACUS Web site at *http://www.acus.gov/foia.* You may also send a written request letter to the agency either by mail addressed to FOIA Public Liaison, Administrative Conference of the United States, 1120 20th Street, NW., South Lobby, Suite 706, Washington, DC 20036, or by fax delivery to (202) 386–7190. For the quickest possible handling of a mail request, you should mark both your request letter and the envelope "Freedom of Information Act Request." (You may find the agency's "Freedom of Information Act Reference Guide"—which is available on its Web site and in paper form—helpful in making your request.) If you are making a request for records about yourself, see § 304.21(d) for additional requirements. If you are making a request for records about another individual, then either a written authorization signed by that individual permitting disclosure of those records to you or proof that that individual is deceased (for example, a copy of a death certificate or an obituary notice) will help the processing of your request. Your request will be considered received as of the date upon which it is logged in as received by the agency's FOIA Public Liaison.

(b) *Description of records sought.* You must describe the records that you seek in enough detail to enable agency personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. If known, you should include any file designations or similar descriptions for the records that you want. As a general rule, the more specific you are about the records or type of records that you want, the more likely that the agency will be able to locate those records in response to your request. If the agency determines that your request does not reasonably describe records, then it will tell you either what additional information is needed or why your request is otherwise insufficient. It also will give you an opportunity to discuss your request by telephone so that you may modify it to meet the requirements of this section. Additionally, if your request does not reasonably describe the records you seek, the agency's response to it may be delayed as an initial matter.

(c) *Agreement to pay fees.* When you make a FOIA request, it will be considered to be an agreement by you to pay all applicable fees charged under § 304.9, up to $50.00, unless you specifically request a waiver of fees. The agency ordinarily will confirm this agreement in an acknowledgment letter. When making a request, you may specify a willingness to pay a greater or lesser amount. Your agreement will not prejudice your ability to seek a waiver or reduction of any applicable fee at a later time.

§ 304.4 Responsibility for responding to requests.

(a) *In general.* The agency will be responsible for responding to a request

in all respects, except in the case of a referral to another agency as is described in paragraphs (b), (c), and (d) of this section. In determining which records are responsive to a request, the agency ordinarily will include only records in its possession and control as of the date upon which it begins its search for them. If any other date is used, the agency will inform the requester of that date.

(b) *Consultations and referrals.* When the agency receives a request for a record in its possession and control, it will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA and, if so, whether it should be disclosed as a matter of administrative discretion. If the agency determines that it is best able to process the record in response to the request, then it will do so. If the agency determines that it is not best able to process the record, then it will either:

(1) Respond to the request regarding that record, after consulting with the agency that is best able to determine whether to disclose it and with any other agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to another agency that originated the record (but only if that agency is subject to the FOIA). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether to disclose it.

(c) *Notice of referral.* When the agency refers all or any part of the responsibility for responding to a request to another agency, it ordinarily will notify the requester of the referral and inform the requester of the name of the agency to which the request has been referred and of the part of the request that has been referred.

(d) *Timing of responses to consultations and referrals.* All consultations and referrals will be handled according to the date upon which the FOIA request initially was received by the first agency, and not any later date.

(e) *Agreements regarding consultations and referrals.* The agency may make agreements with other agencies designed to eliminate the need for consultations or referrals regarding particular types of records.

§ 304.5 Timing of responses to requests.

(a) *In general.* The agency ordinarily will respond to requests according to their order of receipt.

(b) *Multi-track processing.* The agency may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, including according to the number of pages involved. If it does so, then it will advise requesters in its slower track(s) of the limits of its faster track(s) and may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of its faster track(s). The agency will contact the requester by telephone, e-mail or letter, whichever is most efficient, in each case.

(c) *Unusual circumstances.* (1) Where the statutory time limits for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, and the agency determines to extend the time limits on that basis, it will as soon as practicable notify the requester in writing of the unusual circumstances and of the date by which processing of the request can be expected to be completed. Where the extension is for more than ten business days, it will provide the requester with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period processing the request or a modified request.

(2) Where the agency reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated.

(d) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public concerning actual or alleged federal government activity, if made by a person primarily engaged in disseminating information; or

(iii) Other circumstances as determined by the agency.

(2) A request for expedited processing may be made at the time of the initial request for records (i.e., as part of the initial request) or at any later time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category in paragraph (d)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. That requester also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived by the agency as a matter of administrative discretion.

(4) Within ten calendar days of its receipt of a request for expedited processing, the agency will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, then the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, then any appeal of that decision will be acted on expeditiously.

§ 304.6 Responses to requests.

(a) *Acknowledgments of requests.* On receipt of a request, if the agency cannot provide the requested information within two business days, then an acknowledgment letter or e-mail message will be sent to the requester that will confirm the requester's agreement to pay fees under § 304.3(c) and will provide a request tracking number for further reference. Requesters may use this tracking number to determine the status of their request—including the date of its receipt and the estimated date on which action on it will be completed—by calling the agency's FOIA Public Liaison at (202) 480–2080. In some cases, the agency may seek further information or clarification from the requester.

(b) *Grants of requests.* Ordinarily, the agency will have twenty business days from when a request is received to determine whether to grant or deny the request. Once the agency makes such a determination, it will immediately notify the requester in writing. The agency will inform the requester in the notice of any fee charged under § 304.9 and will disclose records to the requester promptly upon payment of any applicable fee. Records disclosed in part will be marked or annotated to show the amount of information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also will be

indicated on the record, if technically feasible.

(c) *Adverse determinations of requests.* Whenever the agency makes an adverse determination denying a request in any respect, it will notify the requester of that determination in writing. Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; and a denial of a request for expedited treatment. The denial letter will include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any FOIA exemption(s) applied by the agency in denying the request;

(3) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption; and

(4) An indication on the released portion of a record of each exemption applied, at the place at which it was applied, if technically feasible.

(5) A statement that the denial may be appealed under § 304.8(a) and a description of the requirements of § 304.8(a).

§ 304.7 Business information.

(a) *In general.* Business information obtained by the agency will be disclosed under the FOIA only under this section and in accordance with Executive Order 12,600, 3 CFR part 235 (1988).

(b) *Definitions.* For purposes of this section:

(1) "Business information" means privileged or confidential commercial or financial information obtained by the agency from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) "Submitter" means any person or entity from whom the agency obtains business information, either directly or indirectly. The term includes corporations; state, local, and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any and all portion(s) of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* The agency will provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information wherever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice will either describe the business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *Where notice is required.* Notice will be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) The agency has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* The agency will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received by the agency until after its disclosure decision has been made will not be considered by the agency. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* The agency will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever the agency decides to disclose business information over the objection of a submitter, it will give the submitter written notice, which will include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which will be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section will not apply if:

(1) The agency determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12,600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous—except that, in such a case, the agency will, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the agency will promptly notify the submitter.

(j) *Corresponding notice to requesters.* Whenever the agency provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, it will also notify the requester(s). Whenever the agency notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, it will also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the agency will notify the requester(s).

§ 304.8 Appeals.

(a) *Appeals of adverse determinations.* If you are dissatisfied with the response to your request, you may appeal an adverse determination

denying your request, in any respect, to the Chairman of the agency. You must make your appeal in writing, by e-mail or letter, and it must be received by the agency within 60 days of the date of the agency's response denying your request. Your appeal should provide reasons and supporting information as to why the initial determination was incorrect. The appeal should clearly identify the particular determination (including the assigned request number, if known) that you are appealing. For the quickest possible handling of a mail request, you should mark your appeal "Freedom of Information Act Appeal." The Chairman or his or her designee will act on the appeal, except that an appeal ordinarily will not be acted on if the request becomes a matter of FOIA litigation.

(b) *Responses to appeals.* The decision on your appeal will be made by e-mail or letter, ordinarily within 20 business days of receipt of your appeal. A decision affirming an adverse determination in whole or in part will contain a statement of the reason(s) for the affirmance, including any FOIA exemption(s) applied, and will inform you of the FOIA provisions for court review of the decision. (You also may be aware of the mediation services that are offered by the Office of Government Information Services ("OGIS") of the National Archives and Records Administration—*see http://www.archives.gov/ogis/*—as a non-exclusive alternative to FOIA litigation.) If the adverse determination is reversed or modified on appeal, in whole or in part, then you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* As a general rule, if you wish to seek review by a court of any adverse determination, you must first appeal it in a timely fashion under this section.

§ 304.9 Fees.

(a) *In general.* The agency will charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section, where a waiver or reduction of fees is granted under paragraph (k) of this section, or where the agency's FOIA staff waives fees in whole or in part because they are deemed to be inappropriate or unreasonable—and in some cases the agency may seek further information or clarification from the requester for this purpose. The agency ordinarily will collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) "Commercial use request" means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, including furthering those interests through litigation. The agency will determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because the agency has reasonable cause to doubt a requester's stated use, the agency will provide the requester a reasonable opportunity to submit further clarification.

(2) "Direct costs" means those expenses that an agency actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) "Duplication" means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others. The agency will honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

(4) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To qualify under this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(5) "Noncommercial scientific institution" means an institution that is not operated on a "commercial" basis, as that term is defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To qualify under this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

(6) "Representative of the news media," or "news-media requester," means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. For this purpose, the term "news" means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the agency may also consider the past publication record of the requester in making such a determination. To qualify under this category, a requester must not be seeking the requested records for a commercial use. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use.

(7) "Review" means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure—for example, doing all that is necessary to redact it and prepare it for disclosure. Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent considering any formal objection to disclosure made by a business submitter under § 304.7 but does not include time spent resolving

general legal or policy issues regarding the application of exemptions.

(8) "Search" means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The agency will conduct searches in the most efficient and least expensive manner reasonably possible. For example, it will not search on a line-by-line basis where duplicating an entire document would be quicker and less expensive.

(c) *Fees charged.* In responding to FOIA requests, the agency will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section:

(1) *Search.* (i) Search fees will be charged for all requests (other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media) subject to the limitations of paragraph (d) of this section. The agency may charge for time spent searching even if it does not locate any responsive record or if it withholds the record(s) located as entirely exempt from disclosure.

(ii) For each quarter hour spent by clerical personnel in searching for and retrieving a requested record, the fee will be $5.00. Where a search and retrieval cannot be performed entirely by clerical personnel (for example, where the identification of records within the scope of a request requires the use of professional personnel) the fee will be $10.00 for each quarter hour of search time spent by professional personnel. Where the time of managerial personnel is required, the fee will be $15.00 for each quarter hour of time spent by those personnel.

(iii) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (d)(1) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (d)(3) of this section) will be entitled to the cost equivalent of two hours of manual search time without charge. These direct costs will include the costs of operator/programmer salary apportionable to the search.

(2) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee will be ten cents per page. For copies produced by computer, such as tapes, disks, or printouts, the agency will charge the direct costs, including operator time, of producing the copy. For other forms of duplication, the agency will charge the direct costs of that duplication.

(3) *Review.* Review fees will be charged to requesters who make a commercial use request. Review fees will be charged only for the initial record review, when the agency determines whether an exemption applies to a particular record or record portion at the initial request level. No charge will be made for review at the administrative appeal level regarding an exemption already applied. However, records or record portions withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies; the costs of that review are chargeable where it is made necessary by such a change of circumstances. Review fees will be charged at the same rates as those used for a search under paragraph (c)(1)(ii) of this section.

(d) *Limitations on charging fees.* (1) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, the agency will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent); and

(ii) The first two hours of search (or the cost equivalent).

(4) Whenever a total fee calculated under paragraph (c) of this section is $20.00 or less for any request, no fee will be charged.

(5) The provisions of paragraphs (d)(3) and (4) of this section work together. This means that for requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $20.00.

(6) In the case of any request on which the agency does not comply with any of the time limits of the FOIA and for which no "unusual or exceptional circumstances" exist, as those terms are defined by the FOIA, the agency will not charge any search fee or, for such requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media, will not charge any duplication fee.

(e) *Notice of anticipated fees in excess of $50.00.* When the agency determines or estimates that the fees to be charged under this section will amount to more than $50.00, it will notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the agency will advise the requester that the estimated fee might be only a portion of the total fee. In cases in which a requester has been notified that actual or estimated fees amount to more than $50.00, the request will not be considered received and further work will not be done on it until the requester agrees to pay the total anticipated fee. Any such agreement should be memorialized in writing. A notice under this paragraph will offer the requester an opportunity to discuss the matter with agency personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Apart from the other provisions of this section, when the agency chooses as a matter of administrative discretion to provide a special service—such as certifying that records are true copies or sending them by other than ordinary mail—the direct costs of providing the service ordinarily will be charged.

(g) *Charging interest.* The agency may charge interest on any unpaid bill starting on the 31st day following the date of the billing of the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the agency. The agency will follow the provisions of the Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749, as amended, and regulations pursuant thereto.

(h) *Aggregating requests.* Wherever the agency reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, it may aggregate those requests and charge accordingly. In so doing, it will presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, the agency will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in

paragraphs (i)(2) and (i)(3) of this section, the agency will not require the requester to make an advance payment—in other words, a payment made before work is begun or continued on a request. Payment owed for work already completed (i.e., a prepayment before copies are sent to a requester) is not an advance payment.

(2) Where the agency determines or estimates that a total fee to be charged under this section will be more than $250.00, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester that has a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any agency within 30 days of the date of billing, the agency may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before it begins to process a new request or continues to process a pending request from that requester.

(4) In cases in which the agency requires advance payment or payment due under paragraph (i)(2) or (i)(3) of this section, the request will not be considered received and further work will not be done on it until the required payment is received.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In cases in which records responsive to requests are maintained for distribution by another agency under such a statutorily based fee schedule program, ACUS will inform the requesters of the steps for obtaining records from those sources so that they may do so most economically.

(k) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section where the agency determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, the agency will consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government." The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute"' to an increased public understanding of those operations or activities.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to convey information effectively to the public will be considered. It will be presumed that a representative of the news media satisfies this consideration.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. The agency will not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is "important" enough to be made public.

(3) To determine whether the second fee waiver requirement is met, the agency will consider the following factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. The agency will consider any commercial interest of the requester (with reference to the definition of "commercial use" in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters will be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The agency ordinarily will presume that where a news-media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed primarily to serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver will be granted for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (k)(2) and (k)(3) of this section insofar as they apply to each request. The agency will exercise its discretion to consider the cost-effectiveness of its investment of administrative resources in this decisionmaking process in deciding to grant waivers or reductions of fees.

§ 304.10 Preservation of records.

(a) The agency will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

(b) In the event that the agency contracts with another agency, entity, or person to maintain records for the agency for the purposes of records management, it will promptly identify such records in its "Freedom of Information Reference Guide" and specify the particular means by which request for such records can be made.

§ 304.11 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Subpart B—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

Authority: 5 U.S.C. 552a, 591–96.

§ 304.20 General provisions.

(a) *Purpose and scope.* This subpart contains the rules that the Administrative Conference of the United States ("ACUS" or "the agency") follows under the Privacy Act of 1974 ("the Privacy Act"), 5 U.S.C. 552a, as amended, regarding the protection of, and individual access to, certain records about individuals. These rules should be read together with and are governed by the Privacy Act itself, which provides additional information about records maintained on individuals. The rules in this subpart apply to all records in Privacy Act systems of records maintained by the agency, which are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the agency. In addition, the agency processes all Privacy Act requests for access to records under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, *as amended,* following the rules contained in subpart A of this part. Thus, all Privacy Act requests will be subject to exemptions for access to records only applicable under both FOIA and the Privacy Act.

(b) *Definitions.* As used in this subpart:

(1) "Request for access to a record" means a request made under Privacy Act, 5 U.S.C. 552a(d)(1).

(2) "Request for amendment or correction of a record" means a request made under Privacy Act, 5 U.S.C. 552a(d)(2).

(3) "Request for an accounting" means a request made under Privacy Act, 5 U.S.C. 552a(c)(3).

(4) "Requester" means an individual who makes a request for access, a request for amendment or correction, or a request for an accounting under the Privacy Act.

§ 304.21 Requests for access to records.

(a) *How made and addressed.* You may make a request for access to a record about yourself by appearing in person or by sending an e-mail message addressed to *info@acus.gov.* You may also send a written request letter to the agency either by mail addressed to 1120 20th Street, NW., South Lobby, Suite 706, Washington, DC 20036, or by fax delivery to (202) 386–7190. For the quickest possible handling of a mail request, you should mark both your request letter and the envelope "Privacy Act Request."

(b) *Description of records sought.* You must describe the records that you want in enough detail to enable agency personnel to locate the system of records containing them with a reasonable amount of effort. Whenever possible, your request should describe the records sought, the time periods in which you believe they were compiled, and the name or identifying number of each system of records in which you believe they are kept. The agency publishes a notice in the **Federal Register** that describes its systems of records.

(c) *Agreement to pay fees.* If you make a Privacy Act request for access to records, it will be considered an agreement by you to pay all applicable fees charged under § 304.27, up to $50.00. Duplication fees in excess of $50.00 are subject to the requirements of § 304.27 of this subpart and the notification requirements in § 304.9 of subpart A. The agency ordinarily will confirm this agreement in an acknowledgment letter. When making a request, you may specify a willingness to pay a greater or lesser amount.

(d) *Verification of identity.* When you make a request for access to records about yourself, you must verify your identity. You must state your full name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted by you under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In order to help the identification and location of requested records, you may also, entirely at your option, include the last four digits of your social security number.

§ 304.22 Responsibility for responding to requests for access to records.

(a) *In general.* The agency will be responsible for responding to a request in all respects, except in the case of a referral to another agency as is described in paragraphs (b), (c), and (d) of this section. In determining which records are responsive to a request, the agency ordinarily will include only records in its possession and control as of the date upon which it begins its search for them. If any other date is used, the agency will inform the requester of that date.

(b) *Consultations and referrals.* When the agency receives a request for access to a record in its possession and control, it will determine whether another agency of the Federal Government, is better able to determine whether the record is exempt from access under the Privacy Act. If the agency determines that it is the agency best able to process the record in response to the request, then it will do so. If it determines that it is not best able to process the record, then it will either:

(1) Respond to the request regarding that record, after consulting with the agency that is best able to determine whether the record is exempt from access and with any other agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to the agency that is best able to determine whether it is exempt from access, or to another agency that originated the record (but only if that agency is subject to the Privacy Act). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether it is exempt from access.

(c) *Notice of referral.* When the agency refers all or any part of the responsibility for responding to a request to another agency, it ordinarily will notify the requester of the referral and inform the requester of the name of the agency to which the request has been referred and of the part of the request that has been referred.

(d) *Timing of responses to consultations and referrals.* All consultations and referrals will be handled according to the date upon which the Privacy Act access request was initially received by the first agency, not any later date.

(e) *Agreements regarding consultations and referrals.* The agency may make agreements with other agencies designed to eliminate the need for consultations or referrals for particular types of records.

§ 304.23 Responses to requests for access to records.

(a) *Acknowledgments of requests.* On receipt of a request, the agency ordinarily will send an acknowledgment letter to the requester that will confirm the requester's agreement to pay fees under § 304.21(c) and provide an assigned request number for further reference. In some cases, the agency may seek further information or clarification from the requester.

(b) *Grants of requests for access.* Once the agency makes a determination to grant a request for access in whole or in part, it will notify the requester in writing. The agency will inform the requester in the notice of any fee charged under § 304.27 and will disclose records to the requester promptly on payment of any applicable fee. If a request is made in person, the agency may disclose records to the requester directly, in a manner not unreasonably disruptive of its operations, on payment of any applicable fee and with a written record made of the grant of the request. If a requester is accompanied by another person, the requester will be required to authorize in writing any discussion of the records in the presence of the other person.

(c) *Adverse determinations of requests for access.* Upon making an adverse determination denying a request for access in any respect, the agency will notify the requester of that determination in writing. Adverse determinations, or denials of requests consist of: a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Privacy Act; a determination on any disputed fee matter; and a denial of a request for expedited treatment. The notification letter will include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any Privacy Act exemption(s) applied in denying the request; and

(3) A statement that the denial may be appealed under § 304.24(a) and a description of the requirements of § 304.24(a).

§ 304.24 Appeals from denials of requests for access to records.

(a) *Appeals.* If you are dissatisfied with the response to your request, you may appeal an adverse determination denying your request, in any respect, to the Chairman of the agency. You must make your appeal in writing, by e-mail or letter, and it must be received by the agency within 60 days of the date of the denial of your request. Your appeal letter should provide reasons and supporting information as to why the initial determination was incorrect. The appeal should clearly identify the particular determination (including the assigned request number, if known) that you are appealing. For the quickest possible handling of a mail request, you should mark your appeal letter and the envelope "Privacy Act Appeal." The Chairman of the agency or his or her designee will act on the appeal, except that an appeal ordinarily will not be acted on if the request becomes a matter of FOIA or Privacy Act litigation.

(b) *Responses to appeals.* The decision on your appeal will be made in writing. A decision affirming an adverse determination in whole or in part will include a brief statement of the reason(s) for the affirmance, including any exemption applied, and will inform you of the Privacy Act provisions for court review of the decision. If the adverse determination is reversed or modified on appeal in whole or in part, then you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* As a general rule, if you wish to seek review by a court of any adverse determination or denial of a request, you must first appeal it under this section.

§ 304.25 Requests for amendment or correction of records.

(a) *How made and addressed.* Unless the record is not subject to amendment or correction as stated in paragraph (f) of this section, you may make a request for amendment or correction of an ACUS record about yourself by following same procedures as in § 304.21. Your request should identify each particular record in question, state the amendment or correction that you want, and state why you believe that the record is not accurate, relevant, timely, or complete. You may submit any documentation that you think would be helpful. If you believe that the same record is maintained in more than one system of records, you should state that.

(b) *Agency responses.* Within ten business days of receiving your request for amendment or correction of records, the agency will send you a written acknowledgment of its receipt of your request. The agency will promptly notify you whether your request is granted or denied. If the agency grants your request in whole or in part, it will describe the amendment or correction made and will advise you of your right to obtain a copy of the corrected or amended record, in disclosable form. If the agency denies your request in whole or in part, it will send you a letter that will state:

(1) The reason(s) for the denial; and

(2) The procedure for appeal of the denial under paragraph (c) of this section, including the name and business address of the official who will act on your appeal.

(c) *Appeals.* You may appeal a denial of a request for amendment or correction in the same manner as a denial of a request for access to records (see § 304.24(a)) and the same procedures will be followed. The agency will ordinarily act on the appeal within 30 business days of receipt of the appeal, except that the Chairman of the agency may extend the time for response for good cause shown. If your appeal is denied, you will be advised of your right to file a Statement of Disagreement as described in paragraph (d) of this section and of your right under the Privacy Act for court review of the decision.

(d) *Statements of Disagreement.* If your appeal under this section is denied in whole or in part, you have the right to file a Statement of Disagreement that states your reason(s) for disagreeing with the agency's denial of your request for amendment or correction. Statements of Disagreement must be concise, must clearly identify each part of any record that is disputed, and should be no longer than one typed page for each fact disputed. The agency will place your Statement of Disagreement in the system of records in which the disputed record is maintained and will mark the disputed record to indicate that a Statement of Disagreement has been filed and exactly where in the system of records it may be found.

(e) *Notification of amendment/correction or disagreement.* Within 30 business days of the amendment or correction of a record, the agency will notify all persons, organizations, or agencies to which it previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended or corrected. If an individual has filed a Statement of Disagreement, the agency will append a copy of it to the disputed record whenever the record is disclosed and may also append a concise statement of its reason(s) for denying the request to amend or correct the record.

(f) *Records not subject to amendment or correction.* The following records are not subject to amendment or correction:

(1) Transcripts of testimony given under oath or written statements made under oath;

(2) Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings, which are the official record of those proceedings; and

(3) Any other record that originated with the courts.

§ 304.26 Requests for an accounting of record disclosures.

(a) *How made and addressed.* Except where accountings of disclosures are not required to be kept (as stated in

paragraph (b) of this section), you may make a request for an accounting of any disclosure that has been made by the agency to another person, organization, or agency of any record about you. This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. Your request for an accounting should identify each particular record in question and should be made in writing to the agency, following the procedures in § 304.21.

(b) *Where accountings are not required.* The agency is not required to provide accountings to you where they relate to:

(1) Disclosures for which accountings are not required to be kept (i.e., disclosures that are made to officers and employees of the agency and disclosures required under the FOIA); or

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from a duly authorized representative of any such law enforcement agency specifying portion of the record desired and the law enforcement activity for which the record is sought.

(c) *Appeals.* You may appeal a denial of a request for an accounting in the same manner as a denial of a request for access to records (see § 304.24(a)) and the same procedures will be followed.

§ 304.27 Fees.

The agency will charge fees for duplication of records under the Privacy Act in the same way in which it charges duplication fees under § 304.9 of subpart A. No search or review fee may be charged for any record under the Privacy Act.

§ 304.28 Notice of court-ordered and emergency disclosures.

(a) *Court-ordered disclosures.* When a record pertaining to an individual is required to be disclosed by a court order, the agency will make reasonable efforts to provide notice of such order to the individual. Notice will be given within a reasonable time after the agency's receipt of the order, except that in a case in which the order is not a matter of public record, the notice will be given only after the order becomes public. This notice will be mailed to the individual's last known address and will contain a copy of the order and a description of the information disclosed.

(b) *Emergency disclosures.* Upon disclosing a record pertaining to an individual made under compelling circumstances affecting health or safety, the agency will notify that individual of the disclosure. This notice will be mailed to the individual's last known address and will state the nature of the information disclosed; the person, organization, or agency to which it was disclosed; the date of disclosure; and the compelling circumstances justifying the disclosure.

§ 304.29 Security of systems of records.

(a) *Administrative and physical controls.* The agency will have administrative and physical controls to prevent unauthorized access to its systems of records, to prevent unauthorized disclosure of records, and to prevent physical damage to or destruction of records. The stringency of these controls corresponds to the sensitivity of the records that the controls protect. At a minimum, these controls are designed to ensure that:

(1) Records are protected from public view;

(2) The area in which records are kept is supervised during business hours in order to prevent unauthorized persons from having access to them;

(3) Records are inaccessible to unauthorized persons outside of business hours; and

(4) Records are not disclosed to unauthorized persons or under unauthorized circumstances in oral, written or any other form.

(b) *Restrictive procedures.* The agency will implement practices and procedures that restrict access to records to only those individuals within the agency who must have access to those records in order to perform their duties and that prevent inadvertent disclosure of records.

§ 304.30 Contracts for the operation of record systems.

Any approved contract for the operation of a record system will contain appropriate requirements issued by the General Services Administration in order to ensure compliance with the requirements of the Privacy Act for that record system. The contracting officer of the agency will be responsible for ensuring that the contractor complies with these contract requirements.

§ 304.31 Use and collection of social security numbers and other information.

The agency will ensure that employees authorized to collect information are aware:

(a) That individuals may not be denied any right, benefit, or privilege as a result of refusing to provide their social security numbers, unless the collection is authorized either by a statute or by a regulation issued prior to 1975;

(b) That individuals requested to provide their social security numbers, or any other information collected from them, must be informed, before providing such information, of:

(1) Whether providing social security numbers (or such other information) is mandatory or voluntary;

(2) Any statutory or regulatory authority that authorizes the collection of social security numbers (or such other information);

(3) The principal purpose(s) for which the information is intended to be used;

(4) The routine uses that may be made of the information; and

(5) The effects, in any, on the individual of not providing all or any part of the requested information; and

(c) That, where the information referred to above is requested on a form, the requirements for informing such individuals are set forth on the form used to collect the information, or on a separate form that can be retained by such individuals.

§ 304.32 Employee standards of conduct.

The agency will inform its employees of the provisions of the Privacy Act, including the scope of its restriction against disclosure of records maintained in a system of records without the prior written consent of the individual involved, and the Act's civil liability and criminal penalty provisions. Unless otherwise permitted by law, an employee of the agency will:

(a) Collect from individuals and maintain only the information that is relevant and necessary to discharge the agency's responsibilities;

(b) Collect information about an individual directly from that individual to the greatest extent practicable when the information may result in an adverse determination about an individual's rights, benefits, or privileges under Federal programs;

(c) Inform each individual from whom information is collected of the information set forth in § 304.31(b);

(d) Ensure that the agency maintains no system of records without public notice and also notify appropriate agency officials of the existence or development of any system of records that is not the subject of a current or planned public notice;

(e) Maintain all records that are used by it in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination;

(f) Except as to disclosures made to an agency or made under the FOIA, make reasonable efforts, prior to

disseminating any record about an individual, to ensure that the record is accurate, relevant, timely, and complete;

(g) Maintain no record describing how an individual exercises his or her First Amendment rights unless such maintenance is expressly authorized by statute or by the individual about whom the record is maintained or is pertinent to and within the scope of an authorized law enforcement activity;

(h) When required by the Privacy Act, maintain an accounting in the specified form of all disclosures of records by the agency to persons, organizations, or agencies;

(i) Maintain and use records with care in order to prevent the unauthorized or inadvertent disclosure of a record to anyone; and

(j) Notify the appropriate agency official of any record that contains information that the Privacy Act does not permit the agency to maintain.

§ 304.33 Preservation of records.

The agency will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the Act.

§ 304.34 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

Dated: March 30, 2011.

Shawne C. McGibbon,

General Counsel.

[FR Doc. 2011–7976 Filed 4–4–11; 8:45 am]

BILLING CODE 6110–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1303

[CPSC Docket No. CPSC–2008–0033]

Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies—Lead Paint

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice of requirements; revision of testing terms.

SUMMARY: The U.S. Consumer Product Safety Commission ("CPSC," "Commission," or "we") is amending the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing to the lead paint ban regulations. We are taking this action to require CPSC and/or ASTM published test methods to be referenced by a third party conformity assessment body in the scope of its accreditation.

DATES: *Effective date:* The revised requirements are effective April 5, 2011.

Comment date: Comments in response to this notice of requirements should be submitted by May 5, 2011. Comments on this notice should be captioned, "Third Party Testing for Certain Children's Products; Requirements for Accreditation of Third Party Conformity Assessment Bodies—Lead Paint."

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2008–0033, by any of the following methods:

Electronic Submissions: Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Written Submissions: Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions) preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. Do not submit confidential business information, trade secret information, or other sensitive or protected information (such as a Social Security Number) electronically; if furnished at all, such information should be submitted in writing.

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

FOR FURTHER INFORMATION CONTACT: Robert "Jay" Howell, Assistant Executive Director for he Office of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; e-mail: *rhowell@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 14(a)(3)(B)(i) of the Consumer Product Safety Act (CPSA), as added by section 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110–314, directed the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to test children's products for conformity with the Commission's regulations at 16 CFR part 1303, *Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint* (the lead paint ban). In the **Federal Register** of September 22, 2008, the Commission published a notice of requirements for accreditation of third party conformity assessment bodies to test children's products for conformity with the lead paint ban under 16 CFR part 1303 (73 FR 54564).

In response to the September 22, 2008 notice of requirements, the International Laboratory Accreditation Cooperation (ILAC) and the American Association for Laboratory Accreditation (A2LA) submitted letters asking us to specify test methods to ensure that accreditation bodies are able to determine the acceptable technologies and methods for lead analyses. The September 22, 2008 notice of requirements stated that the accreditation must be to the International Standards Organization (ISO)/International Electrotechnical Commission (IEC) Standard ISO/IEC 17025:2005, "General Requirements for the Competence of Testing and Calibration Laboratories," and that the scope of the accreditation must include testing to the requirements of 16 CFR part 1303. However, these requirements for accreditation did not reference a specific test method, although the CPSC staff's test method (CPSC–CH–E1003–09) was made available on the CPSC Web site at: *http://www.cpsc.gov/about/cpsia/CPSC-CH-E1003-09.pdf.* Therefore, to require certain test methods that are acceptable to the CPSC for testing for lead in paint, we are amending the notice of requirements to state that the scope of the third party conformity assessment body's accreditation shall specify certain test methodologies.

The Commission is revising the September 22, 2008 notice of requirements to require reference of specific test methods for CPSC acceptance of accreditation of third party conformity assessment bodies to assess conformity with 16 CFR part

1303. One or more of the following test methods must be referenced: The existing CPSC Standard Operating Procedure for Determining Lead (Pb) in Paint and Other Similar Surface Coatings, CPSC–CH–E1003–09 and/or CPSC–CH–E1003–09.1 and/or, ASTM F2853–10, "Standard Test Method for Determination of Lead in Paint Layers and Similar Coatings or in Substrates and Homogenous Materials by Energy Dispersive X-Ray Fluorescence Spectrometry Using Multiple Monochromatic Excitation Beams."

Test Method CPSC–CH–E1003–09 was revised in Test Method CPSC–CH–E1003–09.1 to reflect ministerial edits and remove the statement that the rules for accreditation for lead in paint testing do not explicitly require the use of a particular standard operating procedure. Additionally, the following statement was added. "Adjustments may be necessary to achieve total digestion for certain paints and should be based on sound chemistry knowledge and appropriate acids for the sample material being analyzed." It is still based on standard test procedures, such as ASTM International (formerly the American Society for Testing and Materials) ASTM E1645, ASTM E1613–04, and Association of Official Analytical Chemists (AOAC) standard AOAC 974.02. This test method will be made available on the CPSC Web site at: *http://www.cpsc.gov/about/cpsia/CPSC–CH–E1003–09_1.pdf.*

In addition to the CPCS's test methods, CPSC staff finds that ASTM F2853–10, "Standard Test Method for Determination of Lead in Paint Layers and Similar Coatings or in Substrates and Homogenous Materials by Energy Dispersive X-Ray Fluorescence Spectrometry Using Multiple Monochromatic Excitation Beams." which uses a specific type of X-Ray Fluorescence (XRF) technology, may be used as a test method and is as effective, precise, and reliable as method CPSC–CH–E1003–09 posted on the CPSC Web site. The standard is available on the ASTM Web site at: *http://www.astm.org/Standards/F2853.htm.* Supporting data about the associated interlaboratory research report has been filed with ASTM and can be obtained by contacting ASTM and requesting Research Report RR:F40–1001. Our findings are based on a study conducted in August 2009, as updated in December 2010, which evaluates the effectiveness, precision, and reliability of XRF methods and other alternative methods for measuring lead in paint or other surface coatings when used in children's products. The studies on XRF are published on the CPSC's Web site at: *http://www.cpsc.gov/ABOUT/Cpsia/leadinpaintmeasure.pdf* and *http://www.cpsc.gov/ABOUT/Cpsia/leadinpaintmeasure_update.pdf.* XFR methods and equipment other than those specified in ASTM F2853–10 are not considered effective for testing in paint and surface coatings for the purpose of determining conformity with 16 CFR part 1303 at this time. We are working with the National Institute of Standards and Technology (NIST) to develop and release a lead in paint standard reference material (SRM) 2569, consisting of a thin, uniform film with thickness and lead concentrations appropriate to testing of painted surfaces, and which would be suitable for validating ASTM F2853–10. This SRM may become available in 2011. We also are aware that other commercial reference materials are now available that may be suitable for validating ASTM F2853–10.

Many third party conformity assessment bodies operate on a two year cycle for review and renewal of accreditation. Accordingly, in order to give third party conformity assessment bodies sufficient time to amend their scope documents to reflect the specific test methods accepted by the Commission, CPSC–CH–E1003–09 and/or CPSC–CH–E1003–09.1 and/or ASTM F2853–10, CPSC-accepted third party conformity assessment bodies that are listed on the CPSC Web site as approved to 16 CFR part 1303 (without reference to a test method) will have two years from the date of publication of this notice in the **Federal Register** to reapply and be accepted by the CPSC for CPSC–CH–E1003–09 and/or CPSC–CH–E1003–09.1 and/or ASTM F2853–10 for testing to the lead in paint regulation at 16 CFR part 1303. After that date, previously accepted third party conformity assessment bodies that test for 16 CFR part 1303 must have been accepted by the CPSC for one or more of the required test methods to maintain CPSC-accepted status. All accreditations must be by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation—Mutual Recognition Arrangement (ILAC–MRA) and the scope of the accreditation must include:

- 16 CFR part 1303 (CPSC–CH–E1003–09 and/or CPSC–CH–E1003–09.1), and/or
- 16 CFR part 1303 (ASTM F2853–10).

New applicants seeking CPSC acceptance of accreditation to test to 16 CFR part 1303 will have the option to apply without reference to a specific test method under 16 CFR part 1303 or to apply to the CPSC for acceptance to test to 16 CFR part 1303 according to one or more test methods for up to one year after publication of this notice in the **Federal Register**. After one year from the publication of this notice in the **Federal Register**, the option for third party conformity assessment bodies to apply for CPSC-acceptance of accreditation to 16 CFR part 1303 without reference to a CPSC required test method will not be permitted.

To make it easier for interested parties to understand the nature of the revisions, we are republishing the notice of requirements in its entirety for readability. The republished notice incorporates several nonsubstantive changes or grammatical changes, such as replacing the term "laboratory" with "third party conformity assessment body." These changes were made to make the notice of requirements consistent with other recent notices of requirements published in the **Federal Register**. *See, e.g., Third Party Testing for Certain Children's Products; Children's Sleepwear, Sizes 0 Through 6X and 7 Through 14: Requirements for Accreditation of Third Party Conformity Assessment Bodies,* (75 FR 70911 (November 19, 2010)); *Third Party Testing for Certain Children's Products; Youth All-Terrain Vehicles: Requirements for Accreditation of Third Party Conformity Assessment Bodies,* (75 FR 52616 (August 27, 2010)).

II. Accreditation Requirements

The notice of requirements that appeared in the **Federal Register** on September 22, 2008 (73 FR 5456) is amended to read as follows:

A. Baseline Third Party Conformity Assessment Body Accreditation Requirements

For a third party conformity assessment body to be CPSC-accepted as accredited to test children's products for conformity with the lead paint ban and 16 CFR part 1303, it must be accredited to ISO/IEC 17025–2005 by an accreditation body that is a signatory to the ILAC–MRA, and the accreditation must be registered with, and accepted by, the Commission. A listing of ILAC–MRA signatory accreditation bodies is available on the Internet at: *http://ilac.org/membersbycategory.html.* The scope of the accreditation must include 16 CFR part 1303 (CPSC–CH–E1003–09 and/or CPSC–CH–E1003–09.1) and/or 16 CFR part 1303 (ASTM F2853–10).

The Commission will maintain on its Web site an up-to-date listing of third party conformity assessment bodies whose accreditations it has accepted and the scope of each accreditation.

Once the Commission adds a third party conformity assessment body to that list, the third party conformity assessment body may commence testing of children's products to support the manufacturer's certification that the product complies with 16 CRF part 1303.

B. Additional Accreditation Requirements for Firewalled Conformity Assessment Bodies

In addition to the baseline accreditation requirements in Section II.A of this document above, firewalled conformity assessment bodies seeking accredited status by the CPSC must submit to the Commission copies, in English, of their training documents, showing how employees are trained to notify the Commission immediately and confidentially of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party conformity assessment body's test results. This additional requirement applies to any third party conformity assessment body in which a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body owns an interest of 10 percent or more. While the Commission is not addressing common parentage of a third party conformity assessment body and a children's product manufacturer at this time, it will be vigilant to see whether this issue needs to be addressed in the future.

As required by section 14(f)(2)(D) of the CPSA, the Commission must accept formally, by order, the application from a third party conformity assessment body before the third party conformity assessment body can become accredited by the CPSC as a firewalled conformity assessment body.

C. Additional Accreditation Requirements for Governmental Conformity Assessment Bodies

In addition to the baseline accreditation requirements of part II.A of this document above, the CPSIA permits accreditation of a third party conformity assessment body owned or controlled, in whole or in part, by a government if:

- To the extent practicable, manufacturers or private labelers located in any nation are permitted to choose conformity assessment bodies that are not owned or controlled by the government of that nation;
- The third party conformity assessment body's testing results are not subject to undue influence by any other person, including another governmental entity;
- The third party conformity assessment body is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited;
- The third party conformity assessment body's testing results are accorded no greater weight by other governmental authorities than those of other accredited third party conformity assessment bodies; and
- The third party conformity assessment body does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the third party conformity assessment body's conformity assessments.

The Commission will accept the accreditation of a governmental third party conformity assessment body if it meets the baseline accreditation requirements of part II.A of this document above and meets the additional conditions stated here. To obtain this assurance, CPSC staff will engage the governmental entities seeking accreditation.

III. How does a third party conformity assessment body apply for acceptance of its accreditation?

The Commission has established an electronic accreditation acceptance and registration system accessed via the Commission's Internet site at: *http://www.cpsc.gov/about/cpsia/labaccred.html.* The applicant provides, in English, basic identifying information concerning its location, the type of accreditation it is seeking, and electronic copies of its accreditation certificate and scope statement by its ILAC–MRA signatory accreditation body, and firewalled third party conformity assessment body training document(s), if relevant.

Commission staff will review the submission for accuracy and completeness. In the case of baseline third party conformity assessment bodies and government-owned or government-operated conformity assessment bodies, when that review and any necessary discussions with the applicant are completed satisfactorily, the third party conformity assessment body in question is added to the CPSC's list of accredited third party conformity assessment bodies at: *http://www.cpsc.gov/about/cpsia/labaccred.html.* In the case of a firewalled conformity assessment body seeking accredited status, when the CPSC staff's review is complete, the CPSC staff transmits its recommendation on accreditation to the Commission for consideration. (A third party conformity assessment body that ultimately may seek acceptance as a firewalled third party conformity assessment body also initially can request acceptance as a third party conformity assessment body accredited for testing of children's products other than those of its owners.) If the Commission accepts a CPSC staff recommendation to accredit a firewalled conformity assessment body, the firewalled conformity assessment body will be added to the CPSC's list of accredited third party conformity assessment bodies. In each case, the Commission will notify the third party conformity assessment body electronically of acceptance of its accreditation. All information to support an accreditation acceptance request must be provided in the English language.

Once the Commission adds a third party conformity assessment body to the list, the third party conformity assessment body then may begin testing children's products to support certification of compliance with 16 CFR part 1303, for which it has been accredited.

New applicants for CPSC acceptance of accreditation to 16 CFR part 1303 will have the option to apply to the CPSC without reference to a specific test method or to apply for CPSC acceptance to include a specific reference to 16 CFR part 1303 (CPSC–CH–E1003–09 and/or CPSC–CH–E1003–09.1) and/or 16 CFR part 1303 (ASTM F2853–10) for up to one year after publication of this notice in the **Federal Register**. After one year, the option to apply for accreditation to 16 CFR part 1303 without reference to a CPSC required test method will not be permitted.

CPSC-accepted third party conformity assessment bodies for 16 CFR part 1303 without a reference to one of the specified test methods have up to two years from the date of publication of this notice in the **Federal Register** to reapply and become accepted by the CPSC for 16 CFR part 1303 (CPSC–CH–E1003–09 and/or CPSC–CH–E1003–09.1) and/or 16 CFR part 1303 (ASTM F2853–10). To maintain CPSC-accepted status, third party conformity assessment bodies that are CPSC-accepted for 16 CFR part 1303 without reference to one of the required test methods must reapply with, and be accepted by, the CPSC within the two-year period, irrespective of whether the scope document from their accreditation body that was supplied with their

earlier CPSC application included a reference to one of the required test methods. Previously CPSC-accepted third party conformity assessment bodies for 16 CFR part 1303 (including those that had one of the specified test methods in their accreditation scope document that was supplied with their earlier CPSC application) must reapply to maintain CPSC acceptance because the CPSC did not record references to test methods. If accepted, the third party conformity assessment body will remain on the list of accepted third party conformity bodies whose accreditations the CPSC has accepted for 16 CFR part 1303.

IV. Acceptance of Children's Product Certifications Based on Third Party Conformity Assessment Body Testing to 16 CFR Part 1303

The September 22, 2008 **Federal Register** Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity with Part 1303 of Title 16, Code of Federal Regulations established that each manufacturer (including the importer) or private labeler of children's products subject to the lead paint ban must have products that are manufactured after December 21, 2008 tested by a laboratory accredited (by the CPSC) and must issue a certificate of compliance with the lead paint ban based upon that testing.

This amended notice of requirements published today addresses only the CPSC acceptance criteria for a third party conformity assessment body for testing to the lead paint ban at 16 CFR part 1303. This amended notice does not affect the already-established criteria for CPSC acceptance of certificates of compliance. A product manufacturer's certificate of compliance to 16 CFR part 1303 must be based on testing by a third party conformity assessment body that is posted on the CPSC Web site as accepted for 16 CFR part 1303 at the time the product is tested. The Commission will accept a certificate of compliance with 16 CFR part 1303, Ban of Lead-Containing Paint for a children's product based on testing performed by an accredited (CPSC-accepted) third party conformity assessment body (including a government-owned or government-controlled conformity assessment body, or a firewalled conformity assessment body) if the testing was conducted on a date for which the third party conformity assessment body was listed as accepted by the CPSC for testing to the lead paint ban at 16 CFR part 1303.

Dated: March 30, 2011.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2011–7905 Filed 4–4–11; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

[Docket No. FDA–2011–N–0003]

Oral Dosage Form New Animal Drugs; Robenacoxib

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original new animal drug application (NADA) filed by Novartis Animal Health US, Inc. The NADA provides for the veterinary prescription use of robenacoxib tablets in cats for the control of postoperative pain and inflammation.

DATES: This rule is effective April 5, 2011.

FOR FURTHER INFORMATION CONTACT: Amy L. Omer, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8336, *e-mail: amy.omer@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Novartis Animal Health US, Inc., 3200 Northline Ave., suite 300, Greensboro, NC 27408, filed NADA 141–320 that provides for the veterinary prescription use of ONSIOR (robenacoxib) Tablets in cats for the control of postoperative pain and inflammation associated with orthopedic surgery, ovariohysterectomy, and castration. The NADA is approved as of March 8, 2011, and the regulations are amended in 21 CFR part 520 by adding § 520.2075 to reflect the approval.

A summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning on the date of approval.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Add § 520.2075 to read as follows:

§ 520.2075 Robenacoxib.

(a) *Specifications.* Each tablet contains 6 milligrams (mg) robenacoxib.

(b) *Sponsors.* See No. 058198 in § 510.600(c) of this chapter.

(c) *Conditions of use in cats*—(1) *Amount.* Administer 0.45 mg per pound (/lb) (1 mg/kilogram (kg)) once daily.

(2) *Indications for use.* For the control of postoperative pain and inflammation associated with orthopedic surgery, ovariohysterectomy, and castration in cats weighing at least 5.5 lb (2.5 kg) and at least 6 months of age; for up to a maximum of 3 days.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: March 31, 2011.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2011–8053 Filed 4–4–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2520

Technical Revisions to Actuarial Information on Form 5500 Annual Return/Report for Pension Plans Electing Funding Alternatives Under Pension Relief Act of 2010

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Annual Reporting and Disclosure for Form 5500.

SUMMARY: This document announces that certain technical revisions to the Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information) and the Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information) of the Form 5500 Annual Return/Report of Employee Benefit Plan have been adopted in IRS Notice 2010–83 (2010–51 I.R.B. 862) and IRS Notice 2011–3 (2011–2 I.R.B. 263) to reflect funding relief alternatives retroactively available to defined benefit pension plans under the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (Pension Relief Act). The information that would be required either by way of amendment of the 2008 or 2009 Annual Return/Report or providing an attachment to the 2009 or 2010 Annual Return/Report in accordance with the IRS Notices, will also be added to the 2011 and later Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information) and the Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information) of the Form 5500 Annual Return/Report of Employee Benefit Plan. Compliance with the Schedule SB and Schedule MB, as modified, will satisfy the pertinent Form 5500 actuarial information reporting requirements for the Department of Labor.

DATES: *Effective Date:* April 5, 2011.

FOR FURTHER INFORMATION CONTACT: Steven Klubock, Internal Revenue Service (IRS), at the Employee Plans taxpayer assistance answering service at 1–877–829–5500 (a toll-free number), for questions relating to the Schedules MB and SB requirements under IRS Notices 2010–83 and 2011–3; Grace Kraemer, Pension Benefit Guaranty Corporation (PBGC), (202) 326–4024, for questions relating to annual reporting requirements under Title IV of ERISA in the technical revisions of the Schedules MB and SB; and Elizabeth A. Goodman, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693–8523, for questions relating to this document. Except for the IRS, the telephone numbers referenced above are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

A. Annual Reporting

Sections 101, 104, and 4065 of ERISA, 29 U.S.C. 1021, 1024 and 1365, sections 6058(a) and 6059(a) of the Code, 26 U.S.C. 6058(a) and 6059(a), and the regulations issued under those sections, impose annual reporting and filing obligations on pension and welfare benefit plans, as well as on certain other entities. Plan administrators, employers, and others generally satisfy these annual reporting obligations by the filing of the Form 5500 Annual Return/Report of Employee Benefit Plan, including its schedules and attachments (Form 5500 Annual Return/Report), in accordance with the instructions and related regulations.

The Form 5500 Annual Return/Report is the principal source of information and data available to the Department of Labor (Department or Labor), the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) (collectively, Agencies) concerning the operations, funding, and investments of pension and welfare benefit plans. Actuarial information on defined benefit pension plans is required to be reported as part of the Form 5500 Annual Return/Report on the Schedule MB or the Schedule SB. The Form 5500 Annual Return/Report constitutes an integral part of each Agency's enforcement, research, and policy formulation programs, and is a source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies. The Form 5500 Annual Return/Report also serves as a primary means by which plan operations can be monitored by participants and beneficiaries and by the general public.

B. Pension Relief Act and Changes to Actuarial Schedules

The Pension Relief Act, Public Law 111–192, 124 Stat 1280 (2010), enacted on June 25, 2010, provided retroactive pension funding relief for single-employer and multiemployer defined benefit pension plans that are subject to the reporting requirements of Title I of ERISA. The IRS issued guidance in the form of questions and answers on the application of the special funding rules under the Pension Relief Act and the required notice of a decision by the plan sponsor to apply the special funding rules. IRS Notice 2010–83 provides guidance for sponsors of multiemployer defined benefit plans with respect to the special funding rules under Code § 431(b)(8), as added by section 211(a)(2) of the Pension Relief Act. IRS Notice 2011–3 provides guidance on the special rules relating to funding relief for single-employer defined benefit pension plans (including multiple employer defined benefit pension plans) under Code § 430(c)(2)(D) and § 430(c)(7), as added by section 201 of the Pension Relief Act, and Code § 430(f)(3)(D), as added by section 204 of the Act.

Certain technical revisions to the Form 5500 Schedule MB and SB were necessary to conform the actuarial reporting requirements for defined benefit pension plans to the application of funding relief under the Pension Relief Act. The Internal Revenue Service announced and described those technical revisions in IRS Notice 2010–83 and Notice 2011–3. Specifically, the notices provide that a Schedule MB or Schedule SB that was filed without reflecting application of the special funding rules or was filed reflecting application of the special funding rules, but using calculations that were different from those required by IRS Notice 2010–83 or Notice 2011–3, need not be amended. Instead, the Schedule MB or Schedule SB filed for a subsequent plan year that is no later than the plan year beginning in 2010 that must include an attachment showing how the information regarding the special funding rules on any earlier year Schedule MB or SB that did not comply with the notices, would have differed if it had complied. In addition, the IRS Notices describe the application of funding relief under the Pension Relief Act to the 2011 plan year and future plan years. These rules require changes to Schedule MB and Schedule SB for the 2011 plan year.

II. Good Cause for Exemption From Public Notice and Comment and Immediate Effective Date

To issue a final rule without public notice and comment, an agency must find good cause that notice and comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b). To issue a rule that is immediately effective, an agency similarly must find good cause for dispensing with the 30-day delay required by the Administrative Procedure Act (APA).

The retroactive availability of the funding relief under the Pension Relief

Act for sponsors of defined benefit pension plans created an immediate need for changes to the Schedule MB and Schedule SB reporting requirements. Without these changes, accurate and complete Schedules MB and SB cannot be filed with respect to plans to which the funding relief applies. The information that would not otherwise be provided under the current schedules is essential for the Agencies to monitor and enforce compliance with the special funding rules under the Pension Relief Act. The IRS Notices 2010–83 and 2011–3, including the guidance superseding portions of the instructions to Schedule MB and Schedule SB for the 2008, 2009, and 2010 plan years, have already been approved under the Paperwork Reduction Act and released to the public. In addition, a relatively small number of Form 5500 filers, comprised of only those filers for defined benefit pension plans to which the optional relief offered under the Pension Relief Act applies, are affected by these Schedule MB and Schedule SB changes. Accordingly, the Department finds for good cause that it would be impracticable and contrary to the public interest to delay putting the technical revisions to Schedule MB and SB into place until completion of a full notice and public comment process. For the same reasons, the Department also finds good cause to adopt an effective date that would be less than 30 days after the publication in the **Federal Register** pursuant to the APA. 5 U.S.C. 553(d). Accordingly, the adoption of the technical changes affecting the actuarial schedules for the 2008, 2009, and 2010 Form 5500 Annual Return/Report will be effective as of the date of publication in the **Federal Register**. Related information also will be required to be provided on the 2011 and later Form 5500 Annual Return/Report with respect to those plans to which the alternative funding methods under the Pension Relief Act apply, as described in the Act, but for 2011 and later the information will be included in the schedules and instructions, rather than filers having to create attachments as described in IRS Notice 2010–83 and Notice 2011–3. The 2011 and later Form 5500 Annual Return/Report, Schedule SB, will also require a plan to disclose its status as an eligible charity plan in connection with a special effective date provided under the Pension Relief Act.

III. Executive Order 12866

The Office of Management and Budget (OMB) has determined that this document does not constitute a "significant regulatory action" for purposes of Executive Order 12866. Therefore, this action has not been reviewed by OMB pursuant to the Executive Order.

IV. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), the Form 5500 information collection request (ICR) has been approved by OMB under control number 1210–0110, which currently is scheduled to expire on March 31, 2014. This notice does not implement a substantive or material change to the ICR; therefore, the Department has not requested OMB review at this time.

Signed at Washington, DC, this 24th day of March 2011.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2011–7557 Filed 4–4–11; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0798–201048; FRL–9288–8]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Georgia: Rome; Determination of Attaining Data for the 1997 Annual Fine Particulate Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA has determined that the Rome, Georgia, fine particulate ($PM_{2.5}$) nonattainment area (hereafter referred to as "the Rome Area" or "Area") has attained the 1997 annual average $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS). The Rome Area is comprised of Floyd County in its entirety. This determination of attainment is based upon complete, quality-assured and certified ambient air monitoring data for the 2007–2009 period showing that the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. The requirements for the Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the standard shall be suspended so long as the Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS.

DATES: *Effective Date:* This final rule is effective on May 5, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R04–OAR–2010–0798. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

FOR FURTHER INFORMATION CONTACT: Joel Huey or Sara Waterson, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Huey may be reached by phone at (404) 562–9104 or via electronic mail at *huey.joel@epa.gov.* Ms. Waterson may be reached by phone at (404) 562–9061 or via electronic mail at *waterson.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?
II. What is the effect of this action?
III. What is EPA's final action?
IV. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is determining that the Rome Area (comprised of Floyd County in its entirety) has attaining data for the 1997 annual $PM_{2.5}$ NAAQS. This determination is based upon quality assured, quality controlled and certified ambient air monitoring data that shows the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS based on the 2007–2009 data.

Other specific requirements of the determination and the rationale for EPA's action are explained in the notice of proposed rulemaking (NPR) published on December 13, 2010 (75 FR 77595). The first and second quarters of 2008 were incomplete with around 73 percent completeness each. Data

substitution, as described in 40 CFR part 50, Appendix N, was used to make a complete record. EPA proposed that the Rome Area is meeting the 1997 annual $PM_{2.5}$ NAAQS both with and without data substitution and is now meeting the 1997 annual $PM_{2.5}$ NAAQS. The design value without data substitution, 13.3 μg/m³, is considered to be the official design value. The comment period closed on January 13, 2011. No adverse comments were received in response to the NPR.

II. What is the effect of this action?

This final action, in accordance with 40 CFR 51.1004(c), suspends the requirements for this Area to submit attainment demonstrations, associated RACM, RFP plans, contingency measures, and other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS as long as this Area continues to meet the 1997 annual $PM_{2.5}$ NAAQS. Finalizing this action does not constitute a redesignation of the Rome Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the Clean Air Act (CAA). Further, finalizing this action does not involve approving maintenance plans for the Area as required under section 175A of the CAA, nor does it involve a determination that the Area has met all requirements for a redesignation.

III. What is EPA's final action?

EPA is determining that the Rome Area has attaining data for the 1997 annual $PM_{2.5}$ NAAQS. This determination is based upon quality assured, quality controlled, and certified ambient air monitoring data showing that this Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS during the period 2007–2009. This final action, in accordance with 40 CFR 51.1004(c), will suspend the requirements for this Area to submit attainment demonstrations, associated RACM, RFP plans, contingency measures, and other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS as long as the Area continues to meet the 1997 annual $PM_{2.5}$ NAAQS. EPA is taking this final action because it is in accordance with the CAA and EPA policy and guidance.

IV. Statutory and Executive Order Reviews

This action makes a determination of attainment based on air quality, and will result in the suspension of certain federal requirements, and it will not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this 1997 $PM_{2.5}$ clean NAAQS data determination for the Rome Area does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 6, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: March 24, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart L—Georgia

■ 2. Section 52.578 is amended by adding paragraphs (a) and (b) to read as follows:

§ 52.578 Control Strategy: Sulfur oxides and particulate matter.

* * * * *

(a) Determination of Attaining Data. EPA has determined, as of April 5, 2011, the Rome, Georgia, nonattainment area has attaining data for the 1997 annual $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 annual $PM_{2.5}$ NAAQS.

(b) [Reserved]

[FR Doc. 2011–7773 Filed 4–4–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 300

[Docket Number 110323214–1214–01]

RIN 0660–AA24

Revision to the Manual of Regulations and Procedures for Federal Radio Frequency Management

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: The National Telecommunications and Information Administration (NTIA) hereby makes certain changes to its regulations, which relate to the public availability of the Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual). Specifically, NTIA updates the version of the Manual of Regulations and Procedures for Federal Radio Frequency Management with which federal agencies must comply when requesting use of the radio frequency spectrum.

DATES: *Effective Date:* This regulation is effective on April 5, 2011. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of April 5, 2011.

ADDRESSES: A reference copy of the NTIA Manual, including all revisions in effect, is available in the Office of Spectrum Management, 1401 Constitution Avenue, NW., Room 1087, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: William Mitchell, Office of Spectrum Management, at (202) 482–8124 or *wmitchell@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

NTIA authorizes the U.S. Government's use of the radio frequency spectrum. 47 U.S.C. 902(b)(2)(A). As part of this authority, NTIA developed the NTIA Manual to provide further guidance to applicable federal agencies. The NTIA Manual is the compilation of policies and procedures that govern the use of the radio frequency spectrum by the U.S. Government. Federal government agencies are required to follow these policies and procedures in their use of the spectrum.

Part 300 of title 47 of the Code of Federal Regulations provides information about the process by which NTIA regularly revises the NTIA Manual and makes public this document and all revisions. Federal agencies are required to comply with the specifications in the NTIA Manual when requesting frequency assignments for use of the radio frequency spectrum. *See* 47 U.S.C. 901 *et seq.,* Executive Order 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp. at 158.

This rule updates section 300.1(b) of title 47 of the Code of Federal Regulations to specify the version of the NTIA Manual with which federal agencies must comply when requesting frequency assignments for use of the radio frequency spectrum. In particular, this rule amends section 300.1(b) by replacing "May 2010" with "September 2010." *See* Revision to the Manual of Regulations and Procedures for Federal Radio Frequency Management, 75 FR 54790, 54791 (Sept. 9, 2010) (revising the Manual through May 2010). Upon the effective date of this rule, Federal agencies must comply with the requirements set forth in the January 2008 edition of the NTIA Manual, as revised through September 2010.

The NTIA Manual is scheduled for revision in January, May, and September of each year and is submitted to the Director of the Federal Register for Incorporation by Reference approval. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and part 51 of title 1 of the Code of Federal Regulations. The NTIA Manual is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, by referring to Catalog Number 903–008–00000–8. A reference copy of the NTIA Manual, including all revisions in effect, is available in the Office of Spectrum Management, 1401 Constitution Avenue, NW., Room 1087, Washington, DC 20230, or call William Mitchell on (202) 482–8124, and available online at *http://www.ntia.doc.gov/osmhome/redbook/redbook.html.* The NTIA Manual is also on file at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Paperwork Reduction Act

This action does not contain collection of information requirements subject to the Paperwork Reduction Act (PRA). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the PRA, unless that collection displays a currently valid OMB Control Number.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

Administrative Procedure Act/ Regulatory Flexibility Act

NTIA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment as it is unnecessary. This action amends the regulations to include the date of the most current version of the NTIA Manual. These changes do not impact the rights or obligations of the public. The NTIA Manual applies only to Federal agencies. Because these changes impact only federal agencies, NTIA finds it unnecessary to provide for the notice and comment requirements of 5 U.S.C. 553. NTIA also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the reasons provided above. Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Executive Order 13132

This rule does not contain policies having federalism implications as that term is defined in EO 13132.

Regulatory Text

List of Subjects in 47 CFR Part 300

Incorporation by reference, Radio.

For the reasons set forth in the preamble, NTIA amends title 47, part 300 as follows:

PART 300—MANUAL OF REGULATIONS AND PROCEDURES FOR FEDERAL RADIO FREQUENCY MANAGEMENT

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 47 U.S.C. 901 *et seq.,* Executive Order 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp., p. 158.

■ 2. Section 300.1 (b) is revised to read as follows:

§ 300.1 Incorporation by reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management.

* * * * *

(b) The Federal agencies shall comply with the requirements set forth in the January 2008 edition of the NTIA Manual, as revised through September 2010, which is incorporated by reference with approval of the Director, Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

Dated: March 30, 2011.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. 2011–7944 Filed 4–4–11; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 101029546–1208–02]

RIN 0648–BA39

Atlantic Highly Migratory Species; Bluefin Tuna Bycatch Reduction in the Gulf of Mexico Pelagic Longline Fishery

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

ACTION: Final rule.

SUMMARY: Under this final rule, NMFS requires the use of "weak hooks" in the Gulf of Mexico (GOM) pelagic longline (PLL) fishery. A weak hook is a circle hook that meets NMFS' current size and offset restrictions for the GOM PLL fishery, but is constructed of round wire stock that is thinner-gauge than the circle hooks currently used and is no larger than 3.65 mm in diameter. Weak hooks can allow incidentally hooked bluefin tuna (BFT) to escape capture because the hooks are more likely to straighten when a large fish is hooked. Requiring weak hooks in the GOM will reduce bycatch of BFT; allow the long-term beneficial socio-economic benefits of normal operation of directed fisheries in the GOM with minimal short-term negative socio-economic impacts; and have both short- and long-term beneficial impacts on the stock status of Atlantic BFT, an overfished species. This action affects commercial fishermen using PLL gear to fish for Atlantic Highly Migratory Species (HMS) in the GOM.

DATES: This final action will become effective on May 5, 2011.

ADDRESSES: Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the supporting documents—including the Environmental Assessment (EA), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), small entity compliance guide, and the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP)—are available from the HMS Web site at *http://www.nmfs.noaa.gov/sfa/hms/.*

FOR FURTHER INFORMATION CONTACT: Dianne Stephan at 978–281–9260 or Randy Blankinship at 727–824–5399.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Conventions Act (ATCA), which authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, implementing the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), which details the management measures for Atlantic HMS fisheries, including the PLL fishery. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

Background

On January 13, 2011, NMFS published a proposed rule (76 FR 2313) to require the use of "weak hooks" by PLL vessels fishing in the GOM. A weak hook is a circle hook that meets NMFS' current size and offset restrictions but is constructed of round wire stock that is thinner-gauge and is no larger than 3.65 mm in diameter than the circle hooks currently used in the PLL fishery. This final rule finalizes the provisions proposed in the January 13, 2011, rule. The purpose of this action is to reduce PLL catch of Atlantic BFT in the GOM, which is the only known BFT spawning area for the western Atlantic stock of BFT, as early in the 2011 BFT spawning season as possible. Bluefin tuna spawning season begins in early April each year. This action is consistent with the advice of the ICCAT Standing Committee for Research and Statistics (SCRS) that ICCAT may wish to protect the strong 2003 year class until it reaches maturity and can contribute to spawning. The purpose is also to allow directed fishing for other species to continue within allocated BFT subquota limits. This measure is consistent with the 2006 Consolidated HMS FMP and ICCAT Recommendation 10–03 (supplemental recommendation by ICCAT concerning the western BFT rebuilding program).

Since 2007, NMFS has conducted research on weak hooks used on PLL vessels operating in the GOM to determine if their use can reduce the incidental catch of large BFT during directed PLL fishing for other species. Research data show that the use of a weak hook can significantly reduce the amount of BFT caught incidentally by PLL vessels in the GOM. Weak hooks can allow incidentally hooked BFT to escape capture because the hooks are more likely to straighten when a large fish is hooked, thus releasing the fish.

Due in part to this research, this action finalizes the requirement to use weak hooks in the Atlantic HMS PLL fishery in the GOM. This action will be effective on May 5, 2011 to ensure implementation happens as early in the 2011 BFT spawning season as possible. Implementation of weak hooks in the GOM PLL fishery during spring 2011 is important because the strong 2003 year class is beginning to enter adulthood, and it is likely that some of them will begin to spawn in the GOM this spring. Also, reducing the incidental BFT catch in the GOM may enable the PLL fishery to continue to participate in directed fisheries (e.g., yellowfin tuna (YFT) and swordfish) year-round with less risk of fishery interruption due to insufficient BFT subquota availability in the Longline Category.

NMFS considered three alternatives regarding the GOM PLL fishery. Alternative one would maintain the status quo, thus continuing existing regulations in the GOM PLL fishery. Alternative two would require all PLL vessels fishing in the GOM to use weak hooks. Alternative three would implement additional time/area closures in the GOM to protect spawning BFT. The proposed rule contained details regarding the alternatives considered and a brief summary of the recent management history. Those details are not repeated here.

Response to Comments

During the proposed rule stage, NMFS received more than 57,000 written comments from non-governmental organizations, fishermen, dealers, and other interested parties on the proposed rule. Mass public comment campaigns contributed to the high number of comments received. NMFS also heard numerous comments from constituents who attended the three public hearings and an operator-assisted Atlantic HMS Advisory Panel conference call, which was open to the public. A summary of the comments received on the proposed rule during the public comment period is provided below with NMFS' response. All written comments submitted during the comment period can be found at *http://www.regulations.gov/* by searching for RIN 0648–BA39.

Weak Hook Comments

Comment 1: NMFS should implement weak hooks in the GOM PLL fishery year-round prior to the 2011 western Atlantic BFT spawning season.

Response: NMFS agrees with the intent of this comment for reasons described in the preferred alternative in the proposed and final rules and EA, which include: Protecting the 2003 BFT year class as recommended by the ICCAT SCRS; reducing the impact of the GOM PLL fleet on western BFT; reducing BFT catches in the GOM PLL fishery; maintaining, or possibly improving with experience using the weak hook, catches of YFT; reducing the likelihood of PLL fishery interruption or indirect impacts to directed BFT fisheries due to the Longline Category exceeding its BFT subquota; and improving fishing efficiency and catch by reducing the amount of fishing time lost to BFT and large shark entanglements.

Comment 2: NMFS should not implement weak hooks because they are unproven in effectively reducing BFT mortality. Although BFT catch appears to be reduced, there is no unequivocal evidence that BFT released from a bent hook survive.

Response: NMFS disagrees that weak hooks should not be implemented in the GOM PLL fishery. Research has shown that the use of weak hooks can reduce the incidental catch of BFT by 56.5 percent. Although limited information exists about the effects of weak hooks on BFT post-release mortality, post-release mortality is expected to be reduced because BFT likely straighten the weak hooks relatively quickly after being caught and likely do not incur as high a level of metabolic stress as when the fish stay on the hook until being retrieved upon haul-back of the gear. Due to the fact that BFT have the highest level of energy available at the moment when the fish becomes hooked, NMFS believes that escapement occurs soon after the fish is hooked. NMFS intends to conduct additional research with weak hooks using hook timers to determine the length of time that fish remain on the hook. This information will aid in further understanding more precisely the effects of weak hook use on BFT post-release mortality.

Comment 3: NMFS should implement weak hooks in the GOM PLL fishery seasonally when BFT are present. Seasonal application of the weak hook requirement would allow fishermen to use currently required standard circle hooks when BFT are not present in the GOM to mitigate potential economic impacts due to reductions in YFT and swordfish catch that might occur with year-round use of weak hooks.

Response: NMFS disagrees that the weak hook requirements should be implemented seasonally. BFT are also present in the GOM outside of the spawning season, although in lower numbers, and use of weak hooks year-round will ensure that protection is provided for these BFT.

Research data showed a higher catch rate of YFT with the experimental hook in the late summer months of July, August, and September when compared to the spring and early summer months of March, April, May, and June. Because the experiment focused on collecting data during the BFT spawning season, the majority of data was collected during March–June. Although it is unknown why YFT catch rates were higher in the late summer months after BFT spawning season, if more data had been collected after the BFT spawning period, NMFS believes it likely that the YFT reduction rate would have been less than what was observed (i.e., the amount of YFT caught with the weak hook may not have decreased as much as the overall study showed). Thus the potential economic impact due to decreases in YFT catch may actually be less than described in the proposed rule.

Seasonal application of the weak hook requirement would increase the difficulty of enforcing the rule's requirement for vessels in the GOM with PLL gear on board to possess, use, and deploy only weak hooks. This is because vessels on trips spanning the beginning or end of the period of time during which weak hooks are required might not have removed all of the hooks with wire greater than 3.65 mm in diameter from their vessels, thus possessing both hooks on board. Requiring weak hooks year-round reduces such enforcement concerns because no other type of circle hook would be allowed on vessels fishing with PLL gear in the GOM. There would also be some negative economic impacts to fishermen if standard hooks are allowed to be used outside of BFT spawning season due to higher costs and lost fishing time due to re-rigging of fishing gear.

Comment 4: Implementing weak hooks in the GOM PLL fishery will have negative economic impacts, including the potential for significant loss of catch and revenue by some vessels. This loss in revenue may make it more difficult for some vessels to maintain the hire of captains and crew members who may be able to find more lucrative employment elsewhere. Negative economic impacts also include the initial cost of outfitting GOM PLL vessels with weak hooks and an increased replacement rate of weak hooks due to the ease with which the hooks bend. NMFS should provide reimbursement to fishermen for the cost of initially outfitting their vessels with weak hooks.

Response: As described in the EA, NMFS anticipates negative economic impacts to occur in the short-term for PLL vessels fishing in the GOM. These negative economic impacts include a potential reduction of vessel gross revenue of approximately 14.8 percent, a minor increase in the cost of weak hooks compared to the currently required standard circle hook, and a slight increase in gear cost due to an increased replacement rate of weak hooks compared to the standard circle hook.

As described in the response to comment 3 above, research data showed a higher catch rate of YFT with the experimental hook in the late summer months of July, August, and September when compared to the spring and early summer months of March, April, May, and June. Because the experiment focused on collecting data during the BFT spawning season, the majority of data was collected during March–June. If more data had been collected after the BFT spawning period, NMFS believes it likely that the YFT catch reduction rate would have been less than what was observed and the potential economic impact due to decreases in YFT catch could be less than described in the proposed rule. NMFS gear researchers have found that fishermen participating in research tend to work through a learning curve with new technology and generally improve their performance with a particular gear over time. A voucher program to assist fishermen in the GOM with the purchase of an initial

supply of weak hooks is being sponsored by the National Fish and Wildlife Foundation (*please see* "Weak Hook Voucher Program" below for more details). Compared to the no action alternative, the preferred alternative reduces the incidental BFT catch in the GOM and may enable the PLL fishery to continue to participate in directed fisheries (e.g., YFT and swordfish) year-round with less risk of fishery interruption due to insufficient BFT subquota availability in the Longline Category.

Comment 5: Gulf of Mexico PLL fishermen need a reasonable amount of time to comply with the new weak hook requirement prior to active enforcement of the new requirement, and NMFS should ensure that there is a sufficient supply of weak hooks available for the GOM PLL fleet in advance of the effective date.

Response: NMFS agrees and intends to provide 30 days after publication of the final rule for fishermen to prepare for and comply with the weak hook requirement. NMFS has begun to investigate manufacturer and distributor inventories of weak hooks and believes that enough weak hooks are currently available to initially outfit PLL vessels in the GOM with weak hooks. NMFS cannot delay implementation for longer than 30 days because, as described above, it is important to have these regulations in place as early in the 2011 BFT spawning season as possible to provide additional protections for the strong 2003 year class as it enters adulthood and begins to contribute to spawning in the GOM this spring.

Comment 6: NMFS should seek methods to respond to the ICCAT SCRS call for special efforts to reduce mortality on the 2003 BFT year class in other domestic and international fisheries that target or interact with BFT.

Response: The 2010 SCRS report noted that ICCAT "may wish to protect the 2003 year class until it reaches maturity and can contribute to spawning," and that maintaining catch at 1,800 mt may offer some protection. ICCAT Recommendation 10–03 reduced the total allowable catch (TAC) to 1,750 mt for 2011 and 2012, which may offer further protection for the 2003 year class. Implementation of weak hooks in the GOM PLL fishery is expected to reduce the catch of BFT and reduce mortality of spawning-age BFT, including the 2003 year class. This action will promote survival of BFT in the GOM, and thus will improve western BFT stock health.

Comment 7: NMFS should conduct education and outreach programs for the entire GOM PLL fleet, including reaching Vietnamese fishermen, to help fishermen understand the benefits and costs of weak hook use and fishery management priorities for the future of the fishery. This effort should include fishing techniques learned through the weak hook research to reduce BFT catch and maintain or improve directed catch.

Response: NMFS agrees and intends to conduct outreach and education workshops around the GOM to help fishermen learn the benefits of and techniques for fishing with weak hooks.

Comment 8: NMFS should continue to conduct and expand research on weak hook technology in the GOM PLL fishery. NMFS should conduct additional research on the length of time that BFT remain hooked on weak hooks in order to determine if the mortality rate of BFT is actually reduced. There is currently little data to indicate if BFT that escape from weak hooks survive. Additional research should investigate reducing white marlin and roundscale spearfish bycatch, determining the effect of weak hooks on sea turtle interactions, further reducing BFT bycatch, improving directed species catch, and determining the efficacy of 18/0 hooks made with thinner wire for further BFT bycatch reduction and improved swordfish retention. NMFS should create a sunset provision of 3 years for the weak hook requirement to allow sufficient time for additional research and ensure a thorough review by the agency to determine if the requirement should be continued, revised, or allowed to expire.

Response: NMFS intends to continue research on the effects of the use of weak hooks when compared to the currently required standard circle hook. Among other things, this research will help to better understand the effect of weak hooks on white marlin and roundscale spearfish catches and sea turtle interactions. NMFS intends to conduct research with weak hooks using hook timers to determine the length of time that fish remain on the hook. This information will aid in understanding the effects of weak hook use on BFT post-release mortality. NMFS will continue to collect information on BFT, white marlin, roundscale spearfish, sea turtles and other species caught on PLL gear through the NMFS pelagic observer program that will help to better understand the effects of weak hook implementation.

During experimental PLL fishery data collection conducted in the Northeast Distant gear restricted area and GOM in 2004, NMFS collected data with the currently required standard circle hooks that showed reduced catches of swordfish and YFT with 18/0 circle hooks compared to 16/0 circle hooks on both squid and sardine baits. The evaluation did not include BFT. While these results do not directly answer the public comment about how 18/0 circle hooks constructed of thinner wire might perform for reducing BFT catch, they provide some insight to show that currently required standard 18/0 hooks may reduce swordfish retention.

NMFS disagrees that a sunset provision should be implemented for this final action because such a provision would guarantee that NMFS must take action to continue the weak hook requirement. Instead, NMFS may conduct subsequent rulemaking, if necessary, in the future to address the need for modified or additional management measures.

Comment 9: The weak hook research indicates that the number of swordfish retained by GOM PLL vessels may decrease. If this occurs, fishermen may increase their fishing effort to make up for lost revenue, which may result in increased bycatch of undersized swordfish and other bycatch species.

Response: NMFS agrees that the possibility exists for PLL fishing effort in the GOM to increase if fishermen attempt to make up for lost revenue due to reductions in targeted catch. NMFS will continue to monitor fishing effort and catch in the GOM PLL fleet through logbooks, dealer reports, and the pelagic observer program in order to determine potential effects on target and non-target species. Bycatch mitigation measures such as closed areas (DeSoto Canyon), use of circle hooks, possession and use of protected species safe handling and release gears, and limits on sea turtle interactions required in the 2004 Biological Opinion (BiOp) will remain in effect. However, fishermen may not experience reductions in targeted catch or reduced revenue. Some fishermen that participated in the weak hook research experienced increased targeted catch and are voluntarily using weak hooks year-round. As other fishermen learn the fishing techniques that work well with the weak hooks, those fishermen may not experience reductions in targeted catch or revenue.

As described in the response to Comment 3 above, research data showed a higher catch rate of YFT with the experimental hook in the late summer months of July, August, and September when compared to the spring and early summer months of March, April, May, and June. Because the experiment focused on collecting data during the BFT spawning season, the majority of data was collected during March-June. If more data had been collected after the BFT spawning period, it is likely that

the YFT reduction rate would have been less than what was observed, thus the potential economic impact due to decreases in YFT catch may be less than described in the proposed rule. If this occurs, the incentive to increase fishing effort may not be realized.

Comment 10: Because the weak hooks are nearly identical to the currently required standard circle hook, enforcement of the weak hook requirement will be extremely difficult. Further, the potential reduction in the catch of target species, such as swordfish retained for sale, indicated by the weak hook research, could make it less likely that fishermen will comply with the weak hook requirement.

Response: NMFS intends to fully enforce the weak hook requirement. A gauge has been developed for use by NMFS enforcement agents and officers, U.S. Coast Guard personnel, and state joint enforcement partners to quickly and definitively measure the diameter of the hook wire. This gauge was used by observers during the weak hook study and is proven to be a quick and effective tool for distinguishing the difference between weak hooks and hooks made of larger diameter wire.

Comment 11: Pelagic longline gear is responsible for almost 70 percent of the mortality of white marlin and the weak hook research indicates that white marlin/roundscale spearfish catches may increase by 52.7 percent with weak hooks. This increase in catch is concerning given the poor health of white marlin and the fact that white marlin has been the subject of two status reviews under the Endangered Species Act (ESA).

Response: The NMFS weak hook research results showed that the increase in catch of white marlin and roundscale spearfish was not statistically significant, although the difference was close to being statistically significant. NMFS does not believe that this increase, if it actually occurs, is likely to have population or ecosystem effects for those species because the predicted increase of 144 white marlin (or 1.05 mt in 2009 at 48 lb per fish) dead discards represents less than 0.8 percent of the total amount of international white marlin catch (which includes recreational landings and commercial dead discards) in the North Atlantic (406 mt in 2009).

Due to misidentification of roundscale spearfish as white marlin, the total international white marlin catch also includes some roundscale spearfish and, as such, indicates that any potential increase in roundscale spearfish that might occur in the GOM PLL fishery as a result of this final action should be very small in relation. In addition, NMFS already has comprehensive regulations in place to conserve these species in its domestic fisheries. Under current regulations, PLL vessels are not allowed to retain white marlin/roundscale spearfish, and any that are captured must be released alive or discarded if dead. Additionally, PLL vessels are currently required to possess and use protected species safe handling and release gears and techniques that aid in releasing hooked animals, including white marlin, and maximize post-release survival without removing the fish from the water. Most white marlin/roundscale spearfish that are hooked are released alive.

NMFS would continue research with weak hook technology and closely monitor white marlin and roundscale spearfish catch through observer coverage in the fishery. Should the increased catches of white marlin and roundscale spearfish continue, NMFS would investigate potential mitigation measures that might be implemented if necessary to reduce the catches and/or reduce the bycatch mortality associated with the catches. The current research does not show a statistically significant increase in bycatch; therefore, it is not clear that mitigation measures would be appropriate at this time. Neither does the research indicate which measures would be effective to address any potential statistically significant white marlin and roundscale spearfish increase in catch. If additional research shows a statistically significant increase in such bycatch, possible measures could include adopting a seasonal application of the weak hook, modification or removal of the weak hook requirement or other measures as necessary and appropriate. NMFS would closely monitor fleet activities and catch statistics, and consider making management measures adjustments, including use of inseason management authority, should the data warrant.

Comment 12: While the weak hook study showed a reduction in YFT catch of 7 percent, it also showed an increase in YFT catch in late summer and fall months. If YFT catches actually increase overall as a result of weak hook use, the increased fishing mortality may be detrimental to the YFT population.

Response: As described in the response to Comment 3 above, research data showed a higher catch rate of YFT with the experimental hook in the late summer months of July, August, and September when compared to the spring and early summer months of March, April, May, and June. Because the experiment focused on collecting data during the BFT spawning season, the majority of data was collected during March–June. If more data had been collected after the BFT spawning period, it is likely that the YFT reduction rate would have been less than what was observed. This additional analysis does not, however, indicate that an overall increase in YFT catch would occur. NMFS will continue to collect information on YFT and other species caught on PLL gear through the NMFS pelagic observer program that will help to better understand the effects of weak hook implementation.

Yellowfin tuna are managed internationally by ICCAT, which has adopted a limit on effective fishing effort, but not issued a TAC or individual country quotas. According to the latest ICCAT SCRS YFT stock assessment (2008), the YFT population is not considered to be overfished and overfishing is not occurring. If the catch of YFT in the GOM increases as a result of weak hook use, negative impacts on the YFT population are expected to be minor when compared to the total western Atlantic longline catch. The United States GOM longline catch is 7.7 percent of the total western Atlantic longline catch.

Comment 13: NMFS should reexamine whether it is appropriate to rely on the Final Environmental Impact Statement (FEIS) for the 2006 Consolidated HMS FMP, or the 2004 BiOp for the PLL fishery when supporting the FONSI because the implementation of the weak hook will cause a change in fishing effort because of improved catchability of white marlin and other species. The effects on endangered and threatened marine species are not fully understood through the weak hook research, which is cause for concern given the potential increase in the number of hooks that might be set in the PLL fishery due to the potential decrease of YFT and swordfish retained for sale. Also, an ESA consultation may be required if weak hook use affects loggerhead sea turtles and those loggerhead sea turtles are uplisted in the final rule to list the Northwest Atlantic loggerhead sea turtle (final rule due March 16, 2011). The analysis in the 2006 Consolidated HMS FMP should be updated due to significant events such as Hurricane Katrina and the DWH/BP oil spill, thus the baseline FEIS for the 2006 Consolidated HMS FMP requires new analyses of the effects of the PLL fishery on listed species.

Response: NMFS disagrees that a potential increase in the catch of white marlin is an indication that fishing effort will increase with implementation of weak hooks. White marlin and other

billfishes are not allowed to be retained on PLL vessels. NMFS does not believe that an increase in bycatch that must be discarded will result in an increase in fishing effort.

NMFS believes that the FEIS for the 2006 Consolidated HMS FMP and the 2004 BiOp for the PLL fishery remain applicable and support this final action. Despite recent significant events that have occurred in the GOM, the 2006 Consolidated HMS FMP closure analysis still reflects impacts that are likely to occur with the time/area closure alternatives, particularly when considering redistribution of fishing effort. When redistribution of effort was considered, all time/area closures in the 2006 analysis resulted in an increase in bycatch for some species, including BFT. This final action is not expected to change fishing effort or behavior beyond that already analyzed in the 2001 HMS and 2004 PLL Biological Opinions (BiOps) regarding interactions with endangered species. This action is not expected to significantly alter current fishing practices or bycatch mortality rates from the level analyzed in the Consolidated HMS FMP, and therefore should not have adverse impacts on protected species, or have any further impacts on endangered species, listed marine mammals, or critical habitat beyond those considered in the 2001 and 2004 BiOps.

Comment 14: Comments were received in support of and opposition to implementing weak hooks in Atlantic PLL fisheries outside the GOM.

Response: Research was conducted by the NMFS Southeast Fisheries Science Center to evaluate the efficacy of 16/0 "weak" circle hooks in reducing the bycatch of BFT in the GOM YFT fishery. The weak hook research has shown that the catch of adult-sized BFT in the GOM PLL fleet can be reduced by 56.5 percent with the use of weak hooks. The difference in BFT catch between the standard 16/00 circle hooks and the experimental weak hooks was statistically significant. The size of BFT in the GOM, the only known spawning area for the western stock, is larger than the size distribution of BFT in the Atlantic outside of the GOM. The benefits of weak hook use with PLL gear outside the GOM may not be the same as in the GOM PLL fishery given the differences in the catch composition and the way fishermen fish PLL gear in strong currents such as the Gulf Stream. While research on the use of weak hooks along the Atlantic coast has begun in order to look at reducing the bycatch of marine mammals, further research is needed to determine the applicability of weak hooks outside of the GOM and any impacts on BFT, target catch, marine mammals, sea turtles, and other incidentally caught species.

Gulf of Mexico Time/Area Closure Comment

Comment 15: NMFS should prohibit PLL gear in the GOM (Alternative 3) because of indiscriminate bycatch (particularly the bycatch of BFT, billfishes, leatherback sea turtles, and loggerhead sea turtles) or should implement a seasonal closure for longline use during BFT spawning.

Response: Considering redistribution of fishing effort is important because HMS and protected species are not uniformly distributed throughout the ocean and tend to occur in higher concentrations in certain areas. Therefore, a closure in one area might reduce the bycatch of one or two species, but may increase bycatch of others. NMFS considered a number of redistribution of effort scenarios (*i.e.,* redistribution of effort into all remaining open areas, redistribution of effort into the GOM only, and redistribution of effort in the GOM). In all cases, NMFS found the closures in the GOM could result in an increase in bycatch for some of the species being considered. No one closure in these analyses would have resulted in a decrease in discards or bycatch of all the species considered when the redistribution of fishing effort was considered. When the redistribution of effort was considered, the purpose of a GOM closure (reducing bycatch and discards of spawning BFT) may not be fully realized and may have effects on BFT outside the closed area. For instance, after examining a potential closure in the GOM from April through June in order to protect spawning BFT, the analysis predicted an increase in the number of BFT bycatch and discards elsewhere once displaced fishing effort was considered. In the 2006 Consolidated HMS FMP, NMFS did not prefer any new time/area closures (except the Madison-Swanson and Steamboat Lumps Marine Reserves for other purposes), and did not modify any existing closures at that time because no single closure or combination of closures would reduce the bycatch of all species considered, assuming there is some redistribution of effort. NMFS believes the closure analysis conducted in 2006 remains the best available science and reflects the substantial impacts that would likely occur under the time/area closures analyzed because the underlying principle of fishing effort redistribution that was used in the analysis is still likely to occur. Additionally, NMFS is not aware of other peer reviewed and published time/area closure analyses that consider fishing effort redistribution for the GOM PLL fishery since the NMFS 2006 closure analyses. Therefore, NMFS does not prefer alternative 3 for the same reasons as described above and in the 2006 Consolidated HMS FMP.

The 2006 Consolidated HMS FMP established criteria for considering the implementation of new time/area closures or modification to existing time/area closures. It is not feasible to conduct extensive, new analysis per these criteria and to meet the objectives of this action (*i.e.,* to rapidly implement the final action to increase the survival of spawning BFT in 2011 in the GOM, particularly the 2003 year class). NMFS believes that the 2006 analysis remains valid for the purposes of this rulemaking. However, NMFS intends to review time/area closure analyses, in light of the events of the past few years such as hurricanes and the DWH/BP oil spill, in the near future. At that time, NMFS will consider other methodologies that have been proposed to consider effects of effort redistribution, such as Powers and Abeare (2009) or others, for time/area analysis as appropriate.

General Comments

Comment 16: NMFS should promote more selective alternative gears to PLL for YFT and swordfish fishing.

Response: This comment is not within the range of alternatives considered in this rulemaking because the rulemaking concerns the means, methods, times, and places that PLL gear is used in the GOM. The rulemaking does not consider alternatives related to the use of other fishing gears.

Comment 17: NMFS should implement bycatch caps for species of concern in the GOM PLL fishery and 100 percent observer coverage to support a bycatch cap program. When the bycatch caps are reached, the GOM PLL fishery should be closed.

Response: This comment is not within the range of alternatives considered in this rulemaking because the rulemaking concerns the means, methods, times, and places that pelagic longline gear is used in the GOM. NMFS currently monitors bycatch in the GOM PLL fishery through the use of observers and vessel logbooks. Bycatch in the GOM PLL fishery is minimized through regulations implemented under the Magnuson-Stevens Act and the ESA that require the use of circle hooks, require the use of protected species safe handling and release gears, prohibit the use of live bait, prohibit the possession

and use of PLL gear in existing closed areas, and other requirements.

Comment 18: The effects of the DWH/BP oil spill have not been fully determined and NMFS should err on the side of caution when implementing fishery management measures for fish stocks that may have been affected by the oil spill.

Response: NOAA continues to conduct research on the impacts of the DWH/BP oil spill on natural resources. The impacts of the oil spill and effects on Atlantic HMS are difficult to determine at this time.

With implementation of this final action, NMFS is precautionary in its approach because it is acting consistently with SCRS advice to protect the 2003 BFT year class as it matures and begins to contribute to spawning. In addition, implementation of weak hooks in the GOM PLL fishery is expected to reduce the catch of BFT in that fishery by 56.5 percent, which will reduce mortality of spawning BFT (both the 2003 and other year classes) on their spawning grounds. This will promote the increase of spawning biomass, the likelihood of successful spawning, and further rebuilding of the western BFT stock.

Comment 19: Allowing the PLL fleet to continue to fish will cause BFT to become extinct.

Response: On May 24, 2010, NMFS received a petition from the Center for Biological Diversity (CBD) to list BFT as threatened or endangered under the ESA and designate critical habitat concurrently with its listing. On September 21, 2010, NMFS announced a 90-day finding (75 FR 57431) that the petition presents substantial scientific information indicating the petitioned action may be warranted. NMFS is currently conducting a status review of BFT to determine if the petitioned action is warranted. The status review process includes assessment of the risk of extinction, considering effects of directed and incidental fisheries as well as other impacts. Per the ESA required timeline, NMFS is scheduled to publish that determination by May 24, 2011 (*i.e.,* within 12 months of receiving the petition). If NMFS determines that listing is not warranted, NMFS would publish a **Federal Register** notice announcing the end of the consideration process. If NMFS determines that listing is warranted, NMFS will publish a proposed rule and solicit public comments before developing and publishing a final determination (which would be required within one year of a proposed rule).

Changes From the Proposed Rule

A minor change to the definition of round wire stock at 50 CFR 635.2 has been made to provide further clarification. A minor change to the paragraph at § 635.71(a)(54) that deals with prohibitions has been made to clarify the cross referenced paragraph.

Classification

The NMFS AA has determined that this final action is consistent with the Magnuson-Stevens Act, 2006 Consolidated Atlantic HMS FMP and its amendments, ATCA, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

In compliance with section 604 of the Regulatory Flexibility Act (RFA), NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule, which analyzed the impacts of requiring the use of weak hooks in the GOM PLL fishery. The FRFA analyzes the anticipated economic impacts of the final action and any significant economic impacts on small entities. A summary of the FRFA is below. The full FRFA and analysis of social and economic impacts are available from NMFS (*see* **ADDRESSES**).

In compliance with section 604(a)(1) of the Regulatory Flexibility Act, the purpose of this final rulemaking is, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to further BFT stock recovery by increasing live releases of incidentally caught BFT by providing a new gear technology for PLL vessels to continue routine fishing operations in the GOM.

Section 604(a)(2) of the Regulatory Flexibility Act requires NMFS to summarize significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of NMFS' assessment of such issues, and a statement of any changes made as a result of the comments. The IRFA was included as part of the draft EA and was summarized in the proposed rule. NMFS did not receive any comments specific to the IRFA; however, NMFS did receive comments related to the overall economic impacts of the proposed rule. Those comments and NMFS' responses to them are mentioned above in the preamble for this rule. Particularly relevant economic comments are 1, 3, 4, 5, 7, 9, and 15.

When developing this action, NMFS considered different ways to reduce the regulatory burden on and provide flexibility to the regulated community, consistent with the recent Presidential Memorandum on Regulatory Flexibility, Small Business, and Job Creation (January 18, 2011). Consistent with the objectives of this rule and legal obligations, a voucher program to assist fishermen in the GOM with the purchase of an initial supply of weak hooks is being sponsored by the National Fish and Wildlife Foundation (*please see* "Weak Hook Voucher Program" below for more details). NMFS has also considered seasonal implementation of weak hooks in the GOM PLL fishery; however, this approach is not preferred because BFT are also present in the GOM outside of the spawning season in lower numbers and seasonal application of the weak hook requirement would increase the difficulty of enforcing the weak hook requirement. NMFS also considered a phased-in approach to implementation of the weak hook requirement; however, this approach is not preferred because it would not rapidly provide additional protection for spawning BFT (especially the strong 2003 year class) as early as possible in the spring 2011 spawning season.

Section 604(a)(3) requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. NMFS considers all HMS permit holders to be small entities because they either had average annual receipts less than $4.0 million for fish-harvesting, average annual receipts less than $6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small Business Administration (SBA) size standards for defining a small versus large business entity in this industry.

The GOM PLL fishery is comprised of fishermen who hold an Atlantic Tunas Longline permit, a Swordfish Directed or Incidental permit, and a Shark Directed or Incidental permit and the related industries including processors, bait houses, and equipment suppliers, all of which NMFS considers to be small entities according to the size standards set by the SBA. The final rule would apply to PLL vessels that fish in the GOM. As of October 2010, there were 248 Atlantic tuna longline limited access permit holders. Of these, 136 were registered in states along the coast of the GOM (including all Florida vessels). However, based on logbook records from 2006 to 2009, on average, only 51 PLL vessels were actively operating in the GOM annually, with a high of 55 vessels in 2007 and a low of 47 in 2006 and 2009. During the summer of 2010, preliminary vessel monitoring system information

indicated that the number of active PLL vessels in the GOM decreased by more than 79 percent due to the Deepwater Horizon (DWH)/BP oil spill and associated fishery closures.

This final rule does not contain any new reporting or recordkeeping requirements, but would require a new compliance requirement (5 U.S.C. 604(a)(4)). Fishing vessels with PLL gear onboard will be required, at all times, in all areas of the GOM open to HMS PLL fishing, to possess onboard and/or use only circle hooks meeting current size and offset restrictions, as well as being constructed of only round wire stock that is no larger than 3.65 mm in diameter. This final rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 604(b)(5)). Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the ATCA, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. NMFS does not believe that the new regulations would duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

Under section 604(a)(5), agencies are required to describe any alternatives to the rule which accomplish the stated objectives and which minimize any significant economic impacts. Economic impacts are discussed below and in the Environmental Assessment for the action. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)–(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this rule, consistent with legal obligations, NMFS cannot exempt small entities or change the reporting requirements only for small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in additional reporting requirements (category two above). Fishing vessels with PLL gear onboard will be required, at all times, in all areas of the GOM open to HMS PLL fishing, to possess onboard and use only circle hooks meeting current size and offset restrictions as well as being constructed of only round wire stock that is no larger than 3.65 mm in diameter. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act.

NMFS considered and analyzed three main alternatives for this rule. The first alternative was the status quo, no action alternative. This alternative would maintain existing hook and bait requirements in the Atlantic PLL fishery in the GOM. The second alternative would require all PLL vessels fishing in the GOM to use weak hooks and is the preferred alternative. The third alternative considered establishing additional time/area closures in the GOM. Under this alternative, an area of the GOM would be closed to PLL fishing and could extend over the entire GOM or a subarea. Temporal extents of a closure could be timed to the spawning season for BFT in the GOM, April to mid-June, or for shorter or longer time frames (*i.e.,* year round). Areal extents of a closure could be restricted to portions of the GOM where particularly high concentrations of spawning BFT have been observed while minimizing inclusion of areas with high directed YFT fishing operations. Adaptive management programs might also be considered with the temporal/spatial extent of the time/area changes based on real-time information on distribution and abundance of target and non-target species as well as the socio-economic needs of the fishery. In addition to these three alternatives, NMFS also considered other options such as prohibition on all retention of BFT in the GOM (*i.e.,* no incidental retention of BFT allowed) and adjustment of target catch retention limits (*i.e.,* modify current limits of one BFT per 2,000 lbs of target catch, two BFT per 6,000 lbs and three BFT per 30,000 lbs). As these alternatives either do not reduce mortality of BFT but rather convert discards to landings (or vice versa), or may have substantial negative social and economic impacts and cannot be implemented in short time frames, these alternatives were determined to not meet the objectives of the action and were not considered further.

Alternative 1, the status quo, no action alternative would not result in any additional economic impacts to small entities in the short-term. NMFS does not anticipate a significant change in landings, ex-vessel prices, or operating costs relative to the "status quo" for small entities under this alternative. However, adverse economic impacts in the medium and long-term could result if no action is taken to address the incidental catch of BFT in the GOM PLL fishery. Adverse economic impacts could occur if the Longline Category subquota for BFT is exceeded and a partial or total closure of the fishery is implemented or other management measures are taken in directed BFT fisheries to allow for dead discards of BFT to be accounted for within the U.S. quota.

The preferred alternative, Alternative 2, would require vessels with PLL gear onboard, at all times, in all areas of the GOM open to PLL fishing, to possess onboard and use only circle hooks meeting current size and offset restrictions as well as being constructed of only round wire stock that is no larger than 3.65 mm in diameter. This alternative would result in some minor increases in equipment costs for the new hooks, would likely impact vessel operations, and would also potentially impact catch rates and thus potentially reduce vessel revenues.

Alternative 2 would result in moderate positive social and economic benefits if this measure is able to reduce the bycatch of BFT in the GOM sufficiently to allow the PLL fishery to continue operating in the GOM. However, there would likely be some increased economic costs associated with switching to the weak hook.

This alternative would result in some minor increases in equipment costs associated with acquiring the new weak hooks. Direct cost of purchasing weak hooks is anticipated to increase expenses by $.02 per hook. An informal telephone survey of hook suppliers provides a price of approximately $0.34 per hook for 16/0 commercial grade circle hooks and approximately $0.36 per hook for 16/0 circle hooks constructed of 3.65 mm diameter round wire stock. Assuming that an average of 1,600 hooks per vessel are needed initially to equip vessels with enough required hooks for one trip, the compliance cost, on a per vessel basis, would be approximately $576.

Hook replacement rates are anticipated to increase with use of the weak hook. Researchers during the GOM PLL BFT mitigation research estimated that requiring the weak hook would result in an increase in the rate of hook replacement by 4.41 hooks per 1,000 hooks over the current

replacement rate due to straightening and deformation of the hooks. The researchers anticipated that this rate was an underestimate; however, they estimated the cost of additional hook replacement with the weak hook to be less than $3.00 per 1,000 hooks set. The standard 16/0 circle hooks currently in use will continue to be used in the U.S. Atlantic and inventories of unused standard 16/0 hooks could be sold to vessels fishing in the Atlantic outside of the GOM.

Alternative 2 would also potentially impact vessel catch rates, and thus potentially reduce vessel revenues. Based on the GOM PLL BFT mitigation research results, catch rates for several commercially important species were found to be lower using the new weak hooks versus the standard 16/0 circle hooks. The researchers found a statistically significant (at the 5 percent level) reduction in the total catch of BFT and wahoo when weak hooks were used compared to conventional circle hooks. The total catch of BFT was reduced 56.5 percent when weak hooks were used in the experiment. This reduction includes both discards and BFT retained for sale. Based on observer reports of the number of BFT discarded versus retained in the GOM, the researchers estimate that the experimental results indicate that the use of weak hooks would result in approximately a 14 percent reduction in BFT retained for sale given the BFT incidental retention limits. The total catch of wahoo using the weak hook was reduced by 26.6 percent.

The research also observed reduction in the number of YFT and swordfish retained for sale. While these results were not statistically significant at the 5 percent level, the reductions in YFT and swordfish retained did have p-values ≤ 0.15. Weak hooks in the experiment resulted in a 7 percent reduction in YFT retained for sale and 41.2 percent reduction in swordfish retained for sale. No other commercially targeted species observed during the research exhibited catch rate differences between weak hooks and conventional circle hooks with p-values of ≤ 0.15. Therefore, given that YFT is often the target catch for PLL trip in the GOM and the heterogeneous nature of fishing vessel operations, this analysis conservatively includes the observed reductions in YFT and swordfish. In addition, NMFS also ran the analysis with just BFT and wahoo which exhibited statistically significant differences in catch at the 5 percent level to help illustrate the range of possible outcomes.

Using vessel logbook catch data, NMFS translated the reductions in catch observed in the research experiment into potential fishery revenue impacts that may result from requiring the use of weak hooks in the GOM. The calculations are detailed in the EA for this final rule which is available on request. Based on the research results, the estimated per trip reduction in revenues that would potentially result from requiring the use of weak hooks in the GOM is approximately $2,265.

Based on HMS logbook reports from 2006 to 2009, the average number of PLL trips taken per vessel per year in the GOM is 9.7. Multiplying 9.7 trips per vessel by the estimated $2,265 per trip reduction in catch revenues (when including reductions for BFT, YFT, wahoo, and swordfish) results in an estimated reduction of $21,974 in commercial fishing revenues per vessel per year in the GOM resulting from switching to weak hooks. Alternatively, if the analysis only considers the statistically significant reductions in catch at the 5 percent level (only including reductions for BFT and wahoo which equals $139 less per trip), as used in the research study, the estimated reduction in annual catch revenues per vessel in the GOM for Alternative 2 would be $1,351 (9.7 trips × $139). This lower estimate may also represent the potential improvements in catch rates that may occur over time as fishermen adapt to the new weak hook technology. NMFS' analysis of weak hook research data after the publication of the proposed rule found a seasonal difference in the catch of YFT. Because the experiment focused on collecting data during the BFT spawning season, the majority of data was collected during March-June. If more data had been collected after the BFT spawning period, it is likely that the YFT reduction rate would have been less than what was observed, thus the potential economic impact due to decreases in YFT catch may be less than described above. NMFS does not foresee that the national net benefits and costs would change significantly in the long term as a result of implementation of the final action. In response to comment, NMFS also considered a modified version of alternative 2 that would apply the weak hook requirement seasonally. However, NMFS did not prefer this approach because BFT are also present in the GOM outside of the spawning season in lower numbers and seasonal application of the weak hook requirement would increase the difficulty of enforcing the weak hook requirement.

Under Alternative 3, which considers additional time/area closures in the GOM, some fishermen could be expected to shift effort to fishing areas outside the GOM and there could be changes in the distribution of the fleet with some fishermen possibly exiting the fishery. Predicting fishermen's behavior is difficult, especially as some factors that may determine whether to stay in the fishery, relocate, or leave the fishery are beyond NMFS' control (fuel prices, infrastructure, hurricanes, etc.). While some fishermen will continue to fish in the remaining open areas of the Atlantic, Caribbean, and GOM, others may be forced to leave the fishery entirely, such as selling their permits and going out of business, as a result of the closure. Changes in fishing patterns may result in fishermen having to travel greater distances to reach more favorable grounds, which would likely result in increased fuel, bait, ice, and crew costs. While there may be a potential increase in travel, this is unlikely to raise significant safety concerns because the fleet is highly mobile. The potential shift in fishing grounds, should it occur, could result in fishermen selecting new ports for offloading. This would likely have negative social and economic consequences for traditional ports of offloading, including processors, dealers, and supply houses, and positive social and economic consequences for any new selected ports of offloading. NMFS conducted a detailed, comprehensive socio-economic analysis for the time/area alternatives considered in the 2006 Consolidated HMS FMP and found that the economic impacts of each of the closures considered may be substantial, ranging in losses of up to several million dollars annually, depending upon the closure and displacement of a significant number of fishing vessels. Since the data analysis conducted in the 2006 Consolidated HMS FMP, several events have affected the GOM including Hurricane Katrina, Hurricane Rita, and the DWH/BP oil spill among other events. While social and economic impacts have likely occurred due to these events, NMFS believes the closure analysis in 2006 still reflects the substantial social and economic impacts that would be likely to occur under the time/area closures analyzed. Additionally, Alternative 3 does not meet all of the objectives of this final rule because it does not rapidly enhance BFT stock rebuilding by increasing BFT spawning potential and subsequent recruitment into the fishery (*i.e.,* rapidly implement the action to increase the survival of spawning BFT by spring 2011 in the GOM).

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Copies of the compliance guide for this final rule is available (see **ADDRESSES**).

Weak Hook Voucher Program

The National Fish and Wildlife Foundation (an independent 501(c)(3) non-profit that preserves and restores our nation's native wildlife species and habitats) is conducting a Weak Hook Voucher Program through which Atlantic Tuna Longline permit holders who use PLL gear in the GOM may obtain an initial supply of weak hooks. The National Fish and Wildlife Foundation will mail vouchers to Atlantic Tuna Longline permit holders that used PLL gear in the GOM in 2009–2010. Atlantic Tuna Longline permit holders that have not received the National Fish and Wildlife Foundation voucher in the mail by April 12, 2011, and are planning to fish with PLL gear in the GOM this year, may request a voucher by contacting Mary Beth Charles with the National Fish and Wildlife Foundation at 202–595–2445 or *Marybeth.charles@nfwf.org.* Weak hook vouchers are for hooks that will be used in the Gulf of Mexico and the National Fish and Wildlife Foundation will consider requests for vouchers on a case-by-case basis.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: March 31, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

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

■ 2. In § 635.2, the definition of "round wire stock" is added in alphabetical order to read as follows:

§ 635.2 Definitions.

* * * * *

Round wire stock means round metal wire, typically used in the manufacturing of fishing hooks, that has not been forged, or otherwise modified or treated in any way to increase the original factory tensile strength set by the hook manufacturer.

* * * * *

■ 3. In § 635.21, paragraph (c)(5)(iii)(C)(*2*)(*i*) is revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(C) * * *

(*2*) * * *

(*i*) For purposes of paragraphs (c)(5)(iii)(C)(*1*) and (c)(5)(iii)(C)(*2*) of this section, the outer diameter of an 18/0 circle hook at its widest point must be no smaller than 2.16 inches (55 mm), and the outer diameter of a 16/0 circle hook at its widest point must be no smaller than 1.74 inches (44.3 mm), when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis). The distance between the hook point and the shank (*i.e.,* the gap) on an 18/0 circle hook must be no larger than 1.13 inches (28.8 mm), and the gap on a 16/0 circle hook must be no larger than 1.01 inches (25.8 mm). The allowable offset is measured from the barbed end of the hook, and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side. The only allowable offset circle hooks are those that are offset by the hook manufacturer. In the Gulf of Mexico, as described at § 600.105(c), circle hooks also must be constructed of corrodible round wire stock that is no larger than 3.65 mm in diameter.

* * * * *

■ 4. In § 635.71, add paragraph (a)(54) to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(54) Possess, use, or deploy, in the Gulf of Mexico, any circle hook, other than as described at § 635.21(c). Vessels in the Gulf of Mexico, with pelagic gear onboard, are prohibited from possessing, using, or deploying circle hooks that are constructed of round wire stock which is larger than 3.65 mm in diameter (See: § 635.21(c)(5)(iii)(C)(*2*)(*i*)).

* * * * *

[FR Doc. 2011–8052 Filed 4–1–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0910051338–0151–02]

RIN 0648–XA304

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Trip Limit Adjustments for the Common Pool Fishery

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

ACTION: Temporary rule; inseason adjustment of landing limits.

SUMMARY: NMFS increases the possession limit for George's Bank (GB) cod, Cape Cod (CC)/Gulf of Maine (GOM) yellowtail flounder, and Southern New England (SNE)/Mid-Atlantic (MA) yellowtail flounder, and reduces the trip limit GOM cod and GOM winter flounder for Northeast (NE) multispecies common pool vessels for the 2010 fishing year (FY), through April 30, 2011. This action is authorized under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, and by the regulations implementing Amendment 16 and Framework Adjustment 44 to the NE Multispecies Fishery Management Plan (FMP). The action is intended to facilitate the harvest of GB cod, CC/GOM yellowtail flounder, and SNE/MA yellowtail to allow the total catch of these stocks to approach the pertinent common pool sub-annual catch limits (sub-ACLs). This action is also intended to reduce catch rates of GOM cod and GOM winter flounder by NE common pool vessels and minimize additional overharvest of these stocks relative to the pertinent common pool sub-ACLs.

DATES: The trip limit increases for GB cod and SNE/MA and CC/GOM yellowtail flounder are effective March 31, 2011, through April 30, 2011. The trip limits reductions for GOM cod and GOM winter flounder are effective April 5, 2011, through April 30, 2011.

FOR FURTHER INFORMATION CONTACT: Sarah Heil, Fishery Policy Analyst, (978) 281–9257, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the NE multispecies fishery are found at 50 CFR 648 subpart F. The regulations at § 648.86(o) authorize the NE Regional Administrator (RA) to adjust the possession limits for common pool vessels in order to optimize the harvest of NE regulated multispecies by preventing the overharvest or underharvest of the pertinent common pool sub-ACLs. For FY 2010, the common pool sub-ACLs for GB cod, GOM cod, CC/GOM yellowtail flounder, SNE/MA yellowtail flounder, and GOM winter flounder are: 128 mt (282,192 lb); 240 mt (529,109 lb); 50 mt (110,231 lb); 75 mt (165,347 lb), and 25 mt (55,116 lb), respectively. The current possession limit for GB cod is 2,000 lb (907.2 kg) per day-at-sea (DAS) up to 20,000 lb (9,071.8 kg) per trip, and the current possession limit for CC/GOM yellowtail flounder and SNE/MA yellowtail flounder is 250 lb (113.4 kg) per DAS up to 1,500 lb (680.4 kg) per trip. The current possession limits for GOM cod and GOM winter flounder are: 100 lb (45.4 kg) per DAS up to 1,000 lb (453.6 kg) per trip and 250 lb (113.4 kg) per trip, respectively.

The initial limit for GOM cod set by Amendment 16 was 800 lb (362.9 kg) per DAS up to 4,000 lb (1,814.5 kg) per trip. An inseason action published in the **Federal Register** on May 27, 2010 (75 FR 29678), reduced the common pool trip limits for five stocks: GOM haddock, GB haddock, GOM winter flounder, GB winter flounder, and GB yellowtail flounder. A subsequent action (75 FR 44924, July 30, 2010) reduced the trip limit for GOM cod to 200 lb (90.7 kg) per DAS up to 1,000 lb (453.6 kg) per trip and imposed a gear restriction in the U.S./Canada Management Area to reduce catch of GB yellowtail flounder. A September 2, 2010, inseason action (75 FR 53872) imposed 2:1 differential DAS counting in the Inshore GOM, Offshore GOM, Inshore GB, and Offshore GB Differential DAS Areas to reduce effort on GOM cod, white hake, and witch flounder. A fourth action (75 FR 59154, September 27, 2010) further reduced the GOM cod trip limit to 100 lb (45.4 kg) per DAS. No inseason adjustments have been made to the possession limits for GB cod, CC/GOM yellowtail flounder, or SNE/MA yellowtail flounder for FY 2010.

As of March 24, 2011, the best available catch information, including Vessel Monitoring System (VMS) reports and dealer reports, indicated that approximately 44 percent of the GB cod, 67 percent of the CC/GOM yellowtail flounder, 24 percent of the SNE/MA yellowtail flounder, 102 percent of the GOM cod, and 100 percent of the GOM winter flounder common pool sub-ACLs has been harvested. Based on this information, the RA determined that additional measures are needed to facilitate the harvest of GB cod, CC/GOM yellowtail flounder, and SNE/MA yellowtail flounder to help allow the total catch of these stocks by common pool vessels to approach the pertinent common pool sub-ACLs. Conversely, the RA determined that additional measures are needed to slow catch rates of GOM cod and GOM winter flounder by common pool vessels. Therefore, the trip limit for GB cod is increased to 3,000 lb (1,360.8 kg) per DAS up to 30,000 lb (13,607.8 kg) per trip, and the trip limit for CC/GOM yellowtail flounder and SNE/MA yellowtail flounder is increased to 750 lb (340.2 kg) per DAS up to 3,000 lb (1,360.8 kg) per trip for common pool vessels, effective March 31, 2011 through April 30, 2011. In addition, the trip limit for GOM cod is reduced to 100 lb (45.4 kg) per trip, and the trip limit for GOM winter flounder is reduced to 100 lb (45.4 kg) per trip for common pool vessels, effective April 5, 2011, through April 30, 2011. This action does not change the current cod trip limit for vessels with a Handgear A (50 lb (22.7 kg) per trip), Handgear B (25 lb (11.3 kg) per trip), or Small Vessel Category (75 lb (34.0 kg) per trip of cod within the limit of 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder combined) permit. This action does change the GOM winter flounder trip limit for vessels with a Handgear A, Handgear B, or Small Vessel Category permit to 100 lb (45.4 kg) per trip). The trip limit adjustments implemented through this action are detailed in the table below. Catch will continue to be monitored through dealer-reported landings, VMS catch reports, and other available information, and if necessary, additional adjustments to common pool management measures may be made.

Stock	Old possession/trip limit	New possession/trip limit
CC/GOM yellowtail flounder	250 lb (113.4 kg) per DAS up to 1,500 lb (680.4 kg) per trip.	750 lb (340.2 kg) per DAS up to 3,000 lb (1,360.8 kg) per trip.
SNE yellowtail flounder	250 lb (113.4 kg) per DAS up to 1,500 lb (680.4 kg) per trip.	750 lb (340.2 kg) per DAS up to 3,000 lb (1,360.8 kg) per trip.
GB cod	2,000 lb (907.2 kg) per DAS up to 20,000 lb (9,071.8 kg) per trip.	3,000 lb (1,360.8 kg) per DAS up to 30,000 lb (13,607.8 kg) per trip.
GOM cod	100 lb (45.4 kg) per DAS up to 1,000 lb (453.6 kg) per trip.	100 lb (45.4 kg) per trip.
GOM winter flounder	250 lb (113.4 kg) per trip	100 lb (45.4 kg) per trip.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3) to waive prior notice and the opportunity for public comment, as well as delayed effectiveness, for this inseason adjustment because notice, comment, and a delayed effectiveness would be impracticable and contrary to the public interest. The regulations at § 648.86(o) grant the RA authority to adjust the NE multispecies possession limits for common pool vessels in order to prevent the overharvest or underharvest of the pertinent common pool sub-ACLs. This action increases the possession limit for GB cod, CC/GOM yellowtail flounder, and SNE/MA yellowtail flounder to facilitate the harvest of these stocks, as well as reduces the trip limits for GOM cod and GOM winter flounder to minimize overharvest of the common pool sub-ACLs for these stocks. Catch data upon which this action is based have only recently become available. The time necessary to provide for prior notice and comment, and delayed effectiveness for this action, would prevent NMFS from implementing the necessary possession limit adjustments in a timely manner. A resulting delay in the liberalization of possession limits would unnecessarily restrain catch rates for GB cod, CC/GOM yellowtail flounder, and SNE/MA yellowtail flounder, thereby preventing the total catch of these stocks to approach the pertinent common pool

sub-ACLs. In addition, a resulting delay in the curtailment of the catch rates of GOM cod and GOM winter flounder could increase the amount of overharvest of GOM cod, or cause the GOM winter flounder sub-ACL to be exceeded, thereby undermining the conservation objectives of the FMP.

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

Dated: March 31, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–8056 Filed 3–31–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA347

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the B season allowance of the 2011 Pacific cod allowable catch (TAC) specified for catcher vessels using trawl gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 4, 2011, through 1200 hrs, A.l.t., June 10, 2011.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The B season allowance of the 2011 Pacific cod TAC allocated to catcher vessels using trawl gear in the BSAI is 4,949 metric tons (mt) as established by the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the B season allowance of the 2011 Pacific cod TAC allocated to catcher vessels using trawl gear in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,449 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 30, 2011.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 31, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–8058 Filed 3–31–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 65
Tuesday, April 5, 2011

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1221; Directorate Identifier 2008–NM–097–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 767 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for the products listed above. That NPRM proposed to require installing new panel assemblies in the main equipment center or on the forward cargo compartment sidewall and removing certain relays from some panels in the main equipment center. That NPRM also proposed to require revising the maintenance program to incorporate Airworthiness Limitations (AWLs) No. 28–AWL–27 and No. 28–AWL–28. That NPRM was prompted by fuel system reviews conducted by the manufacturer. For certain airplanes, this action revises that NPRM by proposing to require prior or concurrent installation of a second fuel crossfeed valve. This action also revises that NPRM by proposing an alternative location for the installation of the new panel assemblies for airplanes that have the optional water system drain plumbing and changing the interconnecting wiring between the P141 panel and the P36 and P37 panels. For airplanes with a deactivated center fuel tank, this action revises that NPRM by proposing an alternative functional test for the left and right override/jettison pumps. We are proposing this supplemental NPRM to prevent possible sources of ignition in a fuel tank caused by electrical fault or uncommanded dry operation of the main tank boost pumps and center auxiliary tank override and jettison pumps. An ignition source in the fuel tank could result in a fire or an explosion and consequent loss of the airplane. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this supplemental NPRM by May 2, 2011.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6478; fax (425) 917–6590; e-mail *elias.natsiopoulos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–1221; Directorate Identifier 2008–NM–097–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes. That NPRM published in the **Federal Register** on December 29, 2009 (74 FR 68743). That NPRM proposed to require installing new panel assemblies in the main equipment center or on the forward cargo compartment sidewall and removing certain relays from some panels in the main equipment center. That NPRM also proposed to require revising the maintenance program to incorporate Airworthiness Limitations (AWLs) No. 28–AWL–27 and No. 28–AWL–28.

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, the manufacturer has notified us that certain airplanes affected by the original NPRM have the optional water system drain plumbing. This optional system was not addressed in Boeing Alert Service Bulletin 767–28A0085, dated

January 10, 2008; or Boeing Service Bulletin 767–28A0085, Revision 1, dated June 25, 2009; which we referred to as appropriate sources of service information for accomplishing the proposed actions. Several operators attempted to accomplish the actions and encountered equipment installation interference. Specifically, the installation of the new P141 panel at the location specified in either revision of the service bulletin interferes with the optional water system drain plumbing.

We have revised the supplemental NPRM to refer to Boeing Service Bulletin 767–28A0085, Revision 2, dated August 19, 2010.

Boeing Service Bulletin 767–28A0085, Revision 2, dated August 19, 2010, specifies the following changes:

- For airplanes equipped with the optional water system drain plumbing: An alternate location is specified for the installation of the P141 panel. The interconnecting wiring between the P141 panel and the P36 and P37 panels is also changed due to the relocation of the P141 panel.
- For airplanes with a deactivated center fuel tank (alternately referred to as the center auxiliary fuel tank): An alternative functional test is added for the left and right override/jettison pumps.
- For airplanes having line positions 1 through 430: Installation of a second fuel crossfeed valve is added as a prior or concurrent action. This installation is specified to be done in accordance with Boeing Service Bulletin 767–28–0034, Revision 3, dated March 14, 1996.
- Additional error corrections and clarifications, including clarifications of wiring configurations and routing, and increased work-hours for airplanes with the optional water system drain plumbing.

Explanations of Additional Changes to the Original NPRM

We have added a new paragraph (d) to this supplemental NPRM to provide the Air Transport Association (ATA) of America subject code 28, Fuel. This code is added to make this supplemental NPRM parallel with other new AD actions. We have reidentified subsequent paragraphs accordingly.

We have included the cost of the prior/concurrent installation of the second crossfeed valve.

We have also removed Table 1 and fully cited the service information that was specified in the table. We reidentified the subsequent table.

As noted above, we have added certain paragraphs to the supplemental NPRM and, since we issued the original NPRM, the format has been revised, and certain other paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed from the original NPRM in this supplemental NPRM, as listed in the table titled "Revised Paragraph Identifiers." In the disposition of comments we will refer to the relevant paragraph of the original NPRM or the supplemental NPRM, depending on context.

REVISED PARAGRAPH IDENTIFIERS

Paragraph in the original NPRM	Corresponding or new paragraph in the supplemental NPRM
none	paragraph (d)—new ATA code.
paragraph (d)	paragraph (e).
paragraph (e)	paragraph (f).
paragraph (f)	paragraph (g).
none	paragraph (h)—exception.
paragraph (g)	paragraph (i).
none	paragraph (j)—new concurrent requirement.
paragraph (h)	paragraph (k).
paragraph (i)	paragraph (l).
paragraph (j)	paragraph (m).
none	paragraph (n)—new paragraph for credit for actions accomplished in accordance with previous service information.
paragraph (k)	paragraph (o).

Comments

We gave the public the opportunity to comment on the original NPRM. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Add Service Information to Table 1 of the Original NPRM

Japan Airlines (JAL) requested that we revise Table 1 in paragraph (g) of the original NPRM to include the original versions of two service bulletins as sources of service information. JAL pointed out that these two service bulletins are referred to in AD 2009–16–06, amendment 39–15989, which is the subject of paragraph (g) of the original NPRM.

We agree with JAL's request. We have included a new Table 2 in this supplemental NPRM to include Boeing Alert Service Bulletin 767–28A0083, dated May 3, 2006; and Boeing Alert Service Bulletin 767–28A0084, dated May 3, 2006. Both of these service bulletins are acceptable for compliance with the requirements of AD 2009–16–06. Although Boeing Service Bulletin 767–28A0083, dated May 3, 2006, is identified in Paragraph 1.B., "Concurrent Requirements," of Boeing Service Bulletin 767–28A0085, Revision 2, dated August 19, 2010, Boeing Alert Service Bulletin 767–28A0084, dated May 3, 2006, is not listed in Paragraph 1.B. of Boeing Service Bulletin 767–28A0085, Revision 2, dated August 19, 2010. We have coordinated this difference with Boeing.

Requests To Refer to R1 of AD 2008–11–01

JAL, Continental Airlines (CAL), United Airlines (UAL), and UPS pointed out that although paragraph (i) of the original NPRM proposed the option of incorporating paragraph (g)(2) of AD 2008–11–01, amendment 39–15523 (73 FR 29414, May 21, 2008), that AD has since been revised to AD 2008–11–01 R1, amendment 39–16145 (74 FR 68515, December 28, 2009).

We agree with the requests to refer to AD 2008–11–01 R1, amendment 39–16145. We issued the revision to AD 2008–11–01 to clarify the AD's intended effect on spares and on-airplane fuel tank system components, regarding the use of maintenance manuals and instructions for continued airworthiness. The actions required by AD 2008–11–01 R1 are consistent with paragraph (j) of the original NPRM, which states that "after accomplishing the actions specified in paragraph (i) of this AD, no alternative inspections or inspection intervals may be used." We have changed paragraph (l) of this supplemental NPRM to refer to AD 2008–11–01, amendment 39–15523, and AD 2008–11–01 R1, amendment 39–16145.

Requests for Clarification of Date of Maintenance Planning Data (MPD) Document

Several commenters requested clarification of the intent of the "Revision March 2009" date of Boeing 767 Maintenance Planning Data (MPD) Document, Section 9, D622T001–9, Revision March 2009, referred to in the original NPRM.

- JAL stated that the revision should be Revision April 2009 or Revision August 2009 because it does not appear that Revision March 2009 was issued.
- CAL believed that the date should be Revision May 2009.
- UAL asked if the intent of the proposed rule is to override the requirements of AD 2008–11–01 R1 in that only Revision May 2009 may be used for compliance. UAL stated that it believed that operators should be allowed to use either Revision April 2008 or Revision May 2009, and that paragraph (h) of the original NPRM should be revised accordingly.
- UPS pointed out that as an optional action in AD 2008–11–01 R1, AWLs No.

28–AWL–27 and No. 28–AWL–28 may be incorporated into the maintenance program as identified in Revision April 2008 or Revision May 2009 of the MPD. UPS was unclear as to whether the original NPRM would supersede the previous option by requiring that only Revision March 2009 be used. UPS further stated that AD 2008–11–01 R1 notes that the changes in Revision May 2009 are for clarification only and that either Revision April 2008 or Revision May 2009 are acceptable for use.

We agree that the date of the MPD document needs to be clarified. AWLs No. 28–AWL–27 and No. 28–AWL–28 were added to Boeing 767 Maintenance Planning Data (MPD) Document, Section 9, D622T001–9, in Revision October 2007. None of the revisions of this MPD document since that time have changed the text of AWLs No. 28–AWL–27 and No. 28–AWL–28. Therefore, either of the revisions mentioned in AD 2008–11–01 R1, Revision April 2008 or Revision May 2009, may be used to update the maintenance program to incorporate AWLs No. 28–AWL–27 and No. 28–AWL–28. We have revised paragraph (k) of this supplemental NPRM to specify that Revision April 2008, Revision March 2009, or Revision May 2009, may be used.

Request To Extend Compliance Time

CAL had no technical objection to the original NPRM, but pointed out that although the compliance time for accomplishing the actions proposed in the original NPRM is 60 months, the concurrent requirements from AD 2009–16–06, which is specified as terminating action for paragraph (g) of the original NPRM, have a compliance time of 36 months. CAL stated that doing the actions in AD 2009–16–06 requires extensive airplane modifications and material allocations that can only be accomplished during a heavy check or special maintenance hold. Therefore, CAL requested that we consider a minor extension to the compliance time in AD 2009–16–06.

We disagree with approving an extension to the compliance time for AD 2009–16–06 through this supplemental NPRM. However, we will consider requests for an adjustment to the compliance time under the provisions of paragraph (o) of AD 2009–16–06 if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. We have not changed the supplemental NPRM in this regard.

Request To Remove Paragraph (g) of the Original NPRM

Boeing requested that we consider removing paragraph (g) from the original NPRM. Paragraph (g) of the original NPRM is the concurrent installation of an automatic shutoff system for the auxiliary fuel tank pump. Boeing explained that the safety conditions and fixes associated with references to Boeing Service Bulletin 767–28A0083, Revision 2, dated February 12, 2009; or Boeing Service Bulletin 767–28A0084, Revision 1, dated April 26, 2007; are already mandated by AD 2009–16–06, and by the instructions in paragraph (f) of the original NPRM with implementation of Boeing Service Bulletin 767–28A0085, Revision 2, dated August 19, 2010. Boeing stated that future changes to paragraph (g) of the original NPRM would require alternative methods of compliance (AMOCs) and create added paperwork for Boeing, the airlines, and the FAA.

We disagree with the request to remove paragraph (g) of the original NPRM. Accomplishing the actions proposed in the original NPRM for the center fuel tank pump system depend on the configuration of the center fuel tank pump system of the affected airplanes as modified by the accomplishment of the actions specified in the service information identified in paragraph (g) of the original NPRM. Therefore, airplanes in the effectivity of the service bulletins identified in Table 1 of this supplemental NPRM must have the actions done prior to or concurrently with the actions proposed in paragraph (g) of this supplemental NPRM. If we remove paragraph (i) of this supplemental NPRM, there is no assurance that the center fuel tank pump system for the affected airplanes would be in the correct configuration during the accomplishment of the actions proposed in paragraph (g) of this supplemental NPRM.

Should the service information specified in paragraph (i) of this supplemental NPRM change in a way that affects the ground fault interrupt (GFI) relays and uncommanded-on protective feature, under the provisions of paragraph (o) of this supplemental NPRM, we will consider requests for approval of an AMOC if sufficient data are submitted to substantiate that the design change would provide an acceptable level of safety. We have not changed this supplemental NPRM in this regard.

Request To Remove Paragraphs (h), (i), and (j) of the Original NPRM

All Nippon Airways (ANA) requested that we remove the proposed requirements of paragraphs (h), (i), and (j) of the original NPRM, which specify incorporating AWLs No. 28–AWL–27 and No. 28–AWL–28 into the maintenance program. ANA stated that these AWLs have already been introduced in the airline maintenance program as required by AD 2008–11–01 R1.

We disagree with the request to remove paragraphs (k), (l), and (m) of the supplemental NPRM (paragraphs (h), (i), and (j) of the original NPRM). Incorporating AWLs No. 28–AWL–27 and No. 28–AWL–28 into the maintenance program in accordance with AD 2008–11–01 R1 is an option, not a requirement. Operators may or may not decide to exercise this option. The actions proposed in paragraph (k) of this supplemental NPRM remain applicable. However, paragraph (l) of this supplemental NPRM gives credit to operators of the affected airplanes that chose the optional action; doing the optional action terminates the actions proposed in paragraph (k) of this supplemental NPRM. We have not changed this supplemental NPRM in this regard.

Request To Define Unsafe Condition and Corrective Actions Clearly

TDG Aerospace (TDG) requested that we revise the text of the original NPRM to reflect the construction of a typical NPRM. TDG stated that in that construction, the FAA typically discusses the unsafe condition, describes the desired corrective action, and then refers to the manufacturer's service information for approved instructions for doing the corrective action. TDG pointed out that the intent of the original NPRM is effectively masked by focusing on the "Installation of Panel Assemblies and Removal of Relays." TDG said this suggests that the FAA intends to mandate "Installation of Panel Assemblies and Removal of Relays" as a desired corrective action for the unsafe condition identified in paragraph (d) of the original NPRM. TDG argued that the corrective action is the installation of an uncommanded-on protection system and installation of GFI relays. TDG stated that installing new panels and removing relays is simply one method of achieving the corrective action. TDG further stated that the language of the rule is important with respect to the application for AMOCs and said it would be more straightforward for

AMOC applicants to show an equivalent level of safety to installing uncommanded-on protection and GFI relays as opposed to showing an equivalent level of safety to installation of panel assemblies and removal of relays.

We partially agree with TDG's request for clarification. We disagree that the order of the supplemental NPRM should be revised. The unsafe condition and the intent of the proposed rule are described in the Summary and Discussion sections and paragraph (d) of the original NPRM. The heading "Installation of Panel Assemblies and Removal of Relays" is a descriptive title only and not the enforceable language of paragraph (f) of the original NPRM. However, we agree that some clarification of the P140 and P141 assemblies is necessary. These panel assemblies are preassembled modules that contain the GFI relays and the center fuel tank override/jettison pumps un-commanded ON protective features. We have included in the Summary and Discussion sections of the supplemental NPRM the words "* * * main equipment center or on the forward cargo compartment sidewall and removing certain relays from some panels in the main equipment center." We have also revised the wording in paragraph (g) of this supplemental NPRM to reflect a similar wording.

Request for Clarification of Prior or Concurrent Actions for Airplanes With Deactivated Center Fuel Tank

TDG pointed out that paragraph (j) of AD 2009–16–06 provides for optional terminating action for paragraphs (f), (h), and (i) of that AD via deactivation of the center fuel tank. TDG expressed concern that operators that deactivate the center tank will not be able to do the modifications proposed in the original NPRM without prior or concurrent installation of the automatic shutoff system in accordance with the actions in proposed paragraph (g) of the original NPRM. TDG stated that requiring operators to install an automatic shutoff system on an airplane with a deactivated center tank effectively eliminates the center tank deactivation as an optional terminating action for AD 2009–16–06.

We infer from TDG's comments that it sees a conflict between the original NPRM and AD 2009–16–06, amendment 39–15989, that would invalidate certain provisions of that AD. We disagree. We note that paragraph (g) of the original NPRM proposed to require changes to all affected airplanes, whether the airplanes have an active center fuel tank (with changes made per paragraphs (f), (h), and (i) of AD 2009–16–06), or a deactivated center fuel tank (as allowed by paragraph (j) of AD 2009–16–06). Changes made per Boeing Service Bulletin 767–28A0085, Revision 2, dated August 19, 2010, can be made on airplanes in either configuration, and this service bulletin includes instructions for testing of an airplane with a deactivated center fuel tank (reference Step 3.B.29.e. of the Accomplishment Instructions of this service bulletin). If a deactivated center fuel tank is later reactivated, the requirements in paragraph (i) of AD 2009–16–06 must be done. We have not changed the supplemental NPRM in this regard.

FAA's Determination

We are proposing this supplemental NPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. Certain changes described above expand the scope of the original NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Proposed Requirements of the Supplemental NPRM

This supplemental NPRM would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD will affect 416 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation of GFI equipment and wiring.	Between 216 and 279 work-hours × $85 per hour = between $18,360 and $23,715.	Between $52,285 and $53,123.	Between $70,645 and $76,838.	Up to $31,964,608.
Installation of second crossfeed valve (prior/concurrent action).	Between 274 and 302 work-hours × $85 per hour = between $23,290 and $25,670.	Between $30,838 and $66,903.	Between $54,128 and $92,573.	Between $22,517,248 and $38,510,368.
Installing automatic shutoff system (prior/concurrent action; required by AD 2009–16–06).	Between 3 and 29 work-hours × $85 per hour = between $255 and $2,465.	Between $421 and $9,374.	Between $676 and $11,835.	Between $281,216 and $4,925,024.
Revising the maintenance program.	1	None	$85	$35,360.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2009–1221; Directorate Identifier 2008–NM–097–AD.

Comments Due Date

(a) We must receive comments by May 2, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category; as identified in Boeing Service Bulletin 767–28A0085, Revision 2, dated August 19, 2010.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (o) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 28, Fuel.

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent possible sources of ignition in a fuel tank caused by electrical fault or uncommanded dry operation of the main tank boost pumps and center auxiliary tank override and jettison pumps. An ignition source in the fuel tank could result in a fire or an explosion, and consequent loss of the airplane.

Compliance

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

Installation of Panel Assemblies and Removal of Relays

(g) Within 60 months after the effective date of this AD, install ground fault interrupt relays (P140 and P141 panel assemblies) and all applicable parts and components in the main equipment center or in the forward cargo compartment sidewall, as applicable, and remove the fuel boost pump control relays from the P33, P36, and P37 panels, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–28A0085, Revision 2, dated August 19, 2010, except as required by paragraph (h) of this AD.

Exception to Service Bulletin

(h) Although paragraph 3.B.29.e. of the Accomplishment Instructions of Boeing Service Bulletin 767–28A0085, Revision 2, dated August 19, 2010, specifies an alternative functional test of the left and right center override pumps as an option, this AD requires that test for airplanes on which the center tank is deactivated.

Prior/Concurrent Installations

(i) For airplanes identified in paragraph 1.A.1. of Boeing Service Bulletin 767–28A0083, Revision 2, dated February 12, 2009; or Boeing Service Bulletin 767–28A0084, Revision 1, dated April 26, 2007: Prior or concurrently with accomplishing the action required by paragraph (g) of this AD, install an automatic shutoff system for the auxiliary fuel tank pump, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–28A0083, Revision 2, dated February 12, 2009; or Boeing Service Bulletin 767–28A0084, Revision 1, dated April 26, 2007; as applicable. Accomplishing the requirements of AD 2009–16–06, amendment 39–15989, terminates the requirements of this paragraph.

(j) For airplanes having line positions 1 through 430: Prior or concurrently with accomplishing the action required by paragraph (g) of this AD, install a second fuel crossfeed valve, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–28–0034, Revision 3, dated March 14, 1996.

Maintenance Program Revision

(k) Concurrently with accomplishing the actions required by paragraph (g) of this AD, or within 30 days after the effective date of this AD, whichever occurs later: Revise the maintenance program by incorporating Airworthiness Limitations (AWLs) No. 28–AWL–27 and No. 28–AWL–28 of Section 9 ("AIRWORTHINESS LIMITATIONS (AWLs) AND CERTIFICATION MAINTENANCE REQUIREMENTS (CMRs)") of the Boeing 767 Maintenance Planning Data (MPD) Document, D622T001–9, Revision April 2008; Revision March 2009; or Revision May 2009. The initial compliance time for the actions specified in AWLs No. 28–AWL–27 and No. 28–AWL–28 is within 1 year after accomplishing the installation required by paragraph (g) of this AD, or within 1 year after the effective date of this AD, whichever occurs later.

Terminating Action for AWLs Revision

(l) Incorporating AWLs No. 28–AWL–27 and No. 28–AWL–28 into the maintenance program in accordance with paragraph (g)(2) of AD 2008–11–01, amendment 39–15523, or paragraph (g)(2) of 2008–11–01 R1, amendment 39–16145, terminates the action required by paragraph (k) of this AD.

No Alternative Inspections or Inspection Intervals

(m) After accomplishing the actions specified in paragraph (k) of this AD, no alterative inspections or inspection intervals may be used unless the inspections or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (o) of this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(n) Actions done before the effective date of this AD in accordance with the service information identified in Table 1 of this AD are acceptable for compliance with the corresponding requirements of this AD.

TABLE 1—CREDIT SERVICE INFORMATION

Boeing Service Bulletin	Revision	Date
Boeing Alert Service Bulletin 767–28A0085	Original	January 10, 2008.
Boeing Service Bulletin 767–28A0085	1	June 25, 2009.
Boeing Alert Service Bulletin 767–28A0083	Original	May 3, 2006.
Boeing Service Bulletin 767–28A0083	1	April 26, 2007.
Boeing Alert Service Bulletin 767–28A0084	Original	May 3, 2006.
Boeing Service Bulletin 767–28–0034	2	May 4, 1995.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(p) For more information about this AD, contact Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6478; fax (425) 917–6590; e-mail *elias.natsiopoulos@faa.gov*.

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

Issued in Renton, Washington, on March 24, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–8066 Filed 4–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0184]

RIN 1625–AA00

Safety Zone, Newport River; Morehead City, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes the establishment a safety zone on the waters of the Newport River under the main span US 70/Morehead City—Newport River high rise bridge in Carteret County, NC. This safety zone is necessary to provide for safety of life on navigable waters during the establishment of staging for bridge maintenance. This rule will enhance the safety of the contractors performing maintenance as well as the safety vessels that plan to transit this area.

DATES: Comments and related material must be received by the Coast Guard on or before May 5, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0184 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. *See* the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail BOSN3 Joseph M. Edge, Coast Guard Sector North Carolina, Coast Guard; telephone 252–247–4525, e-mail *Joseph.M.Edge@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0184), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu

select "Proposed Rule" and insert "USCG–2011–0184" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0184" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The State of North Carolina Department of Transportation awarded a contract to Astron General Contracting Company of Jacksonville, NC to perform bridge maintenance on the US Highway 70 Fixed bridge crossing Newport River at Morehead City, North Carolina. The contract provides for cleaning, painting, and steel repair to begin on June 1, 2011 and will be completed by July 31, 2011. The contractor requires the main channel in the vicinity of the bridge to remain closed during mobilization on June 30, 2011 from 10 a.m. to 4 p.m. The Coast Guard will temporarily restrict access to this section of Newport River during the mobilization of the bridge maintenance equipment.

Discussion of Proposed Rule

The temporary safety zone will encompass the waters of the Newport River directly under, latitude 34°43′15″ North, longitude 076°41′39″ West, and 100 yards on either side of the US Highway 70 Fixed bridge. All vessels are prohibited from transiting this section of the waterway while the safety zone is in effect. Entry into the safety zone will not be permitted except as specifically authorized by the Captain of the Port or a designated representative. To seek permission to transit the area, mariners may contact Sector North Carolina at (252) 247–4570. This zone will be enforced from 10 a.m. to 4 p.m. on June 30, 2011.

Regulatory Analyses

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

Executive Order 12866 and Executive Order 13563

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

Although this regulation will restrict access to the area, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited time, from 10 a.m. to 4 p.m., on June 30, 2011, (ii) the Coast Guard will give advance notification via maritime advisories so mariners can adjust their plans accordingly, and (iii) although the safety zone will apply to the section of the Newport River in the immediate vicinity of the US Highway 70 Fixed bridge, vessel traffic may use alternate waterways to transit safely around the safety zone. All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of recreational and fishing vessels intending to transit the specified portion of Newport River from 10 a.m. to 4 p.m. on June 30, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will only be in effect for six hours from 10 a.m. to 4 p.m. Although the safety zone will apply to the section of the Newport River in the vicinity of the bridge, vessel traffic may use alternate waterways to transit safely around the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CWO3 Joseph Edge, Waterways Management Division Chief, Sector North Carolina, at (252) 247–4525. The Coast Guard will not retaliate against small entities that

question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule is categorically excluded, under figure 2–1, paragraph (34)(g), of this instruction. This proposed rule involves the establishment of a temporary safety zone to protect the public from bridge maintenance operations. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T05–0184 to read as follows:

§ 165.T05–0184 Safety Zone: Newport River, Morehead City, North Carolina.

(a) *Definitions.* For the purposes of this section, Captain of the Port means the Commander, Sector North Carolina. *Representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) *Location.* The following area is a safety zone: This zone includes the waters of Newport River directly under, latitude 34°43′15″ North, longitude 076°41′39″ West, and 100 yards on either side of the U.S. Highway 70 Fixed bridge at Morehead City, North Carolina.

(c) *Regulations.* (1) The general regulations contained in § 165.23 of this part apply to the area described in paragraph (b) of this section.

(2) Persons or vessels requiring entry into or passage through any portion of the safety zone must first request authorization from the Captain of the Port, or a designated representative, unless the Captain of the Port previously announced via Marine Safety Radio Broadcast on VHF Marine Band Radio channel 22 (157.1 MHz) that this regulation will not be enforced in that portion of the safety zone. The Captain of the Port can be contacted at telephone number (252) 247–4570 or by radio on

VHF Marine Band Radio, channels 13 and 16.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 10 a.m. to 4 p.m. on June 30, 2011 unless cancelled earlier by the Captain of the Port.

Dated: March 23, 2011.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2011–8005 Filed 4–4–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0168]

RIN 1625–AA00

Safety Zone; Big Rock Blue Marlin Air Show; Bogue Sound, Morehead City, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary Safety Zone for the "Big Rock Blue Marlin Air Show", an aerial demonstration to be held over the waters of Bogue Sound, adjacent to Morehead City, North Carolina. This Safety Zone is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on the Intracoastal Waterway from 7 p.m. until 8 p.m.

DATES: Comments and related material must be received by the Coast Guard on or before May 5, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0168 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. *See* the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail BOSN3 Joseph M. Edge, Prevention Department, Coast Guard Sector North Carolina; telephone 252–247–4525, e-mail *Joseph.M.Edge@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0168), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2011–0168" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0168" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

On June 11, 2011 from 7 p.m. to 8 p.m., the Big Rock Blue Marlin Tournament will sponsor the "Big Rock Blue Marlin Air Show" consisting of an aerial demonstration to take place directly above the waters of Bogue Sounds including the waters of the Intracoastal Waterway adjacent to Morehead City, North Carolina. To

provide for the safety of the spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during this event.

Discussion of Proposed Rule

The Coast Guard is proposing to establish a temporary safety zone that will restrict vessel movement for one hour prior to the event on the specified waters of Bogue Sound, Morehead City, NC. During the enforcement period, while the Aerial Event is taking place, no vessel will be allowed to transit the waterway unless the vessel is given permission from the Patrol Commander to transit. This safety zone will be enforced from 7 p.m. to 8 p.m. on June 11, 2011.

Regulatory Analyses

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

Executive Order 12866 and Executive Order 13563

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation prevents traffic from transiting waters of Bogue Sound during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notification will be made to the maritime community via marine information broadcast and local area newspapers so mariners can adjust their plans accordingly. Vessel traffic will be able to transit the regulated area before and after the event, when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners of operators of vessels intending to transit this section of the Bogue Sound from 7 p.m. to 8 p.m. on June 11, 2011. This safety zone would not have significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and this subject to enforcement, for only 1 hour in the evening. Vessel traffic will be able to transit the area immediately prior to and immediately following the enforcement period. Before the activation of the zone, we would issue maritime advisories widely to users of the waterway.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact BOSN3 Joseph Edge, Prevention Department, Sector North Carolina, 252–247–4525. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of

energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule is categorically excluded, under figure 2–1, paragraph (34)(g), of this instruction. The special local regulation is necessary to provide for the safety of the general public and event participants from potential hazards associated with vessels present on or transiting upon this waterway. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 165–T05–0168 to read as follows:

165.T05–0168 Safety Zone: Big Rock Blue Marlin Air Show, Bogue Sound, Morehead City, NC.

(a) *Regulated Area.* The following area is a safety zone: Specified waters of the Captain of the Port Sector North Carolina, as defined in 33 CFR 3.25–20, in the navigable waters of Bogue Sound within an area bound by a line drawn from the following points: Latitude 34°43′09.9″ N, longitude 076°45′54.9″ W; thence east to latitude 34°43′09.75″ N, longitude 076°44′34.16″ W; thence south to latitude 34°42′52.64″ N, longitude 076°44′32.55″ W; thence west to latitude 34°42′50.7″ N, longitude 076°45′48.5″ W; thence to the point of origin, located approximately 400 yards south of the shoreline of Morehead City.

(b) *Definition:* For the purposes of this section, Captain of the Port means the Commander, Sector North Carolina. *Representative* means any U.S. Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Sector North Carolina to act on his behalf.

(c) *Regulations:* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Sector North Carolina or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall: (i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Sector North Carolina can be reached through the Sector Duty Officer at Sector North Carolina in Atlantic Beach, North Carolina at telephone number (252) 247–4570.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement Period.* This section will be enforced from 7 p.m. until 8 p.m. on June 11, 2011.

Dated: March 23, 2011.

Anthony Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2011–7994 Filed 4–4–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0803]

RIN 1625–AA87

Security Zones; Sector Southeastern New England Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a permanent regulation that would create security zones around cruise ships in the Southeastern New England Captain of the Port (COTP) Zone. These security zones are nearly identical to security zones currently put in place by a temporary final rule. The proposed rule would create a 100-yard radius security zone encompassing all navigable waters around any cruise ship anchored or moored and 200-yard radius security zone encompassing all navigable waters around any cruise ship underway that is being escorted by Coast Guard or law enforcement agencies assisting the Coast Guard. These zones are needed to protect cruise ships and the public from destruction, loss, or injury from sabotage, subversive acts, or other malicious acts of a similar nature. Persons or vessels may not enter these security zones without permission of the COTP or a COTP designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before May 5, 2011. Requests for public meetings must be received by the Coast Guard on or before April 12, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0803 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey

Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. *See* the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Mr. Edward G. LeBlanc, Chief, Waterways Management Division, Coast Guard Sector Southeastern New England, at 401–435–2351, or *Edward.G.LeBlanc@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0803), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0803" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0803" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorizes the Coast Guard to define Security Zones. The Coast Guard's maritime security mission includes the requirement to protect cruise ships from destruction, loss, or injury from sabotage, subversive acts, or other malicious acts of a similar nature. Protecting these vessels from potential threats or harm while transiting, or while moored, at any berth, or at anchor in the waters of Southeastern New England COTP Zone is necessary to safeguard cruise ships and the general public. The Coast Guard proposes a permanent regulation that would create security zones for specified navigable waters around certain cruise ships in the Southeastern New England Captain of the Port Zone. On September 22, 2010, the COTP issued a temporary final rule that created nearly identical security zones in 33 CFR 165.T01–0864. *See* Security Zone: Passenger Vessels, Southeastern New England Captain of the Port Zone, 75 FR 63714, October 18, 2010. In a rule published March 31, 2011 (FR Doc. 2011–7640), temporary § 165.T01–0864 was extended in effect through October 1, 2011.

Discussion of Proposed Rule

The Coast Guard proposes to establish 100-yard radius security zones encompassing all navigable waters around cruise ships that are moored, at any berth or at anchor within the Southeastern New England COTP Zone. This notice of proposed rulemaking also proposes to establish 200-yard radius moving security zones encompassing all navigable waters around escorted cruise ships while underway in the navigable waters within the Southeastern New England COTP zone. We propose to define a "cruise ship" as a passenger vessel (as defined in 46 U.S.C. 2101(22)) that is authorized to carry more than 400 passengers for hire and is 200 feet or more in length. This definition of "cruise ship" will include ferries (as defined in 46 CFR 2.10–25) that are authorized to carry more than 400 passengers for hire and are 200 feet or more in length. This proposed zone would be activated and subject to enforcement at all times a cruise ship is underway, anchored or moored within the navigable waters of the United States in the Southeastern New England COTP Zone.

Regulatory Analyses

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

based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule would not be a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and would not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. These proposed security zones would be activated and enforced only when a cruise ship is transiting, anchored, or moored within the Southeastern New England COTP zone. Persons and/or vessels may enter a security zone if they obtain permission from the Coast Guard COTP, Southeastern New England.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. These proposed security zones would be enforced only when a vessel is transiting within the Southeastern New England COTP zone (a routine transit is usually two hours or less), and only when enforced by Coast Guard law enforcement personnel. Persons and/or vessels with may enter a security zone if they obtain permission from the Coast Guard COTP, Southeastern New England.

This proposed rule may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate or transit within the security zones when a cruise ship is transiting, anchored or moored.

These proposed security zones would not have a significant economic impact on a substantial number of small entities for the following reasons. These proposed security zones are temporary, and would be enforced only either when a vessel is transiting within the Southeastern New England COTP zone (a routine transit is usually two hours or less) or anchored or moored in the Zone. Persons and/or vessels may enter a security zone if they obtain permission from the Coast Guard COTP, Southeastern New England.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Edward G. LeBlanc, Chief, Waterways Management Division, Coast Guard Sector Southeastern New England, at 401–435–2351, or *Edward.G.LeBlanc@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these

standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule in accordance with Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f) and have made a preliminary determination that this action is one of a category of actions which the Coast Guard concluded do not normally have individual or cumulative significant effects on the human environment. Since the proposed action involves establishment of security zones, the applicable categorical exclusion is found in Figure 2–1, paragraph 34(g) of the Commandant Instruction. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.123 to read as follows:

§ 165.123 Cruise Ships, Sector Southeastern New England Captain of the Port (COTP) Zone.

(a) *Location.* The following areas are security zones: All navigable waters within the Southeastern New England Captain of the Port (COTP) Zone, extending from the surface to the sea floor:

(1) Within a 200-yard radius of any cruise ship that is underway and is under escort of U.S. Coast Guard law enforcement personnel or designated representative, or

(2) Within a 100-yard radius of any cruise ship that is anchored, at any berth or moored.

(b) *Definitions.* For the purposes of this section—

"*Cruise ship*" means a passenger vessel as defined in 46 U.S.C. 2101(22), that is authorized to carry more than 400 passengers and is 200 or more feet in length. A *cruise ship* under this section will also include ferries as defined in 46 CFR 2.10–25 that are authorized to carry more than 400 passengers and are 200 feet or more in length.

"*Designated representative*" means any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on the COTP's behalf. The designated representative may be on a Coast Guard vessel, or onboard federal, state, or a local agency vessel that is authorized to act in support of the Coast Guard.

"*Southeastern New England COTP Zone*" is as defined in 33 CFR 3.05–20.

(c) *Enforcement.* The security zones described in this section will be activated and enforced upon entry of any cruise ship into the navigable waters of the United States (see 33 CFR 2.36(a) to include the 12 NM territorial sea) in the Southeastern New England COTP zone. This zone will remain activated at all times while a cruise ship is within the navigable waters of the United States in the Sector Southeastern New England COTP Zone. In addition, the Coast Guard may broadcast the area designated as a security zone for the duration of the enforcement period via Broadcast Notice to Mariners.

(d) *Regulations.* (1) In accordance with the general regulations in 33 CFR part 165, subpart D, no person or vessel may enter or move within the security zones created by this section unless granted permission to do so by the COTP Southeastern New England or the designated representative.

(2) All persons and vessels granted permission to enter a security zone must comply with the instructions of the COTP or the designated representative. Emergency response vessels are authorized to move within the zone, but must abide by the restrictions imposed by the COTP or the designated representative.

(3) No person may swim upon or below the surface of the water within the boundaries of these security zones unless previously authorized by the COTP or his designated representative.

(4) Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(5) Vessel operators desiring to enter or operate within the security zone shall contact the COTP or the designated representative via VHF channel 16 or 508–457–3211 (Sector Southeastern New England command center) to obtain permission to do so.

Dated: March 23, 2011.

V.B. Gifford, Jr.,

Captain, U.S. Coast Guard, Captain of the Port Southeastern New England.

[FR Doc. 2011–8003 Filed 4–4–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1355, 1356 and 1357

Federal Monitoring of Child and Family Service Programs; Request for Public Comment and Consultation Meetings

AGENCY: Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Children's Bureau (CB)

ACTION: Request for public comment and consultation meetings.

SUMMARY: The Children's Bureau is interested in improving the process by which we review title IV–B and IV–E plan requirements. CB currently reviews a State's compliance through Child and Family Service Reviews (CFSRs). Following two rounds of CFSRs in every State and the passage of several amendments to Federal child welfare laws since the CFSRs began, we believe it is time to reassess how CB reviews title IV–B and IV–E programs through the CFSR and identify enhancements and system improvements we could make.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 20, 2011. *Please see* **SUPPLEMENTARY INFORMATION** for additional details on consultation meetings.

ADDRESSES: Interested persons may submit written comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: CBComments@acf.hhs.gov.* Please include "Comments on CFSR **Federal Register** Notice" in the subject line of the message.
- *Mail or Courier Delivery:* Jan Rothstein, Division of Policy, Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, 1250 Maryland Avenue, SW., 8th Floor, Washington, DC 20024

Instructions: If you choose to use an express, overnight, or other special delivery method, ensure that delivery may be made at the address listed under the **ADDRESSES** section. We urge interested parties to submit comments electronically to ensure that they are received in a timely manner. All comments received will be posted without change to *http://www.regulations.gov*. This will include any personal information provided. Comments provided during a meeting, or in writing, in response to this **Federal Register** notice will receive equal consideration by ACF.

FOR FURTHER INFORMATION CONTACT: Jan Rothstein, Children's Bureau, 1250 Maryland Ave., SW., 8th Floor, Washington, DC 20024, (202) 401–5073.

SUPPLEMENTARY INFORMATION:

Child and Family Service Review Background: Section 1123A of the Social Security Act (the Act) requires the Secretary of the Department of Health and Human Services to issue regulations for the review of programs under titles IV–B and IV–E to determine whether such programs are in substantial conformity with title IV–B and IV–E plan requirements, implementing regulations and relevant title IV–B and IV–E plans. ACF issued regulations implementing such reviews, known as the CFSRs, in the **Federal Register** on January 25, 2000 (65 FR 4020). The review process, as regulated, grew out of extensive consultation with interested groups, individuals and experts in the field of child welfare and related areas. The consultation affirmed that the broad goals of child welfare systems are to: Assure safety for all children; to assure permanent, nurturing homes for all children; and to enhance the well-being of children and their families. The reviews reinforce those goals.

The existing CFSRs enable CB to: (1) Ensure conformity with Federal child welfare requirements; (2) determine what is actually happening to children and families as they are engaged in child welfare services; and (3) assist States to enhance their capacity to help children and families achieve positive outcomes. CB conducts the reviews in partnership with State child welfare agency staff and other stakeholders involved in the provision of child welfare services. We have structured the reviews to help States identify strengths as well as areas needing improvement within their agencies and programs.

Each CFSR is a two-stage process consisting of a Statewide Assessment and an onsite review of child and family service outcomes and program systems. For the Statewide Assessment, CB prepares and transmits data profiles that contain aggregate data on the State's foster care and in-home service populations. The data profiles allow each State to compare certain safety and permanency data indicators with national standards determined by CB. The on-site review includes case record reviews, interviews with children and families engaged in services and interviews with other stakeholders. States determined not to have achieved substantial conformity in all the areas assessed are required to develop and implement Program Improvement Plans (PIPs) within two years addressing the areas of nonconformity. CB supports the States with technical assistance and monitors implementation of their plans. States that are unable to complete their PIPs successfully have some of their Federal child welfare funds withheld until they are found to be in substantial conformity or have successfully completed a PIP as prescribed in the Federal regulations.

We believe that the CFSR has been a factor contributing to increased State and local attention to child welfare practice improvement and a renewed focus on child and family outcomes and the systems supporting positive outcomes. Stakeholders have also noted that there are areas where the CFSRs could contribute to even more positive changes. To that end, we are interested in learning from stakeholders in response to the questions below how they would envision a Federal review process that meets the statutory requirements in section 1123A of the Act and holds child welfare agencies accountable for achieving positive outcomes for children and families and continuously improving the quality of their systems for doing so.

In addition to the foregoing, we would like to clarify that, although several of the questions below address Tribal involvement in Federal reviews of title IV–B and IV–E plan requirements, until regulations are in effect otherwise, Indian Tribes operating title IV–E programs of their own are not subject to CFSRs. However, Indian Tribes have participated in CFSRs in the past and Indian children are part of the CFSRs. Therefore, we are interested at this time in gaining their insight into how the process could be improved.

Questions

Please identify the question to which you are responding. If you have additional comments, please identify them by citing to the appropriate section of the regulations or review process, if appropriate:

1. How could ACF best promote and measure continuous quality improvement in child welfare outcomes and the effective functioning of systems that promote positive outcomes for children and families?
2. To what extent should data or measures from national child welfare databases (*e.g.,* the Adoption and Foster Care Analysis and Reporting System, the National Child Abuse and Neglect Data System) be used in a Federal monitoring process and what measures are important for State/Tribal/local accountability?
3. What role should the child welfare case management information system or systems that States/Tribes/local agencies use for case management or quality assurance purposes play in a Federal monitoring process?
4. What roles should State/Tribal/local child welfare agencies play in establishing targets for improvement and monitoring performance towards those targets? What role should other stakeholders, such as courts, clients and other child-serving agencies play?
5. In what ways should targets and performance goals be informed by and integrated with other Federal child welfare oversight efforts?
6. What specific strategies, supports, incentives, or penalties are needed to ensure continued quality improvement and achievement of positive outcomes for children and families that are in substantial conformity with Federal child welfare laws?
7. In light of the ability of Tribes to directly operate title IV–E programs through recent changes in the statute, in what ways, if any, should a Federal review process focus on services delivered to Indian children?
8. Are there examples of other review protocols, either in child welfare or related fields, in which Tribal/State/local governments participate that might inform CB's approach to reviewing child welfare systems?

We welcome any other comments you have about Federal review of child welfare programs, including the current CFSR process.

Additional Consultation Opportunities: In addition to this opportunity to comment, CB plans to hold four in-person consultations in ACF Regions III, VI, VIII and IX and two meetings in our offices in Washington, DC.

CB invites State representatives, Tribal leaders and/or their representatives, judges, families and youth served by the child welfare system and other interested stakeholders to attend these in-person meetings or call in via the conference call number to provide their input on the questions raised above. Registration for the meetings and calls must be completed in advance per the details below. You may also provide written comments as noted in the **ADDRESSES** section, regardless of participation in an in-person session or conference call. Finally, please note that Federal representatives attending the consultation sessions will not be able to respond directly during the session to the concerns or questions raised by participants. The consultation sessions and contact information are listed below:

CB meeting/conference call–1: April 26, 2011, 12–2 EDT.

CB meeting/conference call–2: May 3, 2011, 1–3 EDT.

Register for the meeting/call of your choice by sending an e-mail to: *cw@jbsinternational.com* to register.

Region III—April 20, 2011, 10:00–12:00 EDT

150 S. Independence Mall West, Suite 864, Philadelphia, PA 19106–3499, Please send an e-mail to: *cw@jbsinternational.com* to register.

Region VI—April 18, 2011, 10:00–12:00 CDT

1301 Young Street, Room 1119, Dallas, TX 75202, Please send an e-mail to: *cw@jbsinternational.com* to register.

Region VIII—April 27, 2011, 10:00–12:00 MDT

999 18th Street, South Terrace, Suite 499, Denver, CO 80202, Please send an e-mail to: *cw@jbsinternational.com* to register.

Region IX—April 20, 2011, 10:30–12:30 PDT

90 7th Street, 9th Floor, San Francisco, CA 94103, Please send an e-mail to: *cw@jbsinternational.com* to register.

The Children's Bureau is also hosting Tribal Roundtables for Tribal leaders and/or their representatives. The dates of these sessions are listed below:

August 2–3 in Oklahoma City, Oklahoma;

August 16–17 in Seattle, Washington;

September 13–14 in Minneapolis, Minnesota.

A portion of the agenda for these roundtables will be set aside to discuss Federal monitoring of child and family services programs under titles IV–B and IV–E. The Children's Bureau will send information directly to Tribal leaders regarding attendance at these roundtables.

Dated: March 31, 2011.

Bryan Samuels,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 2011–8044 Filed 4–4–11; 8:45 am]

BILLING CODE 4184–25–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 17, 22, 24, 25, 27, 80, 87, and 90

[WT Docket Nos. 08–61 and 03–187; DA 11–558]

Wireless Telecommunications Bureau Invites Comment on Draft Environmental Notice Requirements and Interim Procedures Affecting the Antenna Structure Registration Program

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau invites comment, pursuant to the rules of the Council on Environmental Quality (CEQ), on draft rules and interim procedures designed to ensure that the environmental effects of proposed communications towers, including their effects on migratory birds, are fully considered prior to construction.

DATES: Submit comments on or before May 5, 2011.

ADDRESSES: All filings should refer to WT Docket Nos. 08–61 and 03–187. 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. 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).

Parties should send a copy of each filing to the Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *mania.baghdadi@fcc.gov.* Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

Filings and comments will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II,

445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (202) 488–5300, fax: (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Availability of Documents: Comments and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

FOR FURTHER INFORMATION CONTACT: Mania K. Baghdadi, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at (202) 418–2133 or by *e-mail: mania.baghdadi@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice in WT Docket Nos. 08–61 and 03–187; DA 11–558, released on March 25, 2011. In this document, the Bureau invites comment, pursuant to the rules of the Council on Environmental Quality (CEQ), on draft rules and interim procedures designed to ensure that the environmental effects of proposed communications towers, including their effects on migratory birds, are fully considered prior to construction. These draft rules and procedures are intended to further the Commission's implementation of the National Environmental Policy Act (NEPA) while preserving the ability of communications providers rapidly to offer innovative and valuable services to the public.

Under CEQ's rules, before adopting procedures implementing NEPA an agency must publish its draft procedures in the **Federal Register** for comment, and CEQ must determine that the procedures conform with NEPA and CEQ's regulations. The Bureau issues this document in order to seek public comment in compliance with those requirements.

The draft rules and procedures respond to the decision of the Court of Appeals for the District of Columbia Circuit in *American Bird Conservancy* v. *FCC.* In *American Bird Conservancy,* the court held that the Commission's current antenna structure registration (ASR) procedures impermissibly fail to offer members of the public a meaningful opportunity to request an Environmental Assessment (EA) for proposed towers that the Commission considers categorically excluded from review under NEPA. The notification process included within the draft rules would address that holding of the court. The draft procedures also include provisions consistent with a Memorandum of Understanding among representatives of communications providers, tower companies, and conservation groups.

Under the draft rules and procedures attached to this document:

- Prior to the filing of an ASR application for a new antenna structure, members of the public would be given an opportunity to comment on the environmental effects of the proposed construction. The applicant would provide notice of the proposal to the local community, and the Commission would post information about the proposal on its Web site. Commission staff would consider any comments received from the public to determine whether an EA is required for the tower.
- EAs for those registered towers that require EAs would be filed and considered by the Commission prior to the filing of an ASR application. Those EAs are currently filed at the same time as either the ASR application or a service-specific license or permit application.
- On an interim basis pending completion of the ongoing programmatic environmental analysis of the ASR program, an EA would be required to be filed for each proposed registered tower more than 450 feet in height to address its potential impact on migratory birds. Staff would review the EA to determine whether the tower would have a significant environmental impact.

Ex Parte Presentations. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Environmental impact statements, Federal buildings and facilities, Radio, Reporting and recordkeeping requirements, Satellites, and Telecommunications.

47 CFR Part 17

Aviation safety, Communications equipment, and Reporting and recordkeeping requirements.

47 CFR Part 22

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, and Rural areas.

47 CRF Part 24

Administrative practice and procedure, Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, and Telecommunications.

47 CFR Part 25

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites, Securities, and Telecommunications.

47 CFR Part 27

Communications common carriers and Radio.

47 CFR Part 80

Communications equipment, Great Lakes, Marine safety, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone, and Vessels.

47 CFR Part 87

Air transportation, Communications equipment, Defense communications, Radio, and Reporting and recordkeeping requirements.

47 CFR Part 90

Administrative practice and procedure, Common carriers, Communications equipment, Radio, and Reporting and recordkeeping requirements.

Federal Communications Commission

Ruth Milkman,

Chief. Wireless Telecommunications Bureau.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 17, 22, 24, 25, 27, 80, 87, and 90 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

2. Section 1.61 is amended by revising paragraph (a)(2) to read as follows:

§ 1.61 Procedures for handling applications requiring special aeronautical study.

(a) * * *

(2) In accordance with § 1.1307 and § 17.4(c) of this chapter, the Bureau will address any environmental concerns prior to processing the registration.

* * * * *

3. Section 1.923 is amended by revising paragraphs (d) and (e) to read as follows:

§ 1.923 Content of applications.

* * * * *

(d) *Antenna Structure Registration.* Owners of certain antenna structures must notify the Federal Aviation Administration and register with the Commission as required by part 17 of this chapter. Applications proposing the use of one or more new or existing antenna structures must contain the FCC Antenna Structure Registration Number(s) of each structure for which registration is required. To facilitate frequency coordination or for other purposes, the Bureau shall accept for filing an application that does not contain the FCC Antenna Structure Registration Number so long as;

(1) The antenna structure owner has filed an antenna structure registration application (FCC Form 854);

(2) The antenna structure owner has provided local notice and the Commission has posted notification of the proposed construction on its Web site pursuant to § 17.4(c)(3) and (4) of this chapter; and

(3) The antenna structure owner has obtained a Determination of No Hazard to Aircraft Navigation from the Federal Aviation Administration. In such instances, the applicant shall provide the FCC Form 854 File Number on its application. Once the antenna structure owner has obtained the Antenna Structure Registration Number, the applicant shall amend its application to provide the Antenna Structure Registration Number, and the Commission shall not grant the application before the Antenna Structure Registration Number has been provided. If registration is not required, the applicant must provide information in its application sufficient for the Commission to verify this fact.

(e) *Environmental Concerns.*

(1) Environmental processing shall be completed pursuant to the process set forth in § 17.4(c) of this chapter for any facilities that use one or more new or existing antenna structures for which a new or amended registration is required by part 17 of this chapter. Environmental review by the Commission must be completed prior to construction.

(2) For applications that propose any facilities that are not subject to the process set forth in § 17.4(c) of this chapter, the applicant is required to indicate at the time its application is filed whether or not a Commission grant of the application for those facilities may have a significant environmental effect as defined by § 1.1307. If the applicant answers affirmatively, an Environmental Assessment, required by § 1.1311, must be filed with the application and environmental review by the Commission must be completed prior to construction.

* * * * *

4. Section 1.929 is amended by revising paragraph (a)(4) to read as follows:

§ 1.929 Classification of filings as major or minor.

* * * * *

(a) * * *

(4) Application or amendment requesting authorization for a facility that may have a significant environmental effect as defined in § 1.1307, unless the facility has been determined not to have a significant environmental effect through the process set forth in § 17.4(c) of this chapter.

* * * * *

5. Section 1.934 is amended by adding paragraph (g) to read as follows:

§ 1.934 Defective applications and dismissal.

* * * * *

(g) *Dismissal for failure to pursue environmental review.* The Commission may dismiss license applications (FCC Form 601) associated with proposed antenna structure(s) subject to § 17.4(c) of this chapter, if pending more than 60 days and awaiting submission of an Environmental Assessment or other environmental information from the applicant, unless the applicant has provided an affirmative statement reflecting active pursuit during the previous 60 days of environmental review for the proposed antenna structure(s). To avoid potential dismissal of its license application, the license applicant must provide updates every 60 days unless or until the applicant has submitted the material requested by the Bureau.

6. Section 1.1307 is amended by adding a note to paragraph (d) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(d) * * *

Note to paragraph (d). Pending a final determination as to what, if any, permanent measures should be adopted specifically for the protection of migratory birds, the Bureau shall require an Environmental Assessment for an otherwise categorically excluded action involving a new or existing antenna structure, for which an antenna structure registration application (FCC Form 854) is required under part 17 of this chapter, if the proposed antenna structure will be more than 450 feet in height above ground level (AGL) and involves either: (1) Construction of a new antenna structure; (2) modification or replacement of an existing antenna structure involving a substantial increase in size as defined in Section I(C)(1)–(3) of Appendix B to Part 1 of this chapter; or (3) addition of lighting or adoption of a less preferred FAA Lighting Style as defined in § 17.4(c)(1)(C) of this chapter. The Bureau shall consider whether to require an EA for other antenna structures subject to § 17.4(c) of this chapter in accordance with § 17.4(c)(8) of this chapter. An Environmental Assessment required pursuant to this note will be subject to the same procedures that apply to any Environmental Assessment required for a proposed tower or modification of an existing tower for which an antenna structure registration application (FCC Form 854) is required, as set forth in § 17.4(c) of this chapter.

PART 17—CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES

7. The authority citation for part 17 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, Interpret or apply secs. 301, 309, 48 Stat. 1081, 1085, as amended; 47 U.S.C. 301, 309.

8. Section 17.4 is amended by revising paragraph (c) to read as follows:

§ 17.4 Antenna structure registration.

* * * * *

(c) Each prospective applicant must complete the environmental notification process described in this paragraph, except as specified in paragraph (c)(1) of this section.

(1) *Exceptions from the environmental notification process.* Completion of the environmental notification process is not required when FCC Form 854 is submitted solely for the following purposes:

(i) For notification only, such as to report a change in ownership or contact information, or the dismantlement of an antenna structure;

(ii) For a reduction in height of an antenna structure or an increase in

height that does not constitute a substantial increase in size as defined in Section I(C)(1)–(3) of Appendix B to part 1 of this chapter, provided that there is no construction or excavation more than 30 feet beyond the existing antenna structure property;

(iii) For removal of lighting from an antenna structure or adoption of a more preferred FAA Lighting Style. For this purpose FAA Lighting Styles are ranked as follows (with the most preferred lighting style listed first and the least preferred listed last): FAA Style B (L–856), FAA Style D (L–865), FAA Style E (L–864/L–865/L–810), FAA Style C (L–856/L–865), FAA Style F (L–856 Day/L–864 Night and L–810) and FAA Style A (L–864/L–810). A complete description of each FAA Style and the manner in which it is to be deployed can be found at FAA, U.S. Dept. of Transportation, Advisory Circular: Obstruction Marking and Lighting, AC 70/7460–1K (Feb. 1, 2007);

(iv) For replacement of an existing antenna structure at the same geographic location that does not require an Environmental Assessment (EA) under § 1.1307(a) through (d) of this chapter, provided the new structure will not use lights if the previous structure was unlighted, the new structure will not use a less preferred FAA Lighting Style, there will be no substantial increase in size as defined in Section I(C)(1)–(3) of Appendix B to part 1 of this chapter, and there will be no construction or excavation more than 30 feet beyond the existing antenna structure property;

(v) For any other change that does not alter the physical structure, lighting, or geographic location of an existing structure; or

(vi) For construction, modification, or replacement of an antenna structure on Federal land where another Federal agency has assumed responsibility for evaluating the potentially significant environmental effect of the proposed antenna structure on the quality of the human environment and for invoking any required environmental impact statement process, or for any other structure where another Federal agency has assumed such responsibilities pursuant to a written agreement with the Commission. *See* § 1.1311(e) of this chapter.

(2) *Commencement of the environmental notification process.* The prospective applicant shall commence the environmental notification process by filing information about the proposed antenna structure with the Commission. This information shall include, at a minimum, all of the information required on FCC Form 854 regarding ownership and contact information, geographic location, and height, as well as the type of structure and anticipated lighting. The Wireless Telecommunications Bureau may utilize a partially completed FCC Form 854 to collect this information.

(3) *Local notice.* The prospective applicant must provide local notice of the proposed new antenna structure or modification of an existing antenna structure through publication in a newspaper of general circulation or other appropriate means, such as through the public notification provisions of the relevant local zoning process. The local notice shall contain all of the descriptive information as to geographic location, configuration, height and anticipated lighting specifications reflected in the submission required pursuant to paragraph (c)(2) of this section. It must also provide information as to the procedure for interested persons to file Requests for environmental processing pursuant to §§ 1.1307(c) and 1.1313(b) of this chapter, including any assigned file number.

(4) *National notice.* On or after the local notice date provided by the prospective applicant, the Commission shall post notification of the proposed construction on its Web site. This posting shall include the information contained in the initial filing with the Commission or a link to such information. The posting shall remain on the Commission's Web site for a period of 30 days.

(5) *Requests for environmental processing.* Any Request filed by an interested person pursuant to §§ 1.1307(c) and 1.1313(b) of this chapter must be received by the Commission no later than 30 days after the proposed antenna structure goes on notice pursuant to paragraph (c)(4) of this section. The Wireless Telecommunications Bureau shall establish by public notice the process for filing Requests for environmental processing and responsive pleadings consistent with the following provisions.

(1) *Service and pleading cycle.* The interested person or entity shall serve a copy of its Request on the prospective ASR applicant pursuant to § 1.47 of this chapter. Oppositions may be filed no later than 10 days after the time for filing Requests has expired. Replies to oppositions may be filed no later than 5 days after the time for filing oppositions has expired. Oppositions shall be served upon the Requester, and replies shall be served upon the prospective applicant.

(2) *Content.* An Environmental Request must state why the interested person or entity believes that the proposed antenna structure or physical modification of an existing antenna structure may have a significant impact on the quality of the human environment for which an Environmental Assessment must be considered by the Commission as required by § 1.1307 of this chapter, or why an Environmental Assessment submitted by the prospective ASR applicant does not adequately evaluate the potentially significant environmental effects of the proposal. The Request must be submitted as a written petition filed either electronically or by hard copy setting forth in detail the reasons supporting Requester's contentions.

(6) *Amendments.* The prospective applicant must file an amendment to report any substantial change in the information provided to the Commission. An amendment will not require further local or national notice if the only reported change is a reduction in the height of the proposed new or modified antenna structure; if proposed lighting is removed or changed to a more preferred FAA Lighting Style as set forth in paragraph (c)(1)(iii) of this section; or if the amendment reports only administrative changes that are not subject to the requirements specified in this paragraph. All other changes to the physical structure, lighting, or geographic location data for a proposed registered antenna structure require additional local and national notice and a new period for filing Requests pursuant to paragraphs (c)(3), (c)(4), and (c)(5) of this section.

(7) *Environmental Assessments.* If an Environmental Assessment (EA) is required under § 1.1307 of this chapter, the antenna structure registration applicant shall attach the EA to its environmental submission, regardless of any requirement that the EA also be attached to an associated service-specific license or construction permit application. The EA may be provided either with the initial environmental submission or as an amendment. If the EA is submitted as an amendment, the Commission shall post notification on its Web site for another 30 days pursuant to paragraph (c)(4) of this section and accept additional Requests pursuant to paragraph (c)(5) of this section. However, additional local notice pursuant to paragraph (c)(3) of this section shall not be required unless information has changed pursuant to paragraph (c)(6) of this section. The applicant shall serve a copy of the EA

upon any party that has previously filed a Request pursuant to paragraph (c)(5) of this section.

(8) *Disposition.* The processing Bureau shall resolve all environmental issues before the tower owner, or the first tenant licensee acting on behalf of the owner, may complete the antenna structure registration application. In a case where no EA is submitted, the Bureau shall notify the applicant whether an EA is required under § 1.1307(c) or (d) of this chapter. In a case where an EA is submitted, the Bureau shall either grant a Finding of No Significant Impact (FONSI) or notify the applicant that the proposal may have a significant environmental impact and further environmental processing is required pursuant to § 1.1308 of this chapter. Upon filing the completed antenna structure registration application, the applicant shall certify that the construction will not have a significant environmental impact, unless an Environmental Impact Statement is prepared pursuant to § 1.1314 of this chapter.

(9) *Transition rule.* An antenna structure registration application that is pending with the Commission as of [EFFECTIVE DATE OF FINAL RULE] shall not be required to complete the environmental notification process set forth in this paragraph. However, if such an application is amended in a manner that would require additional notice pursuant to paragraph (c)(6) of this section, then such notice shall be required.

* * * * *

PART 22—PUBLIC MOBILE SERVICES

9. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

10. Section 22.143 is amended by revising paragraph (d)(4) to read as follows:

§ 22.143 Construction prior to grant of application.

* * * * *

(d) * * *

(4) For any construction or alteration that would exceed the requirements of § 17.7 of this chapter, the licensee has notified the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460–1), secured a valid FAA determination of "no hazard," and received antenna height clearance and obstruction marking and lighting specifications (FCC Form 854R) from the FCC for the proposed construction or alteration.

* * * * *

PART 24—PERSONAL COMMUNICATION SERVICES

11. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

12. Section 24.2 is amended by revising paragraphs (b) and (f) to read as follows:

§ 24.2 Other applicable rule parts.

* * * * *

(b) *Part 1.* This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; and the environmental requirements that, together with the procedures specified in § 17.4(c) of this chapter, if applicable, must be complied with prior to the initiation of construction. Subpart F includes the rules for the Wireless Telecommunications Services and the procedures for filing electronically via the ULS.

* * * * *

(f) *Part 17.* This part contains requirements for the construction, marking and lighting of antenna towers, and the environmental notification process that must be completed before filing certain antenna structure registration applications.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

13. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309, and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, and 332, unless otherwise noted.

14. Section 25.113 is amended by revising paragraph (a) to read as follows:

§ 25.113 Station licenses and launch authority

(a) Construction permits are not required for satellite earth stations. Construction of such stations may commence prior to grant of a license at the applicant's own risk. Applicants must comply with the provisions of 47 CFR 1.1312 relating to environmental processing prior to commencing construction. Applicants filing applications that propose the use of one or more new or existing antenna structures requiring registration under part 17 of this chapter must also comply with any applicable environmental notification process specified in § 17.4(c) of this chapter.

* * * * *

15. Section 25.115 is amended by revising paragraph (c)(2)(vi)(A)(*4*) to read as follows:

§ 25.115 Applications for earth station authorizations.

* * * * *

(c) * * *

(2) * * *

(vi) * * *

(A) * * *

(*4*) The applicant has determined that the facility(ies) will not significantly affect the environment as defined in § 1.1307 of this chapter after complying with any applicable environmental notification procedures specified in § 17.4(c) of this chapter.

* * * * *

PART 27—MISCELLANEOUS WIRELESS COMMUNICATION SERVICES

16. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336 and 337 unless otherwise noted.

17. Section 27.3 is amended by revising paragraphs (b) and (f) to read as follows:

§ 27.3 Other applicable rule parts.

* * * * *

(b) *Part 1.* This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; competitive bidding procedures; and the environmental requirements that, together with the procedures specified in § 17.4(c) of this chapter, if applicable, must be complied with prior to the initiation of construction. Subpart F includes the rules for the Wireless Telecommunications Services and the procedures for filing electronically via the ULS.

* * * * *

(f) *Part 17.* This part contains requirements for the construction, marking and lighting of antenna towers, and the environmental notification process that must be completed before filing certain antenna structure registration applications.

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

18. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

19. Section 80.3 is amended by revising paragraphs (b) and (e) to read as follows:

§ 80.3 Other applicable rule parts of this chapter.

* * * * *

(b) *Part 1.* This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; and the environmental processing requirements that, together with the procedures specified in § 17.4(c) of this chapter, if applicable, must be complied with prior to the initiation of construction. Subpart Q of part 1 contains rules governing competitive bidding procedures for resolving mutually exclusive applications for certain initial licenses.

* * * * *

(e) *Part 17.* This part contains requirements for the construction, marking and lighting of antenna towers, and the environmental notification process that must be completed before filing certain antenna structure registration applications.

* * * * *

PART 87—AVIATION SERVICES

20. The authority citation for part 87 continues to read as follows:

Authority: 47 U.S.C. 154, 303, and 307(e), unless otherwise noted.

21. Section 87.3 is amended by revising paragraphs (b) and (e) to read as follows:

§ 87.3 Other applicable rule parts.

* * * * *

(b) *Part 1* contains rules of practice and procedure for license applications, adjudicatory proceedings, rule making proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; and the environmental processing requirements that, together with the procedures specified in § 17.4(c) of this chapter, if applicable, must be complied with prior to the initiation of construction.

* * * * *

(e) *Part 17* contains requirements for construction, marking and lighting of antenna towers, and the environmental notification process that must be completed before filing certain antenna structure registration applications.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

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

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

23. Section 90.5 is amended by revising paragraphs (b) and (f) to read as follows:

§ 90.5 Other applicable rule parts.

* * * * *

(b) *Part 1* includes rules of practice and procedure for the filing of applications for stations to operate in the Wireless Telecommunications Services, adjudicatory proceedings including hearing proceedings, and rule making proceedings; procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; and the environmental processing requirements that, together with the procedures specified in § 17.4(c) of this chapter, if applicable, must be complied with prior to initiating construction.

* * * * *

(f) *Part 17* contains requirements for construction, marking and lighting of antenna towers, and the environmental notification process that must be completed before filing certain antenna structure registration applications.

* * * * *

24. Section 90.129 is amended by revising paragraph (g) to read as follows:

§ 90.129 Supplemental information to be routinely submitted with applications.

* * * * *

(g) The environmental assessment required by §§ 1.1307 and 1.1311 of this chapter, if applicable. If an application filed under this part proposes the use of one or more new or existing antenna structures that require registration under part 17 of this chapter, any required environmental assessment should be submitted pursuant to the process set forth in § 17.4(c) of this chapter rather than with the application filed under this part.

* * * * *

[FR Doc. 2011–7785 Filed 4–4–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2011–0016; MO 92210–0–0008–B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Bearmouth Mountainsnail, Byrne Resort Mountainsnail, and Meltwater Lednian Stonefly as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Bearmouth mountainsnail (*Oreohelix* species 3), Byrne Resort mountainsnail (*Oreohelix* species 31), and meltwater lednian stonefly (*Lednia tumana*) as endangered or threatened, and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing the Bearmouth mountainsnail and the Byrne Resort mountainsnail is not warranted because neither constitutes a valid taxon; therefore, they are not considered to be listable entities under the Act. We find that listing of the meltwater lednian stonefly is warranted. However, currently listing of the meltwater lednian stonefly is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add the meltwater lednian stonefly to our candidate species list. We will develop a proposed rule to list the meltwater lednian stonefly as our priorities allow. We will make any determination on critical habitat during development of the proposed listing rule. During any interim period, we will address the status of the candidate taxon through our annual Candidate Notice of Review (CNOR).

DATES: The finding announced in this document was made on April 5, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R6–ES–2011–0016. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Montana Field Office, 585 Shepard Way, Helena, MT

59601. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Mark Wilson, Field Supervisor, Montana Field Office (*see* **ADDRESSES**); by telephone at 406–449–5225; or by facsimile at 406–449–5339. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition containing substantial scientific or commercial information indicating that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we determine that the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

Federal action for the Bearmouth mountainsnail, Byrne Resort mountainsnail, and meltwater lednian stonefly began on July 30, 2007, after we received a petition dated July 24, 2007, from Forest Guardians (now WildEarth Guardians) requesting that the Service: (1) Consider all full species in our mountain-prairie region ranked as G1 or G1G2 by the organization NatureServe, except those that are currently listed, proposed for listing, or candidates for listing; and (2) list each species as either endangered or threatened (Forest Guardians 2007, pp. 1–37). The petition incorporated all analyses, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/.* We acknowledged the receipt of the petition in a letter to the Forest Guardians, dated August 24, 2007 (Slack 2007, p. 1). In that letter we stated, based on preliminary review, we found no compelling evidence to support an emergency listing for any of the species covered by the petition, and that we planned work on the petition in Fiscal Year (FY) 2008.

On March 19, 2008, WildEarth Guardians filed a complaint (1:08–CV–472–CKK) indicating that the Service failed to comply with its statutory duty to make 90-day findings on their two multiple species petitions in two of the Service's administrative regions—one for the mountain-prairie region, and one for the Southwest region (*WildEarth Guardians* v. *Kempthorne* 2008, case 1:08–CV–472–CKK). We subsequently published two initial 90-day findings on January 6, 2009 (74 FR 419), and February 5, 2009 (74 FR 6122), identifying species for which we were then making negative 90-day findings, and species for which we were still working on a determination. The Bearmouth mountainsnail, Byrne Resort mountainsnail, and meltwater lednian stonefly were not addressed in either 90-day finding published in 2009, as we were still conducting our analyses of these mountainsnails and the stonefly. On March 13, 2009, the Service and WildEarth Guardians filed a stipulated settlement in the U.S. District Court, District of Columbia, agreeing that the Service would submit to the **Federal Register** a finding as to whether WildEarth Guardians' petition presented substantial information indicating that the petitioned action may be warranted for 38 mountain-prairie region species by August 9, 2009 (*WildEarth Guardians* v. *Salazar* 2009, case 1:08–CV–472–CKK).

On August 18, 2009, we published a 90-day finding for 38 mountain-prairie region species (74 FR 41649). In that finding, we found that the petition presented substantial information to indicate that listing of Bearmouth mountainsnail and Byrne Resort mountainsnail may be warranted due to the present or threatened destruction, modification, or curtailment of their habitat or range resulting from road construction and associated activities. We also found that listing of the meltwater lednian stonefly may be warranted based on threats from climate change, and specifically the melting of glaciers associated with the species' habitat. The finding also requested further information pertaining to all three "species" (74 FR 41649). However, the 90-day finding did not formally consider the taxonomic status of the petitioned entities.

This notice constitutes the 12-month finding on the July 24, 2007, petition to list the Bearmouth mountainsnail, Byrne Resort mountainsnail, and meltwater lednian stonefly as endangered or threatened.

Species Information for Bearmouth Mountainsnail and Byrne Resort Mountainsnail

Species Descriptions

Bearmouth mountainsnail and Byrne Resort mountainsnail are ascribed to the genus *Oreohelix,* commonly called the "mountainsnail." This genus of land snails is endemic to western North America and is found in mountainous environments in the western United States from the eastern Sierra Nevadas in the west to the Black Hills in the east, and from southern Canada down to northern Mexico (Pilsbry 1916, pp. 341–342; Pilsbry 1939, pp. 415–416; Weaver 2006, p. 9).

Biology and Life History

Most mountainsnail species are relatively large land snails (adult body size greater than 5 centimeters (cm) (2 inches (in.)) that typically prefer forested environments, calcium-rich areas, and generally high available water content during generally dry conditions in spring and summer months (Weaver 2006, p. 9). They survive colder conditions at higher elevations by burrowing underground and aestivating (Weaver 2006, p. 9). Individuals often also burrow during hot summer months, appearing on the surface to feed during or after rains (Frest and Johannes 1995, p. 22; Weaver 2006, p. 9). One adaptation by *Oreohelix* to arid and semi-arid environments is the practice of hatching eggs internally instead of the typical pattern of laying them in favorable locations, as desiccation of eggs and juveniles is a common cause of land snail death, especially in arid areas (Frest and Johannes 1995, p. 18). Hatching the eggs internally can reduce the probability of desiccation, and adults seem to be able to delay release of juveniles if conditions warrant (Frest and Johannes 1995, p. 18).

Western land snails are typically herbivores, but some may consume animal matter (Frest and Johannes 1995, p. 24). Land snails contribute substantially to nutrient recycling, often breaking down plant detritus and animal waste (Frest and Johannes 1995, pp. 24–25). They are preyed upon extensively by small mammals (*e.g.,* shrews and voles), reptiles, amphibians, birds, and insects (Frest and Johannes 1995, p. 25).

The life history of western land snails is strongly controlled by climate. Some species of *Oreohelix* are among the most long-lived land snails, reaching sexual

maturity at about 2 to 3 years and living as long as 8 to 10 years (Frest and Johannes 1995, p. 25). Mountainsnails have low adult vagility (ability to move or disperse) (Chak 2007, p. 23) and apparently lack a larval stage with high dispersal ability (Weaver 2006, pp. 8–9). Consequently, mountainsnails typically exist in small, circumscribed colonies with dozens to a few thousand individuals (Frest and Johannes 1995, pp. 22–23). *Oreohelix* snails are known to be hermaphroditic (individuals have both male and female genitalia and can assume either role in mating) (Pisbry 1939, p. 427; Hendricks 2003, pp.17, 25) and viviparous (give birth to live young) (Pilsbry 1916, p. 343; Pilsbry 1939, p. 418).

Oreohelix species and subspecies vary in size, height of shell spire, degree of carination (*i.e.,* presence and size of a keel or ridge around the outside whorl of the shell), width of umbilicus (*i.e.,* the ventral opening formed in the center of the whorls), and color (Pilsbry 1939, p. 415). Shell morphology is plastic (variable in response to environmental conditions) in *Oreohelix,* and in snails in general and can be affected by elevation, calcium content, humidity, and population density (Chak 2007, p. 3). Substantial variation in shell morphology within a particular *Oreohelix* colony is common (Pilsbry 1916, p. 340; 1939, p. 415). Conversely, shell characteristics can be similar in taxa with different evolutionary histories but that occupy similar environments (Chak 2007, p. 3). This variation within species and colonies, combined with parallelism that can occur between unrelated groups, has long been recognized as a challenge to correctly identifying *Oreohelix* specimens and determining their distribution (Pilsbry 1916, p. 340).

Distribution and Abundance

The distribution and abundance of Bearmouth mountainsnail and Byrne Resort mountainsnail are not well known. In general, very little is known about the distribution and status of terrestrial mollusks in Montana (*e.g.,* Hendricks 2003, pp. 3–4). The 2007 petition from WildEarth Guardians and the NatureServe rankings for both Bearmouth mountainsnail and Byrne Resort mountainsnail (*e.g.,* NatureServe 2010a, b) rely entirely on information contained in the unpublished report by Frest and Johannes (1995, entire) that summarized occurrence and conservation status of mollusks in the Interior Columbia Basin.

Frest and Johannes (1995, p. 5) stated that the original distribution of Bearmouth mountainsnail is the "Clark Fork River valley in the area between Clinton and Garrison, Granite and Powell counties, Montana," and they described the present distribution (in 1995) as "a few very small colonies in the Bearmouth area." They did not provide any spatial information about the actual location of these colonies. They further speculated that Bearmouth mountainsnail may occur in the adjacent lands managed by the U.S. Forest Service (Lolo National Forest) and the State of Montana. Little information about the Bearmouth mountainsnail has become available since the report by Frest and Johannes (1995, p. 115). No occurrences of Bearmouth mountainsnail were reported in more recent surveys of terrestrial mollusks conducted by the Montana Natural Heritage Program (MNHP) (Hendricks 2003, entire; Hendricks *et al.* 2008, entire).

The only potential recent occurrences of Bearmouth mountainsnail come from surveys conducted by Dr. Kathleen Weaver, an assistant professor at the University of La Verne, California, who recently began conducting research on the distribution, ecology, and genetics of *Oreohelix* in Montana. Dr. Weaver reports collecting land snail specimens from two colonies she believes may be Bearmouth mountainsnails (Weaver 2010a, 2010b, pers. comm.). The first colony is located in the Bearmouth area, and Dr. Weaver believes it is near the type locality "Bearmouth" location along the Clark Fork River described in Frest and Johannes (1995, p. 5; *see* above). The second colony is located along Rock Creek, a left-bank tributary to the Clark Fork River. The two colonies are believed to represent the same species based on genetic similarity measured using mitochondrial DNA (mtDNA, maternally-inherited DNA found in cellular organelles called mitochondria) (Weaver 2010b, pers. comm.). Dr. Weaver refers to the two colonies as "Bearmouth mountainsnail" based on the location of the first colony (Weaver 2010b, pers. comm.). Both colonies are very small (no more than 5 to 15 square meters or about 17 to 50 square feet), and may contain from a few dozen to a few hundred individuals (Weaver 2010b, pers. comm.).

No information is available on the current abundance or distribution of Byrne Resort mountainsnail, or whether the "species" even exists. The original distribution of the Byrne Resort mountainsnail was described by Frest and Johannes (1995, p. 140) as "the Clark Fork River valley near Bearmouth, Granite County, MT," and they described the present distribution (in 1995) as "a few very small colonies in the old Byrne Resort area." As with the Bearmouth mountainsnail, Frest and Johannes did not provide any accurate spatial information about the actual location of these colonies. No occurrences of Byrne Resort mountainsnail were reported in more recent surveys of terrestrial mollusks conducted by the MNHP (Hendricks 2003, entire; Hendricks *et al.* 2008, entire). More recently, neither the MNHP nor Dr. Weaver (University of La Verne) have been able to locate a colony of *Oreohelix* in the area that Frest and Johannes (1995, p. 14) reported the Byrne Resort mountainsnail (Hendricks 2010, pers. comm.; Weaver 2010b, pers. comm.). It is not known whether the colonies no longer exist, or if the original description of Byrne Resort mountainsnail is incorrect.

Habitat

Factors determining habitat preferences of land snails include cover, effective moisture availability, and geologic history (Frest and Johannes 1995, p. 20). Most land snail species including those in the genus *Oreohelix* are calciphiles, meaning they are usually restricted to limestone, dolomite, or other substrates containing high levels of the element calcium (Pilsbry 1916, p. 342; Frest and Johannes 1995, pp. 20–21). Moist soil conditions are favored and soil pH may be a factor in determining suitable habitat (Frest and Johannes 1995, pp. 20–24). *Oreohelix* are generally associated with talus (a sloping mass of loose rock debris at the base of a cliff) or rocky outcrops, and the occupied sites may range from low-elevation canyons and valley bottoms to high-elevation slopes well above the treeline (Hendricks 2003, pp. 4–5).

Taxonomy and Evaluation of the Listable Entities for Bearmouth Mountainsnail and Byrne Resort Mountainsnail

The genus *Oreohelix* belongs to phylum Mollusca, class Gastropoda, order Stylommatophora (terrestrial snails and slugs), and family Oreohelicidae. The genus *Oreohelix* consists of 41 recognized species (Turgeon *et al.* 1998, p. 143; Integrated Taxonomic Information System (ITIS) 2010). Overall, the taxonomy of the genus is not well known (Chak 2007, p. 21; Weaver 2006, p. 9), and additional species have been proposed in the primary literature (*e.g.,* Ports 2004, entire), in graduate theses (*e.g.,* Weaver 2006, pp. 49–95), and in grey literature reports (*e.g.,* Frest and Johannes 1995, pp. 113–140). The most extreme example of purported additional

taxonomic diversity in *Oreohelix* is found in Frest and Johannes (1995, pp. 113–139), who proposed that 31 additional species or subspecies were found in the Interior Columbia Basin. The Bearmouth mountainsnail (*Oreohelix* sp. 3) and the Byrne Resort Mountainsnail (*Oreohelix* sp. 31) were among these 31 proposed species or subspecies (Frest and Johannes 1995, pp. 115, 139–140).

Taxonomic classification of *Oreohelix* snails has been based traditionally on shell morphology (*e.g.,* Pilsbry 1916, entire; Pilsbry 1939, pp. 413–553). Nonetheless, shell morphology has long been considered an unreliable characteristic for delineating taxonomic units within *Oreohelix* because of the substantial phenotypic plasticity that exists for shell traits (Pilsbry 1916, p. 340; Chak 2007, pp. 3, 15; Weaver *et al.* 2008, p. 908). Phenotypic plasticity is defined as the ability of an individual genotype (genetic composition) to produce multiple phenotypes (observable characteristics or traits) in response to its environment. There is wide agreement among malacologists (the branch of invertebrate zoology that deals with the study of Mollusca) familiar with *Oreohelix* that relying exclusively on shell morphology to designate taxa is problematic (McDonald 2010, pers. comm.; Oliver 2010, pers. comm.; Weaver 2010a, pers. comm.). More robust taxonomic designations within genus *Oreohelix* generally rely on differences in internal anatomy, such as penis morphology (Pilsbry 1916, entire; Pilsbry 1939, pp. 413–553; Chak 2007, p. 15). More recently, molecular genetic methods have been used to reconcile taxonomic designations originally based on morphological characteristics (*e.g.,* Chak 2007, pp. 21–42; Weaver *et al.* 2008, entire).

The basis of the species designations for the Bearmouth mountainsnail (*Oreohelix* sp. 3) and Byrne Resort mountainsnail (*Oreohelix* sp. 31) is shell morphology (Frest and Johannes 1995, pp. 115, 139–140). Unfortunately, Frest and Johannes never published any of their putative (presumed or supposed) species designations for *Oreohelix* contained in their 1995 report. In some cases, species designations by Frest and Johannes that relied entirely on shell morphology were subsequently found to be in error when additional morphological (Weaver 2006, p. 10) or genetic information (Chak 2007, p. 1) was collected.

Taxonomy of the Bearmouth Mountainsnail (*Oreohelix* sp. 3)

The only additional information about the occurrence and taxonomic status of Bearmouth mountainsnail comes from Dr. Weaver (Weaver 2010a, 2010b, pers. comm.). As described above, she identified two colonies of *Oreohelix* in Montana that she believes represent Bearmouth mountainsnail, based on the location of one colony and genetic similarity (of mtDNA) of the two colonies (Weaver 2010b, pers. comm.). Dr. Weaver observed that genetic analyses of individuals from these two colonies (that she believes to represent Bearmouth mountainsnail) revealed approximately 6 percent DNA sequence divergence relative to a sister taxon (*O. carinifera*) in the same genus (Weaver 2010a, pers. comm.). This level of divergence is consistent with species-level differences in terrestrial mollusks (*e.g.,* Weaver *et al.* 2008, pp. 913–914). Thus, there is some evidence to suggest that the individuals she sequenced are part of a distinct species or subspecies. Unfortunately, archived individuals collected from the putative type location of Bearmouth mountainsnail (as described in Frest and Johannes 1995, p. 115) are not available (Weaver 2010b, pers. comm.). Moreover, Frest and Johannes did not provide the precise location of any of the "type localities" (*i.e.,* location where the specimens that define the species were collected) for the undescribed species in their 1995 report (Frest and Johannes 1995, pp. 113–140). Consequently, there remains uncertainty as to whether the "Bearmouth mountainsnail" proposed by Frest and Johannes (1995, p. 115) represents the same entity that Dr. Weaver refers to as "Bearmouth mountainsnail."

Uncertainty notwithstanding, the Bearmouth mountainsnail is not included as a valid taxon in the classic works by Pilsbry (1916, entire; 1939, entire), which are still accepted as the most authoritative publications on the taxonomy of *Oreohelix;* nor is the Bearmouth mountainsnail listed among the *Oreohelix* taxa recognized by more current sources such as the Integrated Taxonomic Information System (ITIS 2010) or the Council of Systematic Malacologists and the American Malacological Union (Turgeon *et al.* 1998, p. 143 in this compilation of mollusk taxonomy by scientific experts). In summary, the entity referred to as the "Bearmouth mountainsnail" has not been formally described as a species according to accepted scientific standards, and this entity is not widely recognized as a species or subspecies by the scientific community. The type of additional information that may permit a formal description may include a more thorough description of the type specimen, an evaluation of various lines of evidence (morphological, ecological, biogeographical, genetic) relevant to its taxonomic status, resolution of any discrepancies in taxonomic nomenclature, or a combination of these (*e.g.,* Weaver 2006, pp. 49–65), and that the taxon be accepted as valid by widely-recognized sources (*e.g.,* Turgeon *et al.* 1998, entire; ITIS 2010).

Taxonomic Status of Byrne Resort Mountainsnail (*Oreohelix* sp. 31)

There have been no additional collections of Byrne Resort mountainsnail at the location initially described by Frest and Johannes (1995, p. 140) (Hendricks 2010, pers. comm.; Weaver 2010b, pers. comm.). Specimens collected near where Frest and Johannes made their collection of Byrne Resort mountainsnail have been tentatively identified as a variant of an existing species (lyrate mountainsnail, *Oreohelix haydeni*) based on morphological characteristics (Hendricks 2010, pers. comm.). To our knowledge, there has been no follow-up analysis of any specimens collected by Frest and Johannes (1995, pp. 139–140). Thus, we have virtually no information on this putative species.

The taxonomic validity of the Byrne Resort mountainsnail is highly uncertain given that the only description was based on shell morphology, which, as discussed above, is widely recognized by the scientific community as a poor trait for defining taxonomic groups in *Oreohelix* (Pilsbry 1906, p. 340). Moreover, we are not aware of any corroborating information concerning the taxonomic status of this entity. The Byrne Resort mountainsnail is not listed as a valid taxon in the classic works by Pilsbry (1916, entire; 1939, entire), which are still accepted as the most authoritative publications on the taxonomy of *Oreohelix;* nor is the Byrne Resort mountainsnail listed among the *Oreohelix* taxa recognized by more current sources such as the Council of Systematic Malacologists (*e.g.,* Turgeon *et al.* 1998, p. 143) or the Integrated Taxonomic Information System (ITIS 2010). In short, the entity referred to as "Byrne Resort mountainsnail" has not been formally described as a species according to accepted scientific standards, and this entity is not widely recognized as a species or subspecies by the scientific community. The type of additional information that may permit a formal description may include a more

thorough description of the type specimen, an evaluation of various lines of evidence (morphological, ecological, biogeographical, genetic) relevant to its taxonomic status, resolution of any discrepancies in taxonomic nomenclature, or a combination of these (*e.g.,* Weaver 2006, pp. 49–65), and that the taxon be accepted as valid by widely-recognized sources (*e.g.,* Turgeon *et al.* 1998, entire; ITIS 2010).

Finding for the Bearmouth Mountainsnail (Oreohelix sp. 3) and Byrne Resort Mountainsnail (Oreohelix sp. 31)

We have very little information on the distribution and abundance of these two land snails. In fact, we could not find any information on occurrence or even the existence of the species referred to as the "Byrne Resort mountainsnail" by Frest and Johannes (1995, p. 139). We have some information, based on recent surveys and genetic analyses, that two colonies of land snails tentatively identified by a species expert as "Bearmouth mountainsnail" currently exist in the vicinity of the Clark Fork River valley, Montana (Weaver 2010a, 2010b, pers. comm.). To our knowledge, there has never been a systematic analysis of the validity of taxonomic arrangements (*i.e.,* subspecies or species) that have been proposed for *Oreohelix* by Frest and Johannes (1995, pp. 113–140). Moreover, neither the Bearmouth mountainsnail nor the Byrne Resort mountainsnail has been formally described as a species, and neither is presently recognized as a species or subspecies by the scientific community (*e.g.,* Pilsbry 1939, entire; Turgeon *et al.* 1998, p. 143; ITIS 2010).

Neither the Bearmouth mountainsnail nor the Byrne Resort mountainsnail is recognized as a species or subspecies, and their taxonomic statuses are currently uncertain. Consequently, the Service does not at this time consider the Bearmouth mountainsnail or the Byrne Resort mountainsnail to be listable entities under section 3(16) of the Act (16 U.S.C. 1532(16)) because they do not belong to taxa currently recognized by the scientific community. The Service encourages additional scientific investigations that will resolve the significant uncertainties concerning the occurrence and taxonomy of *Oreohelix* land snails. Because we have concluded the Bearmouth mountainsnail and the Byrne Resort mountainsnail are not listable entities, we will not be further evaluating these mountainsnails under section 4(a)(1) of the Act, and they will not be discussed further in this finding.

Species Information for the Meltwater Lednian Stonefly

Species Description and Taxonomy

The meltwater lednian stonefly (*Lednia tumana*) is in the monotypic genus *Lednia* (Baumann 1975, p. 19; Stewart and Harper 1996, p. 263; Stark *et al.* 2009, entire). The genus *Lednia* belongs to the phylum Arthropoda, class Insecta, order Plecoptera (stoneflies), family Nemouridae, and subfamily Nemourinae. The family Nemouridae is the largest in the order Plecoptera (stoneflies), comprising more than 370 species in 17 genera (Baumann 1975, p. 1). In North America, family Nemouridae comprises 73 species in 13 genera (Stark *et al.* 2009, entire). The type specimens for the meltwater lednian stonefly were collected in the Many Glaciers area of Glacier National Park (Glacier NP), Montana (Baumann 1982, pers. comm.). The species was originally described by Ricker in 1952 (Baumann 1975, p. 18), and is recognized as a valid species by the scientific community (*e.g.,* Baumann 1975, p. 18; Baumann *et al.* 1977, pp. 7, 34; Newell *et al.* 2008, p. 181; Stark *et al.* 2009, entire). Consequently, we conclude that the meltwater lednian stonefly (*Lednia tumana*) is a valid species and, therefore, a listable entity under section 3(16) of the Act.

Kondratieff and Lechleitner (2002, pp. 385, 391) reported that specimens thought to be the meltwater lednian stonefly were collected in Mount Rainier National Park (Mount Rainier NP), Washington. They also cited a personal communication with a species expert (R.W. Baumann, Brigham Young University, Provo, UT) that similar specimens also are known from North Cascades National Park (North Cascades NP), Washington, and a site in the California Sierra Nevada (Kondratieff and Lechleitner 2002, pp. 388–389). However, the specimens discovered in Mount Rainier NP, North Cascades NP, and in the Sierra Nevada Mountains of California are now believed to represent additional undescribed taxa (presumably in the genus *Lednia*) that await formal description (Baumann 2010, pers. comm.; Kondratieff 2010, pers. comm.; Kondratieff *et al.* 2006, p. 463). If these specimens are described as species in the genus *Lednia,* then the genus *Lednia* would no longer be considered a monotypic genus. However, the taxonomy of these additional specimens (from Mount Rainier NP, North Cascades NP, and in the Sierra Nevada Mountains of California) has not been evaluated or accepted by the scientific community (*e.g.,* Stark *et al.* 2009, entire). Thus, while there is some preliminary indication that the taxonomy of the genus *Lednia* will be revised when the new specimens are officially described, the meltwater lednian stonefly remains the only species in the genus *Lednia* that is currently recognized by the scientific community. Consequently, based on the information presented above, the Service considers *Lednia* to be a monotypic genus. Therefore, for the purpose of this finding, we are evaluating the meltwater lednian stonefly, throughout its known range, as a full species in a monotypic genus.

The nymph (aquatic juvenile stage) of the meltwater lednian stonefly is dark red-brown on its dorsal (top) surface and pink on the ventral (lower) surface, with light grey-green legs (Baumann and Stewart 1980, p. 658). Mature nymphs can range in size from 4.5 to 6.5 millimeter (mm) (0.18 to 0.26 in.) (Baumann and Stewart 1980, p. 655). Adults also are small, ranging in size from 4 to 6 mm (0.16 to 0.24 in.) (Baumann 1975, p. 19).

Biology and Life History

Plecoptera (stoneflies) are primarily associated with clean, cool, running waters (Stewart and Harper 1996, p. 217). The Nemourids are usually the dominant Plecoptera family in mountain-river ecosystems, both in terms of total biomass and in numbers of species present (Baumann 1975, p. 1). Eggs and larvae of all North American species of stoneflies, including the meltwater lednian stonefly, are aquatic (Stewart and Harper 1996, p. 217). Nemourid stonefly larvae are typically herbivores or detritivores, and their feeding mode is generally that of a shredder or collector-gatherer (Baumann 1975, p. 1; Stewart and Harper 1996, pp. 218, 262). We have no information on the longevity of the meltwater lednian stonefly, but in general stoneflies can complete their life cycles within a single year (univoltine) or in 2 to 3 years (semivoltine) (Stewart and Harper 1996, pp. 217–218). Adult meltwater lednian stoneflies are thought to emerge and breed in August and September (Baumann and Stewart 1980, p. 658; Giersch 2010b, pers. comm.; MNHP 2010a).

Distribution and Abundance

The current known distribution of the meltwater lednian stonefly is restricted to a handful of locations just to the east and west of the Continental Divide within Glacier NP (Newell *et al.* 2008, p. 181; National Park Service (NPS) 2009; *see* Table 1 below). Within the last 13 years, the meltwater lednian stonefly has been observed in a total of 11

streams within Glacier NP, at sites ranging from 1,628 to 2,378 meters (m) elevation (5,341 to 7,801 feet (ft)) (NPS 2009; *see* Table 1 below). Most collection sites have been in close proximity to glaciers. The species can attain moderate to high abundance in certain locations (*e.g.,* Logan Creek: Baumann and Stewart 1980, p. 658; NPS 2009, entire).

TABLE 1—DOCUMENTED OCCURRENCES OF MELTWATER LEDNIAN STONEFLY (LEDNIA TUMANA) DURING THE LAST 13 YEARS. ALL OCCURRENCES ARE WITHIN GLACIER NP, MONTANA. INFORMATION PROVIDED BY NPS (2009) BASED ON DATA COLLECTED BY F. RICHARD HAUER (FLATHEAD LAKE BIOLOGICAL STATION, DIVISION OF BIOLOGICAL SCIENCES, UNIVERSITY OF MONTANA, POLSON) AND JOE GIERSCH (DRUNELLADESIGNS.COM, WEST GLACIER, MONTANA)

Stream or drainage	Year	Elevation
East of the Continental Divide (Glacier County, Montana)		
Baring Creek [a]	1998	2,378 m (7,801 ft).
	1999	2,173 m (7,129 ft).
	2003	2,273 m (7,457 ft).
	2009	2,024 m (6,640 ft).
Lunch Creek [a b]	1999	2,173 m (7,129 ft).
	2003	2,273 m (7,457 ft).
	2009	2,024 m (6,640 ft).
Reynolds Creek [a b]	1997	2,171 m (7,123 ft).
		2,170 m (7,119 ft).
		2,140 m (7,021 ft).
		2,106 m (6,909 ft).
		2,165 m (7,103 ft).
	1998	2,169 m (7,116 ft).
		2,068 m (6,785 ft).
		2,099 m (6,886 ft).
		2,165 m (7,103 ft).
St. Mary River [a]	1999	2,054 m (6,739 ft).
Swiftcurrent Creek [a]	2007	1,628 m (5,341 ft).
Twin Lakes (St. Mary River)	1998	2,265 m (7,431 ft).
West of the Continental Divide (Flathead County, Montana)		
Ahern Creek	1998	2,065 m (6,775 ft).
Bear Creek	2001	1,696 m (5,564 ft).
Hidden Lake (Hidden Creek)	1998	2,302 m (7,552 ft).
Logan Creek [a b]	1998	2,115 m (6,939 ft).
		2,031 m (6,663 ft).
Mineral Creek	1997	2,017 m (6,617 ft)

Collection Location Details
[a] Stream directly associated with a named glacier within that watershed or an unnamed glacier present on a 7.5′ topographic map.
[b] Multiple collections within a stream are itemized by year and elevation.

Although the species has been observed recently only in Glacier NP, experts speculate that suitable habitat for the species may extend north into Waterton Lakes National Park in Canada and south into the Scapegoat-Great Bear-Bob Marshall wilderness areas of Montana, or in similar areas of the northern Rocky Mountains in alpine snow-melt streams (*e.g.,* Baumann 1982, pers. comm.; Giersch 2010a, pers. comm.). The species was previously reported from the Waterton River system in Alberta (Donald and Anderson 1977, p. 114). However, surveys conducted in Waterton Lakes National Park (Canada) during 2007 and 2008 did not detect the species (Langor 2010, pers. comm.), although it is unclear if the proper habitat was surveyed (Johnston 2010, pers. comm.).

In general, little information exists about the meltwater lednian stonefly, and additional surveys are needed in order to develop a more thorough understanding of its distribution and abundance (*e.g.,* Giersch 2010a, 2010b, pers. comm.). In the interim, we conclude based on the available recent survey information that the meltwater lednian stonefly is a narrow endemic present only in Glacier NP.

Habitat

The meltwater lednian stonefly is found in snow-melt runoff streams in high-elevation, alpine areas, most typically in locations closely linked to glacial runoff (Baumann and Stewart 1980, p. 658; MNHP 2010a) or alpine springs (Hauer *et al.* 2007, p. 107; Giersch 2010c, pers. comm.). The species is considered a cold-water stenotherm restricted to water less than (<) 10 degrees Celsius (°C) (< 50 degrees Fahrenheit (°F)) (MNHP 2010a), but apparently it can tolerate higher water temperatures (up to 15 °C (59 °F)) in certain situations (Hauer *et al.* 2007, p. 107) for short periods of time (Giersch 2010c, pers. comm.). Most aquatic invertebrates in stream environments in the northern Rocky Mountains exhibit very strong elevation (temperature) gradients in their distribution (*e.g.,* Fagre *et al.* 1997, p. 763; Lowe and Hauer 1999, pp. 1637, 1640, 1642; Hauer *et al.* 2007, p. 110), and occur at the highest population density in their preferred temperature range. We presume the meltwater lednian stonefly exhibits a similar pattern, in terms of being more likely to be present and more abundant in the small (first order), cold, snowmelt-driven, alpine streams, and less likely to occur farther downstream within a drainage in larger habitats (second order and larger streams) with warmer water temperatures. In general, the alpine

streams inhabited by the meltwater lednian stonefly are presumed to have very low nutrient concentrations (low nitrogen and phosphorus), reflecting the nutrient content of the glacial or snow-melt source (Hauer *et al.* 2007, pp. 107–108). The daytime microhabitat preferences of meltwater lednian stonefly nymphs are the underside of rocks or larger pieces of bark or wood (Baumann and Stewart 1980, p. 658).

Summary of Information Pertaining to the Five Factors for the Meltwater Lednian Stonefly

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR 424) set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this finding, information pertaining to meltwater lednian stonefly in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The known distribution of the meltwater lednian stonefly is entirely within the boundaries of Glacier NP. The ecosystems in most national parks are considered to be comparatively pristine, and the Glacier NP is a relatively unaltered landscape when compared to other areas of western North America (Fagre 2005, p. 2).

Climate Change

Climate is influenced primarily by long-term patterns in air temperature and precipitation. The Intergovernmental Panel on Climate Change (IPCC) has concluded that climate warming is unequivocal, and is now evident from observed increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global mean sea level (IPCC 2007, pp. 30–31). Continued greenhouse gas emissions at or above current rates are expected to cause further warming (IPCC 2007, p. 30). The years from 1995 through 2006 rank among the 12 warmest years in the instrumental record of global average near-surface temperature since 1850 (Independent Scientific Advisory Board (ISAB) 2007, p. 7; IPCC 2007, p. 30). During the last century, mean annual air temperature increased by approximately 0.6 °C (1.1 °F) (IPCC 2007, p. 30). Warming appears to have accelerated in recent decades, as the linear warming trend over the 50 years from 1956 to 2005 (average 0.13 °C or 0.24 °F per decade) is nearly twice that for the 100 years from 1906 to 2005 (IPCC 2007, p. 30). Climate change scenarios estimate that the mean air temperature could increase by over 3 °C (5.4 °F) by 2100 (IPCC 2007, pp. 45–46). The IPCC also projects there will likely be regional increases in the frequency of hot extremes, heat waves, and heavy precipitation, as well as greater warming in high northern latitudes (IPCC 2007, p. 46).

We recognize that there are scientific differences of opinion on many aspects of climate change, including the role of natural variability in climate. In our analysis, we rely primarily on synthesis documents (IPCC 2007, entire; ISAB 2007, entire; Karl *et al.* 2009, entire) that present the consensus view of a large number of experts on climate change from around the world. We find that these synthesis reports, as well as the scientific papers used in, or resulting from, those reports represent the best available scientific information we can use to inform our decision. Where possible, we use empirical data or projections specific to Glacier NP and the surrounding area and focus on observed or expected effects on stream systems, as this area includes the known distribution of the meltwater lednian stonefly.

Water temperature and hydrology (stream flow) influence many of the basic physical and biological processes in aquatic systems, and both are sensitive to environmental changes that result from climate change (*e.g.,* Stewart *et al.* 2005, entire; Isaak *et al.* 2010, entire; Kaushal *et al.* 2010, entire). For ectothermic organisms like aquatic invertebrates, temperature sets basic constraints on species' distribution and physiological performance (Fagre *et al.* 1997, p. 763; Lowe and Hauer 1999, pp. 1637, 1640, 1642; Hauer *et al.* 2007, p. 110). Stream hydrology not only affects the structure of aquatic systems across space and time, but influences the life history and phenology (timing of life-cycle events) of aquatic invertebrates such as stoneflies (Stewart and Harper 1996, pp. 217–218).

Significant trends in water temperature and stream flow have been observed in the western United States (Stewart *et al.* 2005, entire; Kaushal *et al.* 2010, entire), and increased air temperatures and changes in precipitation are partially responsible. During the past 50 to 100 years in the western United States, the timing of runoff from snowmelt has shifted to occur 1 to 4 weeks earlier (Regonda *et al.* 2005, p. 380; Stewart *et al.* 2005, pp. 1136, 1141; Hamlet *et al.* 2007, p. 1468), presumably as a result of increased temperatures (Hamlet *et al.* 2007, p. 1468), increased frequency of melting (Mote *et al.* 2005, p. 45), and decreased snowpack (Mote *et al.* 2005, p. 41). Trends in decreased water availability also are apparent across the Pacific Northwest. For example, Luce and Holden (2009, entire) found a tendency toward more extreme droughts at 72 percent of the stream flow gages they examined across Idaho, Montana, Oregon, and Washington.

The western United States appears to be warming faster than the global average. In the Pacific Northwest, regionally averaged temperatures have risen 0.8 °C (1.5 °F) over the last century and as much as 2 °C (4 °F) in some areas. Since 1900, the mean annual air temperature for Glacier NP and the surrounding region has increased 1.33 °C, which is 1.8 times the global mean increase (U.S. Geological Survey (USGS) 2010, p. 1). Mean annual air temperatures are projected to increase by another 1.5 to 5.5 °C (3 to 10 °F) over the next 100 years (Karl *et al.* 2009, p. 135). Warming also appears to be very pronounced in alpine regions globally (*e.g.,* Hall and Fagre 2003, p. 134 and references therein).

For the purposes of this finding, we consider the foreseeable future for anticipated environmental changes such as reductions in glacial meltwater and increases in stream temperatures to be approximately 40 years based on two factors. First, various global climate models (GCMs) and emissions scenarios give consistent predictions within that

timeframe (Ray *et al.* 2010, p. 11). Second, the effect of climate change on glaciers in Glacier NP has been modeled within that time range (*e.g.,* Hall and Fagre 2003, entire). We used a similar foreseeable future time period when considering climate change projections in other 12-month findings for species in western North America (*see* American pika (*Ochotona princeps*), 75 FR 6438, February 9, 2010; Arctic grayling (*Thymallus arcticus*), 75 FR 54708, September 8, 2010).

While projected patterns of warming across North America are generally consistent across different GCMs and emissions scenarios (Ray *et al.* 2010, p. 22), there tends to be less agreement among models for whether mean annual precipitation will increase or decrease, but the models seem to indicate an increase in precipitation in winter and a decrease in summer (Ray *et al.* 2010, pp. 22–23). In the foreseeable future, natural variation will likely confound a clear prediction for precipitation based on current climate models (Ray *et al.* 2010, p. 29). Although there is considerable uncertainty about how climate will evolve at any specific location, statistically downscaled climate projection models (models that predict climate at finer spatial resolution than GCMs) for the western United States also support widespread warming, with warmer temperature zones shifting to the north and upward in elevation (Ray *et al.* 2010, pp. 23–24).

Based on the information described above, we believe that environmental changes resulting from climate change may affect the meltwater lednian stonefly through two primary mechanisms: (1) Loss of glaciers, and (2) changes in hydrology and increased water temperature.

Glacier Loss

Environmental changes resulting from climate change are assumed to be directly related to the well-documented loss of glaciers in Glacier NP (*e.g.,* Hall and Fagre 2003, entire; Fagre 2005, entire). Glacier NP contained approximately 150 glaciers larger than 0.1 square kilometer (25 acres) in size when established in 1910, but presently only 25 glaciers larger than 0.1 square kilometers in size (25 acres) remain in the park (Fagre 2005, pp. 1–3; USGS 2005, 2010). Between 1966 and 2006, the 25 largest glaciers (those that are presently believed to be larger than 0.1 square kilometer (25 acres) in area) shrank by an average of 26.4 percent, whereas smaller glaciers (those that are presently believed to be smaller than 0.1 square kilometer (25 acres) in area) shrank at more than twice that rate (59.7 percent) (USGS 2010).

Hall and Fagre (2003, entire) modeled the effects of climate change on glaciers in Glacier NP's Blackfoot-Jackson basin using then-current climate assumptions (doubling of atmospheric carbon dioxide by 2030). Current climate change publications consider scenarios with higher anticipated carbon dioxide concentrations and associated temperature changes. However, we are not aware of any other published studies using more recent climate scenarios that speak directly to anticipated conditions in Glacier NP, so we use Hall and Fagre's predictions in our analysis. Under this scenario, they predicted that increases in winter precipitation would not be able to buffer glacial shrinking, and the Blackfoot-Jackson glaciers, which are among the largest in Glacier NP, would disappear entirely by 2030 (Hall and Fagre 2003, pp. 137–138).

Glacial shrinking varies by topography (structure and position of land underlying the glaciers), with the result that glaciers shrink at different rates (*e.g.,* Key *et al.* 2002, p. J370; Hall and Fagre 2003, p. 136). Given the greater relative rate of shrinkage observed in smaller glaciers (*e.g.,* USGS 2010), we presume that if Hall and Fagre's projections are correct, then nearly all glaciers should be gone from Glacier NP by 2030. We base our analysis as to whether climate change threatens the meltwater lednian stonefly on this assumption.

The consequences of glacier shrinking and glacier loss to aquatic systems inhabited by the meltwater lednian stonefly in Glacier NP are expected to be significant (*e.g.,* Fagre 2005, p. 8). Glaciers act as water banks, whose continual melt helps regulate stream water temperatures and maintain streamflows during late summer or drought periods (Hauer *et al.* 2007, p. 107; USGS 2010). Loss of glaciers may lead to direct dewatering of headwater stream reaches, thus desiccating (drying) habitats currently occupied by lednian stoneflies that are often in close proximity to glaciers (*e.g.,* Baumann and Stewart 1980, p. 658). Permanent desiccation (*i.e.,* no streamflow) resulting from loss of glaciers is expected to result directly in the loss of suitable habitat for the meltwater lednian stonefly and the extirpation of populations that are directly dependent on surface runoff from melting glaciers.

In some cases, streams might change from perennial (always flowing) to ephemeral (only flowing seasonally) as glaciers disappear (Hauer *et al.* 1997, p. 909). A transition from perennial to ephemeral streamflow also is expected to reduce the extent of habitat suitable for the meltwater lednian stonefly; however, the actual response may be more complex in this scenario. For example, adults of the species emerge (transition from aquatic larvae to terrestrial winged adults) and reproduce in the short time period in August and September when the streams are not covered with seasonal snowpack. The species is thus adapted to reproduce in a very narrow ecological window. If the stream only flows seasonally, the species may still be able to complete its life cycle if the nymph (larval) stage can withstand seasonal stream drying. We do not know whether the species can complete its entire life cycle within 1 year (univoltine) or across more than 1 year (semivoltine), nor do we have projections for which streams may dry seasonally in Glacier NP. Therefore, at this time we cannot accurately predict the response of the species in cases where streams change from perennial to ephemeral. However, we do presume that this change will, at a minimum, reduce the distribution and abundance of the species.

Loss of glaciers also may indirectly affect alpine streams by changing the riparian vegetation and nutrient cycling in stream ecosystems. For example, the reduced snowpacks that lead to glacier recession are predicted to allow high-elevation trees to become established above the current treeline and in subalpine meadows, and thus to reduce the diversity of herbaceous plants (Hall and Fagre 2003, pp. 138–139). Changes in riparian vegetation (such as a shift from deciduous to coniferous vegetation) may affect nutrient cycling in headwater streams and the quality of food resources available to herbivorous aquatic insects (*e.g.,* Hisabae *et al.* 2010, pp. 5–7), such as the meltwater lednian stonefly and other aquatic macroinvertebrates.

Changes to Streamflow and Water Temperature

Reduced water volume of snowmelt runoff from glaciers (Fagre 2005, p. 7), combined with earlier runoff (*e.g.,* Fagre 2005, p. 1) and increases in temperatures expected under climate change (Karl *et al.* 2009, p. 135), may result in water temperatures above the physiological limits for survival or optimal growth for the meltwater lednian stonefly, which is a cold-water species (MNHP 2010a). Given the strong temperature gradients that influence the distribution of aquatic invertebrates (Fagre *et al.* 1997, p. 763; Lowe and Hauer 1999, pp. 1637, 1640, 1642; Hauer *et al.* 2007, p. 110) and our

assumption that the meltwater lednian stonefly responds similarly to these types of gradients, we expect that there will be major changes in invertebrate communities, with species that currently occupy more downstream reaches shifting their distributions to higher elevations to track changing thermal regimes (*e.g.,* Fagre 2005, p. 7). One likely result is the displacement or extirpation or both of stenothermic species that occupy headwater stream reaches (such as the meltwater lednian stonefly), due to thermal conditions that become unsuitable, encroaching aquatic invertebrate species that may be superior competitors, or changed thermal conditions that may favor the encroaching species in competitive interactions between the species (so-called condition-specific competition). Consequently, we infer that changes in the timing and volume of streamflow coupled with increased summer water temperatures will reduce the extent of suitable habitat and result in the extirpation of some meltwater lednian stonefly populations.

In summary, we expect environmental changes resulting from climate change to affect the meltwater lednian stonefly through loss of glaciers, which can lead to the permanent or seasonal drying of currently occupied habitats, and through interrelated alterations to existing hydrologic and thermal regimes, which will reduce the extent of habitat suitable for this species because it has very specific thermal requirements (*i.e.,* it is a cold-water obligate). Environmental changes resulting from climate change are ongoing based on the documented shrinking of glaciers in Glacier NP, and are expected to continue in the foreseeable future in Glacier NP (*e.g.,* Fagre and Hall 2003, entire) and across western North America (USGS 2010, p.1; Karl *et al.* 2009, p. 135). Consequently, we conclude that the threat of current and future environmental changes resulting from climate change occurs over the entire range of the species. This threat has likely reduced the amount of suitable habitat for the meltwater lednian stonefly, based on the documented extent of glacial melting. However, data on the species is sparse and limited to a handful of observations (*e.g., see* Table 1 above). Thus, we have no empirical basis for evaluating whether there are any trends in the occurrence or abundance of the species, nor can we speak to whether environmental changes resulting from climate change have actually affected populations. We reason that future environmental changes resulting from climate change will likely result in the extirpation of populations of the meltwater lednian stonefly because of stream drying and increased water temperatures, and that there will be substantial reductions in the amount of suitable habitat for the species relative to its current range. Effects on populations found in spring habitats may lag behind those found in stream habitats directly associated with melting glaciers or snowfields. Chemical, hydrologic, and thermal conditions of both habitat types are ultimately influenced by melting snow and ice, but conditions in spring habitats are more stable (*e.g.,* Hauer *et al.* 2007, p. 107; Giersch 2010c, pers. comm.) and should change more slowly because their groundwater sources are storing water from melted snow and ice. Ultimately, spring habitats might also dry as their groundwater sources are depleted, and not replenished by glacial meltwater.

The impacts of environmental changes resulting from climate change will likely continue within the foreseeable future (40 years). Due to the magnitude and extent of the effects of the environmental changes resulting from climate change, we conclude that the environmental changes resulting from climate change constitute a significant threat to the meltwater lednian stonefly in the foreseeable future.

Maintenance and Improvement of Glacier National Park Infrastructure

Glacier NP is managed to protect natural and cultural resources, and the landscape within the park is relatively pristine. However, the Glacier NP does include a number of human-built facilities and structures, such as the Going-to-the-Sun Road (which bisects the Glacier NP) and numerous visitor centers, trailheads, overlooks, and lodges (*e.g.,* NPS 2003a, pp. S3, 11). Maintenance and improvement of these facilities and structures could conceivably lead to disturbance of the natural environment.

One major project initiated in 2003, and that is ongoing as of 2011, is the improvement of the Going-to-the-Sun Road (NPS 2003a; 2003b). This road parallels or bisects a number of streams in the Glacier NP including McDonald, Logan, Lunch, Siyeh, and Baring Creeks (NPS 2003a, p. 134). Localized land disturbance associated with construction activities could lead to introduction of sediment into stream channels (*e.g.,* NPS 2003a, pp. S18–S19, 74). However, the collection sites for the meltwater lednian stonefly in streams adjacent to or bisected by the road (*e.g.,* Logan, Lunch, and Baring Creeks; *see* Table 1 above) are all upstream from the road. We anticipate that any disturbance to aquatic habitats from road construction would occur in the immediate vicinity of the construction and that any impacts (*i.e.,* sediment input) would be translated downstream. Thus, we conclude that road maintenance does not constitute a threat to the meltwater lednian stonefly or its habitat now or in the foreseeable future.

We do not have any information indicating maintenance and improvement of other Glacier NP facilities and structures is affecting the species. Most documented occurrences of meltwater lednian stonefly are in remote locations upstream from human-built structures; thus we conclude that maintenance and improvement of other Glacier NP facilities and structures does not constitute a threat to the meltwater lednian stonefly or its habitat now or in the foreseeable future.

Glacier National Park Visitor Impacts

Between 2000 to 2008, Glacier NP averaged more than 1.8 million visitors annually (NPS 2008). Many of the recent collection sites for the meltwater lednian stonefly (*e.g.,* Logan and Reynolds Creeks; *see* Table 1 above) are near visitor centers or adjacent to popular hiking trails. Theoretically, human activity (wading) in streams by anglers or hikers could disturb meltwater lednian stonefly habitat. However, we consider it unlikely that many Glacier NP visitors would actually wade in stream habitats where the species has been collected, because the sites are in small, high-elevation streams situated in rugged terrain, and most would not be suitable for angling. In addition, the sites are typically snow covered into late July or August (Giersch 2010a, pers. comm.), and the alpine areas begin to accumulate snowpack in the fall, so the sites occupied by the stonefly are not accessible for more than a few months. We also note that the most accessible collection sites in Logan Creek near the Logan Pass Visitor Center and the Going-to-the-Sun Road (so called "Jones Flat" at Oberlin Bend) are currently closed to public use and entry to protect resident vegetation (NPS 2010, pp. J5, J24). We conclude that impacts to the meltwater lednian stonefly and its habitat from public visitors to Glacier NP do not constitute a threat now or in the foreseeable future.

Summary of Factor A

Climate change, and the associated effects of glacier loss, reduced streamflows, and increased water temperatures, is expected to

significantly reduce the occurrence of populations and extent of suitable habitat for the meltwater lednian stonefly in Glacier NP in the foreseeable future. Nearly all known recent occurrences of the meltwater lednian stonefly are in close proximity to glaciers that are projected to disappear during the next 20 years. Consequently, we expect that the environmental changes resulting from climate change will significantly alter the habitat of all extant populations of the meltwater lednian stonefly, and we conclude that the loss of glaciers represents a high-intensity threat (*i.e.,* one that results in dramatic changes to the species' habitat and distribution) and that this threat is, and will continue to be, large in scope (most, if not all, known populations will be affected) now and into the foreseeable future. The significant reduction in glacier size observed during the past 40 years is evidence that the environmental changes resulting from climate change also may represent a current threat to this species, but we do not have any information on trends in the occurrence of meltwater lednian stonefly populations or changes in densities of specific populations to confirm this. In addition, we anticipate that effects of the environmental changes resulting from climate change on the species will become more pronounced, or that they will accelerate in the foreseeable future, as glaciers melt and eventually disappear in Glacier NP. In conclusion, we find that the meltwater lednian stonefly is likely to become in danger of extinction in the foreseeable future because of the environmental changes resulting from climate change.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are not aware of any threats involving the overutilization or collection of the meltwater lednian stonefly (*Lednia tumana*) for any commercial, recreational, scientific, or educational purposes at this time. We are aware that specimens are occasionally collected for scientific purposes to determine its distribution and abundance (*e.g.,* Baumann and Stewart 1980, pp. 655, 658; NPS 2009); however, the species is observed to be relatively abundant in preferred habitats (*e.g.,* NPS 2009). We have no information that suggests past collections, current collections, or any collections in the foreseeable future will result in population-level effects to the species. Consequently, we do not consider overutilization for commercial, recreational, scientific, or educational purposes to be a threat to the meltwater lednian stonefly.

Factor C. Disease or Predation

We are not aware of any diseases that affect the meltwater lednian stonefly. Therefore, we do not consider disease to be a threat to the species now or in the foreseeable future.

We presume that nymph and adult meltwater lednian stoneflies may occasionally be subject to predation by bird species such as the American dipper (*Cinclus mexicanus*). The American dipper prefers to feed on aquatic invertebrates in fast-moving, clear, alpine streams (MNHP 2010b), and the species is native to Glacier NP. As such, predation by American dipper on the meltwater lednian stonefly would represent a natural ecological interaction in the Glacier NP. We have no evidence that the extent of such predation, if it occurs, represents any population-level threat to the meltwater lednian stonefly. Therefore, we do not consider predation to be a threat to the species now or in the foreseeable future.

In summary, there is currently no scientific evidence to indicate that the meltwater lednian stonefly is affected by any diseases, or that any avian predation that occurs constitutes an abnormal (above background-level) predator-prey interaction likely to have adverse population-wide effects. Therefore, we do not find disease or predation to be threats to the meltwater lednian stonefly now or in the forseeable future.

Factor D. Inadequacy of Existing Regulatory Mechanisms

The Act requires us to examine the adequacy of existing regulatory mechanisms with respect to those existing and foreseeable threats that place the meltwater lednian stonefly in danger of becoming either endangered or threatened. The currently documented distribution of the species is within the boundaries of Glacier NP, which is under the jurisdiction of the National Park Service (NPS). Thus, there are a number of Federal laws and regulations that may be relevant.

National Environmental Policy Act

All Federal agencies are required to adhere to the National Environmental Policy Act (NEPA) of 1970 (42 U.S.C. 4321 *et seq.*) for projects they fund, authorize, or carry out. The Council on Environmental Quality's regulations for implementing NEPA (40 CFR 1500–1518) state that, when preparing environmental impact statements, agencies shall include a discussion on the environmental impacts of the various project alternatives, any adverse environmental effects which cannot be avoided, and any irreversible or irretrievable commitments of resources involved (40 CFR 1502). The NEPA itself is a disclosure law, and does not require subsequent minimization or mitigation measures by the Federal agency involved. Although the NPS may include conservation measures for meltwater lednian stonefly or any other species as a result of the NEPA process, any such measures are typically voluntary in nature and are not required by NEPA.

National Park Service Organic Act

The NPS Organic Act of 1916 (16 U.S.C. 1 *et seq.*), as amended, states that the NPS "shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations * * * to conserve the scenery and the national and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." The current distribution of the meltwater lednian stonefly is entirely within the boundaries of Glacier NP, so the NPS Organic Act is presumed to be one Federal law of particular relevance to the species. Although Glacier NP does not have a management plan specific to the meltwater lednian stonefly, the habitats occupied by the species remain relatively pristine and generally free from direct human impacts from Glacier NP visitors (*see* discussion under Factor A). We also note that the most accessible meltwater lednian collection sites in Logan Creek near the Logan Pass Visitor Center and the Going-to-the-Sun Road (so called "Jones Flat" at Oberlin Bend) are currently closed to public use and entry to protect resident vegetation under Glacier NP management regulations (NPS 2010, pp. J5, J24). We believe that the NPS Organic Act provides adequate protection from the species and its habitat being directly destroyed or modified by most human activities, including visitor use and development. However, the NPS Organic Act does not address the primary threat to the species of habitat loss resulting from the environmental changes due to climate change. Therefore, the Organic Act does not constitute an adequate regulatory mechanism for this threat.

Clean Air Act

On December 15, 2009, the U.S. Environmental Protection Agency (EPA) published in the **Federal Register** (74 FR 66496) a rule titled, "Endangerment

and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act." In this rule, the EPA Administrator found that the current and projected concentrations of the six long-lived and directly emitted greenhouse gases—carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride—in the atmosphere threaten the public health and welfare of current and future generations; and that the combined emissions of these greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas pollution that threatens public health and welfare (74 FR 66496). In effect, the EPA has concluded that the greenhouse gases linked to climate change are pollutants, whose emissions can now be subject to the Clean Air Act (42 U.S.C. 7401 *et seq.; see* 74 FR 66496). However, specific regulations to limit greenhouse gas emissions were only proposed in 2010. At present, we have no basis to conclude that implementation of the Clean Air Act in the foreseeable future (40 years, based on global climate projections) will substantially reduce the current rate of global climate change through regulation of greenhouse gas emissions. Thus, we conclude that the Clean Air Act does not adequately address the primary threat to the meltwater lednian stonefly, namely the anticipated loss of thermally and hydrologically suitable habitat as a result of the melting of glaciers and other environmental changes that result from climate change in Glacier NP.

Summary of Factor D

The existing regulatory mechanisms, especially the NPS Organic Act, appear to adequately protect the pristine nature of Glacier NP and presumably the high-alpine streams inhabited by the meltwater lednian stonefly. Thus, at a local or regional level we have no evidence that such regulatory mechanisms are inadequate to protect the species now or in the foreseeable future, and we expect that meltwater lednian stonefly habitat in Glacier NP will be generally protected from direct human disturbance. However, we consider habitat loss and modification resulting from the environmental changes due to climate change to constitute the primary threat to the species. The United States is only now beginning to address global climate change through the regulatory process (*e.g.,* Clean Air Act). We have no information on what regulations may eventually be adopted, and when implemented, if they would address the changes in meltwater lednian stonefly habitat that are likely to occur in the foreseeable future. Consequently, we conclude that existing regulatory mechanisms are not adequate to address the threat of habitat loss and modification resulting from the environmental changes due to climate change to the meltwater lednian stonefly in the foreseeable future.

Factor E. Other Natural or Manmade Factors Affecting The Species' Continued Existence

Restricted Range and Stochastic (Random) Events

The meltwater lednian stonefly is currently considered to be a narrow endemic found only within Glacier NP. At present, the species' restricted range makes the species vulnerable to extirpation by localized disturbances or environmental conditions, such as fire, flood, and drought. We have no information on the specific effects of any of these disturbances on the meltwater lednian stonefly, nor any information on the ability of the species to recover from disturbance or disperse to new habitats. However, in general, organisms of alpine stream segments may be isolated by specific thermal or habitat criteria that make transfer from one stream to another difficult despite the physical connections that exist in dendritic stream networks (*e.g.,* Hauer *et al.* 2007, pp. 108–110). We presume that the species' restricted range does not constitute a threat in itself for the meltwater lednian stonefly, especially as it occupies habitats that are generally considered pristine and that should be comparatively resistant and resilient to disturbance compared to more intensively managed landscapes. We do not consider the species' restricted range to be a threat at the present time, but we do anticipate that the species' restricted range may interact with the anticipated environmental changes resulting from the effects of climate change to increase the risk of extirpation, and therefore to become a threat in the foreseeable future.

Summary of Factor E

The restricted range of the meltwater lednian stonefly does not necessarily constitute a threat in itself. However, the restricted range in concert with the threat of habitat loss and modification resulting from the environmental changes due to climate change is expected to increase the vulnerability of the species, and thus we anticipate this will become a threat in the foreseeable future. We are not aware of any additional natural or manmade factors affecting the species' continued existence that present a current or potential threat in the foreseeable future to the meltwater lednian stonefly, but we do consider the interaction of the species' restricted range with the threat of habitat loss in the foreseeable future to be a threat to the species under this factor.

Finding for the Meltwater Lednian Stonefly

As required by the Act, we considered the five factors in assessing whether the meltwater lednian stonefly is endangered or threatened throughout all or a significant portion of its range. We carefully examined the best scientific and commercial information available regarding the past, present, and future threats faced by the species. We reviewed the petition, information available in our files, other available published and unpublished information, and we consulted with recognized experts and other Federal and State agencies.

The meltwater lednian stonefly is a narrowly distributed endemic presently known to occur in a small number of cold, snowmelt- or glacier-fed, high-alpine streams in Glacier NP, Montana. Our status review identified threats to the species related to Factors A, D, and E. In particular, under Factor A, the melting of glaciers in Glacier NP is considered a threat to the species, now and in the foreseeable future, because loss of glaciers is expected to alter the thermal and hydrologic regimes of high-alpine streams occupied by the species. Higher water temperatures, seasonal or permanent stream dewatering, and changes in the timing and volume of snowmelt may change the existing habitat such that it no longer satisfies the ecological and physiological requirements of the species. While existing regulatory mechanisms provide adequate protection for the meltwater lednian stonefly and its habitat from direct destruction or modification resulting from most human activities, the existing regulatory mechanisms do not address the primary threat to the species, which is habitat loss and modification resulting from environmental changes caused by global climate change. Thus, under Factor D, we conclude the existing regulatory mechanisms do not adequately address the threat of habitat loss and modification in the foreseeable future. In addition, under Factor E we conclude that the restricted range of the species, while not a threat by itself, is expected to interact with the threat of habitat loss and modification to increase the

vulnerability of the species in the forseeable future.

On the basis of the best scientific and commercial information available, we find that listing of the meltwater lednian stonefly as endangered or threatened is warranted. We will make a determination on the status of the species as endangered or threatened when we prepare a proposed listing determination. However, as explained in more detail below (*see* Preclusion and Expeditious Progress section), an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We have reviewed the available information to determine if the existing and foreseeable threats render the species at risk of extinction now, such that issuing an emergency regulation temporarily listing the species, under section 4(b)(7) of the Act, is warranted. We determined that issuing an emergency regulation temporarily listing the species is not warranted at this time, because the species is not under immediate threat of extinction. Glaciers still exist in Glacier NP and are expected to be present through the next decade. However, if at any time we determine that issuing an emergency regulation temporarily listing the meltwater lednian stonefly is warranted, we will initiate the action at that time.

Listing Priority Number

The Service adopted guidelines on September 21, 1983 (48 FR 43098), to establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered or Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. These guidelines, titled "Endangered and Threatened Species Listing and Recovery Priority Guidelines," address the immediacy and magnitude of threats, and the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera (genus with one species), full species, and subspecies (or equivalently, distinct population segments of vertebrates).

As a result of our analysis of the best available scientific and commercial information, we assigned the meltwater lednian stonefly a Listing Priority Number (LPN) of 4 based on our finding that the species faces threats that are of high magnitude but are not imminent. These primary threats include the present or threatened destruction, modification, or curtailment of its habitat resulting from climate change, and the inadequacy of existing regulatory mechanisms to address threats from climate change.

Under the Service's guidelines, the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidelines indicate that species with the highest magnitude of threat are those species facing the greatest threats to their continued existence. These species receive the highest listing priority. We consider the threats that the meltwater lednian stonefly faces from melting glaciers and other environmental changes that result from climate change to be high in magnitude because of the recent observations of glacial ablation (shrinking) in Glacier NP and the projections that all glaciers in Glacier NP may disappear in the next 20 years, and because we expect all known populations of the meltwater lednian stonefly to be affected by these changes.

Under our LPN guidelines, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure that species facing actual, identifiable threats are given priority over those for which threats are only potential or for those that are intrinsically vulnerable but are not known to be presently facing such threats. The significant reduction in glacier sizes in Glacier NP observed during the past few decades and the changes in hydrologic patterns and water temperatures attributed to climate change suggests that habitat loss and modification may represent a current threat to the species. Because of its apparent dependence on glacial meltwater for survival, the meltwater lednian stonefly is intrinsically vulnerable to threats from the environmental changes resulting from climate change. However, we do not have sufficient empirical information on the meltwater lednian stonefly to evaluate whether there are any trends in the occurrence or abundance of the species, nor do we have any information about the species' response to such changes. Thus, we cannot conclude that the species is currently actually facing the threat of habitat loss and modification, which would be necessary to make a finding that the threat of environmental changes resulting from climate change is imminent. Environmental changes resulting from climate change are reasonably certain to occur, but we have no empirical (documented) evidence that the resulting threat to the species is imminent (ongoing). The other identified threats include inadequate regulatory mechanisms for addressing the environmental changes resulting from climate change, and the interaction of the species' restricted range with the threat of habitat loss resulting from climate change. These threats act in concert with climate change, and so they also are not imminent. We expect the threat of climate change to intensify in the foreseeable future based on projections of air temperature increases from current global climate models and the predicted melting of all glaciers in Glacier NP by the year 2030. Therefore, based on our LPN guidelines, the threats are not imminent (ongoing).

The third criterion in our LPN guidelines is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. The meltwater lednian stonefly (*Lednia tumana*) is a valid taxon at the species level and is currently recognized as a monotypic genus; thus it receives a higher priority than a species or subspecies.

Therefore, we have assigned the meltwater lednian stonefly an LPN of 4 based on our determination that the threats are high in magnitude but not imminent, and because the species is recognized as a monotypic genus.

We will continue to monitor the threats to the meltwater lednian stonefly and the species' status on an annual basis, and should the taxonomic status or the magnitude or imminence of the threats change, we will revisit our assessment of its LPN.

Because we have assigned the meltwater lednian stonefly a LPN of 4, work on a proposed listing determination for the meltwater lednian stonefly is precluded by work on higher priority listing actions with absolute statutory, court-ordered, or court-approved deadlines and on final listing determinations for those species that were proposed for listing with funds from FY 2010. This work includes all the actions listed in the tables below under Preclusion and Expeditious Progress.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and the cost and relative priority of competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a listing proposal regulation or whether promulgation of such a proposal is precluded by higher-priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual "resubmitted" petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The median cost for preparing and publishing a 90-day finding is $39,276; for a 12-month finding, $100,690; for a proposed rule with critical habitat, $345,000; and for a final listing rule with critical habitat, $305,000.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (*see* 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (*see* House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Since FY 2002, the Service's budget has included a critical habitat subcap to ensure that some funds are available for other work in the Listing Program ("The critical habitat designation subcap will ensure that some funding is available to address other listing activities" (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001)). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In some FYs since 2006, we have been able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In other FYs, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. At this time, for FY 2011, we do not know if we will be able to use some of the critical habitat subcap funds to fund proposed listing determinations.

We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. Through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities nationwide. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress identified the availability of resources as the only basis for deferring the initiation of a rulemaking that is warranted. The Conference Report accompanying Public Law 97–304 (Endangered Species Act Amendments of 1982), which established the current statutory deadlines and the warranted-but-precluded finding, states that the amendments were "not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise." Although that statement appeared to refer specifically to the "to the maximum extent practicable" limitation on the 90-day deadline for making a "substantial information" finding, that finding is made at the point when the Service is deciding whether or not to commence a status review that will determine the degree of threats facing the species, and therefore the analysis underlying the statement is more relevant to the use of the warranted-but-precluded finding, which is made when the Service has already determined the degree of threats facing the species and is deciding whether or not to commence a rulemaking.

In FY 2011, on March 18, 2011, Congress passed a continuing resolution which provides funding at the FY 2010 enacted level through April 8, 2011. Until Congress appropriates funds for FY 2011 at a different level, we will fund listing work based on the FY 2010 amount. Thus, at this time in FY 2011, the Service anticipates an appropriation of $22,103,000 for the listing program based on FY 2010 appropriations. Of that, the Service anticipates needing to dedicate $11,632,000 for determinations of critical habitat for already listed species. Also $500,000 is appropriated for foreign species listings under the Act. The Service thus has $9,971,000 available to fund work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. In FY 2010, the Service received many new petitions and a single petition to list 404 species. The receipt of petitions for a large number of species is consuming the Service's listing funding that is not dedicated to meeting court-ordered commitments. Absent some ability to balance effort among listing duties under existing funding levels, it is unlikely that the Service will be able to initiate any new listing determination for candidate species in FY 2011.

In 2009, the responsibility for listing foreign species under the Act was transferred from the Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. Therefore, starting in FY 2010, we used a portion of our funding to work on the actions described above for listing actions related to foreign species. In FY 2011, we anticipate using $1,500,000 for work

on listing actions for foreign species which reduces funding available for domestic listing actions; however, currently only $500,000 has been allocated for this function. Although there are no foreign species issues included in our high-priority listing actions at this time, many actions have statutory or court-approved settlement deadlines, thus increasing their priority. The budget allocations for each specific listing action are identified in the Service's FY 2011 Allocation Table (part of our record).

For the above reasons, funding a proposed listing determination for the meltwater lednian stonefly, which has an LPN of 4, is precluded by court-ordered and court-approved settlement agreements, listing actions with absolute statutory deadlines, work on final listing determinations for those species that were proposed for listing with funds from FY 2011, and work on proposed listing determinations for those candidate species with a higher listing priority (*i.e.,* candidate species with LPNs of 1 to 3).

Based on our September 21, 1983, guidelines for assigning an LPN for each candidate species (48 FR 43098), we have a significant number of species with high priority LPNs. Using these guidelines, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high or moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: Monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, distinct population segment, or significant portion of the range)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority).

Because of the large number of high-priority species, we have further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, originally comprised a group of approximately 40 candidate species ("Top 40"). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for those 40 candidates, we apply the ranking criteria to the next group of candidates with an LPN of 2 and 3 to determine the next set of highest priority candidate species. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, because as listed species, they are already afforded the protection of the Act and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered if we can combine this with work that is subject to a court-determined deadline.

With our workload so much bigger than the amount of funds we have to accomplish it, it is important that we be as efficient as possible in our listing process. Therefore, as we work on proposed rules for the highest priority species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, we take into consideration the availability of staff resources when we determine which high-priority species will receive funding to minimize the amount of time and resources required to complete each listing action.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. As with our "precluded" finding, the evaluation of whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program in light of the resource available for delisting, which is funded by a separate line item in the budget of the Endangered Species Program. So far during FY 2011, we have completed one delisting rule.) Given the limited resources available for listing, we find that we are making expeditious progress in FY 2011 in the Listing Program. This progress included preparing and publishing the following determinations:

FY 2011 COMPLETED LISTING ACTIONS

Publication date	Title	Actions	FR pages
10/6/2010	Endangered Status for the Altamaha Spinymussel and Designation of Critical Habitat.	Proposed Listing Endangered	75 FR 61664–61690
10/7/2010	12-month Finding on a Petition to list the Sacramento Splittail as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	75 FR 62070–62095
10/28/2010	Endangered Status and Designation of Critical Habitat for Spikedace and Loach Minnow.	Proposed Listing Endangered (uplisting).	75 FR 66481–66552
11/2/2010	90-Day Finding on a Petition to List the Bay Springs Salamander as Endangered.	Notice of 90-day Petition Finding, Not substantial.	75 FR 67341–67343
11/2/2010	Determination of Endangered Status for the Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail and Designation of Critical Habitat.	Final Listing Endangered	75 FR 67511–67550
11/2/2010	Listing the Rayed Bean and Snuffbox as Endangered	Proposed Listing Endangered	75 FR 67551–67583
11/4/2010	12-Month Finding on a Petition to List Cirsium wrightii (Wright's Marsh Thistle) as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 67925–67944
12/14/2010	Endangered Status for Dunes Sagebrush Lizard	Proposed Listing Endangered	75 FR77801–77817
12/14/2010	12-month Finding on a Petition to List the North American Wolverine as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78029–78061

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
12/14/2010	12-Month Finding on a Petition to List the Sonoran Population of the Desert Tortoise as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78093–78146
12/15/2010	12-Month Finding on a Petition to List *Astragalus microcymbus* and *Astragalus schmolliae* as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78513–78556
12/28/2010	Listing Seven Brazilian Bird Species as Endangered Throughout Their Range.	Final Listing Endangered	75 FR 81793–81815
1/4/2011	90-Day Finding on a Petition to List the Red Knot subspecies *Calidris canutus roselaari* as Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 304–311
1/19/2011	Endangered Status for the Sheepnose and Spectaclecase Mussels.	Proposed Listing Endangered	76 FR 3392–3420
2/10/2011	12-Month Finding on a Petition to List the Pacific Walrus as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 7634–7679
2/17/2011	90-Day Finding on a Petition To List the Sand Verbena Moth as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 9309–9318
2/22/2011	Determination of Threatened Status for the New Zealand-Australia Distinct Population Segment of the Southern Rockhopper Penguin.	Final Listing Threatened	76 FR 9681–9692
2/22/2011	12-Month Finding on a Petition to List *Solanum conocarpum* (marron bacora) as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 9722–9733
2/23/2011	12-Month Finding on a Petition to List Thorne's Hairstreak Butterfly as Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 991–10003
2/23/2011	12-Month Finding on a Petition to List *Astragalus hamiltonii, Penstemon flowersii, Eriogonum soredium, Lepidium ostleri,* and *Trifolium friscanum* as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded & Not Warraned.	76 FR 10166–10203
2/24/2011	90-Day Finding on a Petition to List the Wild Plains Bison or Each of Four Distinct Population Segments as Threatened.	Notice of 90-day Petition Finding, Not substantial.	76 FR 10299–10310
2/24/2011	90-Day Finding on a Petition to List the Unsilvered Fritillary Butterfly as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 10310–10319
3/8/2011	12-Month Finding on a Petition to List the Mt. Charleston Blue Butterfly as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 12667–12683
3/8/2011	90-Day Finding on a Petition to List the Texas Kangaroo Rat as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 12683–12690
3/10/2011	Initiation of Status Review for Longfin Smelt	Notice of Status Review	76 FR 13121–31322
3/15/2011	Withdrawal of Proposed Rule to List the Flat-tailed Horned Lizard as Threatened.	Proposed rule withdrawal	76 FR 14210–14268
3/22/2011	12-Month Finding on a Petition to List the Berry Cave Salamander as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 15919–15932

Our expeditious progress also includes work on listing actions that we funded in FY 2010 and FY 2011 but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and, as discussed above, selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, when compared to preparing separate proposed rules for each of them in the future.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement	
Mountain plover [4]	Final listing determination.
Hermes copper butterfly [3]	12-month petition finding.
4 parrot species (military macaw, yellow-billed parrot, red-crowned parrot, scarlet macaw) [5]	12-month petition finding.
4 parrot species (blue-headed macaw, great green macaw, grey-cheeked parakeet, hyacinth macaw) [5]	12-month petition finding.
4 parrots species (crimson shining parrot, white cockatoo, Philippine cockatoo, yellow-crested cockatoo) [5]	12-month petition finding.
Utah prairie dog (uplisting)	90-day petition finding.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

Species	Action
Actions With Statutory Deadlines	
Casey's june beetle	Final listing determination.
6 Birds from Eurasia	Final listing determination.
5 Bird species from Colombia and Ecuador	Final listing determination.
Queen Charlotte goshawk	Final listing determination.
5 species southeast fish (Cumberland darter, rush darter, yellowcheek darter, chucky madtom, and laurel dace) [4]	Final listing determination.
Ozark hellbender [4]	Final listing determination.
Altamaha spinymussel [3]	Final listing determination.
3 Colorado plants (*Ipomopsis polyantha* (Pagosa Skyrocket), *Penstemon debilis* (Parachute Beardtongue), and *Phacelia submutica* (DeBeque Phacelia)) [4].	Final listing determination.
Salmon crested cockatoo	Final listing determination.
6 Birds from Peru & Bolivia	Final listing determination.
Loggerhead sea turtle (assist National Marine Fisheries Service) [5]	Final listing determination.
2 mussels (rayed bean (LPN = 2), snuffbox No LPN) [5]	Final listing determination.
CA golden trout [4]	12-month petition finding.
Black-footed albatross	12-month petition finding.
Mojave fringe-toed lizard [1]	12-month petition finding.
Kokanee—Lake Sammamish population [1]	12-month petition finding.
Cactus ferruginous pygmy-owl [1]	12-month petition finding.
Northern leopard frog	12-month petition finding.
Tehachapi slender salamander	12-month petition finding.
Coqui Llanero	12-month petition finding/ Proposed listing.
Dusky tree vole	12-month petition finding.
3 MT invertebrates (meltwater lednian stonefly (*Lednia tumana*), *Oreohelix* sp. 3, *Oreohelix* sp. 31) from 206 species petition.	12-month petition finding.
5 WY plants (*Abronia ammophila, Agrostis rossiae, Astragalus proimanthus, Boechere* (*Arabis*) *pusilla, Penstemon gibbensii*) from 206 species petition.	12-month petition finding.
Leatherside chub (from 206 species petition)	12-month petition finding.
Frigid ambersnail (from 206 species petition) [3]	12-month petition finding.
Platte River caddisfly (from 206 species petition) [5]	12-month petition finding.
Gopher tortoise—eastern population	12-month petition finding.
Grand Canyon scorpion (from 475 species petition)	12-month petition finding.
Anacroneuria wipukupa (a stonefly from 475 species petition) [4]	12-month petition finding.
3 Texas moths (*Ursia furtiva, Sphingicampa blanchardi, Agapema galbina*) (from 475 species petition)	12-month petition finding.
2 Texas shiners (*Cyprinella* sp., *Cyprinella lepida*) (from 475 species petition)	12-month petition finding.
3 South Arizona plants (*Erigeron piscaticus, Astragalus hypoxylus, Amoreuxia gonzalezii*) (from 475 species petition).	12-month petition finding.
5 Central Texas mussel species (3 from 475 species petition)	12-month petition finding.
14 parrots (foreign species)	12-month petition finding.
Striped Newt [1]	12-month petition finding.
Fisher—Northern Rocky Mountain Range [1]	12-month petition finding.
Mohave Ground Squirrel [1]	12-month petition finding.
Puerto Rico Harlequin Butterfly [3]	12-month petition finding.
Western gull-billed tern	12-month petition finding.
Ozark chinquapin (*Castanea pumila* var. *ozarkensis*) [4]	12-month petition finding.
HI yellow-faced bees	12-month petition finding.
Giant Palouse earthworm	12-month petition finding.
Whitebark pine	12-month petition finding.
OK grass pink (*Calopogon oklahomensis*) [1]	12-month petition finding.
Ashy storm-petrel [5]	12-month petition finding.
Honduran emerald	12-month petition finding.
Southeastern pop snowy plover & wintering pop. of piping plover [1]	90-day petition finding.
Eagle Lake trout [1]	90-day petition finding.
Smooth-billed ani [1]	90-day petition finding.
32 Pacific Northwest mollusks species (snails and slugs) [1]	90-day petition finding.
42 snail species (Nevada & Utah)	90-day petition finding.
Peary caribou	90-day petition finding.
Spring Mountains checkerspot butterfly	90-day petition finding.
Spring pygmy sunfish	90-day petition finding.
Bay skipper	90-day petition finding.
Spot-tailed earless lizard	90-day petition finding.
Eastern small-footed bat	90-day petition finding.
Northern long-eared bat	90-day petition finding.
Prairie chub	90-day petition finding.
10 species of Great Basin butterfly	90-day petition finding.
6 sand dune (scarab) beetles	90-day petition finding.
Golden-winged warbler [4]	90-day petition finding.
404 Southeast species	90-day petition finding.
Franklin's bumble bee [4]	90-day petition finding.
2 Idaho snowflies (straight snowfly & Idaho snowfly) [4]	90-day petition finding.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

Species	Action
American eel [4]	90-day petition finding.
Gila monster (Utah population) [4]	90-day petition finding.
Arapahoe snowfly [4]	90-day petition finding.
Leona's little blue [4]	90-day petition finding.
Aztec gilia [5]	90-day petition finding.
White-tailed ptarmigan [5]	90-day petition finding.
San Bernardino flying squirrel [5]	90-day petition finding.
Bicknell's thrush [5]	90-day petition finding.
Chimpanzee	90-day petition finding.
Sonoran talussnail [5]	90-day petition finding.
2 AZ Sky Island plants (*Graptopetalum bartrami* & *Pectis imberbis*) [5]	90-day petition finding.
I'iwi [5]	90-day petition finding.
High-Priority Listing Actions	
19 Oahu candidate species [2] (16 plants, 3 damselflies) (15 with LPN = 2, 3 with LPN = 3, 1 with LPN = 9)	Proposed listing.
19 Maui-Nui candidate species [2] (16 plants, 3 tree snails) (14 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8)	Proposed listing.
2 Arizona springsnails [2] (*Pyrgulopsis bernadina* (LPN = 2), *Pyrgulopsis trivialis* (LPN = 2))	Proposed listing.
Chupadera springsnail [2] (*Pyrgulopsis chupaderae* (LPN = 2)	Proposed listing.
8 Gulf Coast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11)) [4].	Proposed listing.
Umtanum buckwheat (LPN = 2) and white bluffs bladderpod (LPN = 9) [4]	Proposed listing.
Grotto sculpin (LPN = 2) [4]	Proposed listing.
2 Arkansas mussels (Neosho mucket (LPN = 2) & Rabbitsfoot (LPN = 9)) [4]	Proposed listing.
Diamond darter (LPN = 2) [4]	Proposed listing.
Gunnison sage-grouse (LPN = 2) [4]	Proposed listing.
Coral Pink Sand Dunes Tiger Beetle (LPN = 2) [5]	Proposed listing.
Miami blue (LPN = 3) [3]	Proposed listing.
Lesser prairie chicken (LPN = 2)	Proposed listing.
4 Texas salamanders (Austin blind salamander (LPN = 2), Salado salamander (LPN = 2), Georgetown salamander (LPN = 8), Jollyville Plateau (LPN = 8)) [3].	Proposed listing.
5 SW aquatics (Gonzales Spring Snail (LPN = 2), Diamond Y springsnail (LPN = 2), Phantom springsnail (LPN = 2), Phantom Cave snail (LPN = 2), Diminutive amphipod (LPN = 2)) [3].	Proposed listing.
2 Texas plants (Texas golden gladecress (*Leavenworthia texana*) (LPN = 2), Neches River rose-mallow (*Hibiscus dasycalyx*) (LPN = 2)) [3].	Proposed listing.
4 AZ plants (Acuna cactus (*Echinomastus erectocentrus* var. *acunensis*) (LPN = 3), Fickeisen plains cactus (*Pediocactus peeblesianus fickeiseniae*) (LPN = 3), Lemmon fleabane (*Erigeron lemmonii*) (LPN = 8), Gierisch mallow (*Sphaeralcea gierischii*) (LPN = 2)) [5].	Proposed listing.
FL bonneted bat (LPN = 2) [3]	Proposed listing.
3 Southern FL plants (Florida semaphore cactus (*Consolea corallicola*) (LPN = 2), shellmound applecactus (*Harrisia* (= *Cereus*) *aboriginum* (= *gracilis*)) (LPN = 2), Cape Sable thoroughwort (*Chromolaena frustrata*) (LPN = 2)) [5].	Proposed listing.
21 Big Island (HI) species [5] (includes 8 candidate species—5 plants & 3 animals; 4 with LPN = 2, 1 with LPN = 3, 1 with LPN = 4, 2 with LPN = 8).	Proposed listing.
12 Puget Sound prairie species (9 subspecies of pocket gopher (*Thomomys mazama* ssp.) (LPN = 3), streaked horned lark (LPN = 3), Taylor's checkerspot (LPN = 3), Mardon skipper (LPN = 8)) [3].	Proposed listing.
2 TN River mussels (fluted kidneyshell (LPN = 2), slabside pearlymussel (LPN = 2) [5]	Proposed listing.
Jemez Mountain salamander (LPN = 2) [5]	Proposed listing.

[1] Funds for listing actions for these species were provided in previous FYs.
[2] Although funds for these high-priority listing actions were provided in FY 2008 or 2009, due to the complexity of these actions and competing priorities, these actions are still being developed.
[3] Partially funded with FY 2010 funds and FY 2011 funds.
[4] Funded with FY 2010 funds.
[5] Funded with FY 2011 funds.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

The meltwater lednian stonefly will be added to the list of candidate species upon publication of this 12-month finding. We will continue to monitor the status of this species as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing action for the meltwater lednian stonefly will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Montana Field Office (*see* **ADDRESSES** section).

Authors

The primary authors of this notice are the staff members of the Montana Field Office.

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 21, 2011.

Gregory E. Siekaniec,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2011–7827 Filed 4–4–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R9–ES–2010–0001; MO 92210–0–0010 B6]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Peary Caribou and Dolphin and Union Population of the Barren-Ground Caribou as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 90-day finding on a petition to list the Peary (*Rangifer tarandus pearyi*) and the Dolphin and Union population of the barren-ground (*R. t. groenlandicus x pearyi*) caribou as endangered or threatened under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific and commercial information indicating that the petitioned action may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of these two subspecies to determine if listing these two subspecies is warranted. To ensure that this status review is comprehensive, we request scientific and commercial data and other information regarding these two subspecies. At the conclusion of this review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before June 6, 2011. After this date, you must submit information directly to the office listed in the **FOR FURTHER INFORMATION CONTACT** section below. Please note that we may not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for docket FWS–R9–ES–2010–0001 and then follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, *Attn:* FWS–R9–ES–2010–0001; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the Information Requested section below for more details).

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171; facsimile 703–358–1735. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

When we make a finding that a petition presents substantial information indicating that listing a species or subspecies may be warranted, we are required to promptly review the status of the species (conduct a status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on these two subspecies from governmental agencies (including Canadian national and provincial governments), local indigenous people of Canada (who also may be acknowledged as Native American or Aboriginal tribes), the scientific community, industry, and any other interested parties. We seek information on:

(1) Each subspecies' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns, particularly regarding their seasonal migrations;

(d) Historical and current population levels, and current and projected population trends;

(e) Potential threats to each subspecies such as mining, resource extraction, or other threats not identified; and

(f) Past and ongoing conservation measures for each subspecies or their habitat.

(2) The factors that are the basis for making a listing determination for a species or subspecies under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of their habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes, particularly data on hunting;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting their continued existence.

(3) The potential effects of climate change on each subspecies and its habitat.

Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include. Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all

hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding, will be available for you to review at *http://www.regulations.gov,* or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Endangered Species Program, Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly review the status of the species, which is subsequently summarized in our 12-month finding.

In considering what factors might constitute threats, we look beyond the exposure of the species to determine whether the species responds to the factor in a way that causes actual impacts to the species and we look at the magnitude of the effect. If there is exposure to a factor, but no response, or only a beneficial response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant the factor is. If the factor is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as threatened or endangered as those terms are defined by the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the information in the petition is substantial. The information must include evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

Petition History

On September 15, 2009, we received a petition (also dated September 15, 2009), from the International Fund for Animal Welfare (hereafter referred to as petitioner) requesting that two subspecies of barren-ground caribou (*Rangifer tarandus*) be listed as endangered or threatened under the Act. These two subspecies are the Peary caribou (*R. t. pearyi*) and the Dolphin and Union population of the barren-ground caribou (*R. t. groenlandicus x pearyi*). The petition clearly identified itself as such and included the requisite identification information as required by 50 CFR 424.14(a). The petition was amended on May 14, 2010, and the petitioner provided supplemental information to the original petition. We consider this amended petition, along with the previously submitted information, to be a new petition and the statutory timeframes to begin on May 14, 2010. This finding addresses the petition.

Species Information

Taxonomic Background

Banfield's 1961 taxonomic characterization listed nine subspecies of caribou (*R. tarandus*), two of which are now extinct. Peary caribou was first taxonomically described by J. A. Allen in 1902. The Dolphin and Union caribou was described in 1960 as *R. t. groenlandicus x pearyi* by Manning. Prior to 1979, Peary caribou (*R. t. pearyi*) and the Dolphin and Union caribou (*R. t. groenlandicus x pearyi*) were considered the same subspecies. In 1991, three populations of *R. t. pearyi* were recognized; Banks Island, High Arctic, and Low Arctic. In 2003, Zittlau *et al.* found (pp. 593–598) that the Dolphin and Union population of barren-ground caribou is genetically distinct from both Peary and mainland barren-ground caribou (*R. t. groenlandicus*). In 2004, the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) recognized four populations of Peary caribou. We accept Peary caribou as a subspecies because of the genotypic and phenotypic evidence presented by COSEWIC (2004, p. 17).

Also in 2004, COSEWIC clarified that the Dolphin and Union population of the barren-ground caribou (*R. t. groenlandicus x pearyi*) is comprised of a portion of the former "Low Arctic population" of Peary caribou. Although most entities agree that the Dolphin and Union population is a valid subspecies, the taxonomic reclassification process can be slow, and the Dolphin and Union population has not yet been taxonomically reclassified. For the purpose of this finding, we consider the Dolphin and Union population of the barren-ground caribou to be a valid subspecies and treat it as such. Throughout this finding, we will refer to this subspecies as the Dolphin and Union caribou.

General Habitat Characteristics and Life History

Both subspecies live in an ecological grazing system in which abiotic factors such as snow, rain, and ice largely determine their fate (COSEWIC 2004, p. 54). Food shortages can have a significant effect on caribou populations in these ecosystems. In the winter of 1973–1974, both subspecies experienced a population crash—freezing rain created sheets of ice, forming a barrier that covered the caribou's food sources and subsequently caused mass starvation (Miller *et al.* 1977a in Miller and Gunn 2003, p. 2). Their nutrition is closely related to plant phenology (timing of plant blooming based on daylight and temperature). Seasonal feeding is critical for various life stages such as lactation and growth during the spring, increasing fat reserves during the summer, and simply surviving during the winter. Caribou generally migrate great distances in search of food; some herds travel significantly greater distances than others. The distance traveled likely depends on food availability (COSEWIC 2004, pp. 29–30). Caribou forage by pushing snow off the vegetation with their noses, but when snowpack is deeper, they will dig small craters in the snow to reach the vegetation (COSEWIC 2004, p. 35).

Peary Caribou

Description

With an average total body length of 1.7 meters (m) (5.6 feet (ft)), the Peary caribou is relatively small and short when compared to other caribou species (COSEWIC 2004, pp. 9–10).

Distribution and Population

Peary caribou are endemic to the Queen Elizabeth Islands in northeastern Canada, in the provinces of Nunavut and the Northwest Territories. They exist in the Canadian Arctic Islands and coastal Greenland, but live mainly on the islands of the Canadian archipelago. The four populations of Peary caribou are generally delineated as follows: (1) Queen Elizabeth Islands, (2) Banks

Island and NW Victoria Island, (3) Prince of Wales and Somerset Islands, and (4) Boothia Peninsula (COSEWIC 2004, p. 19). This subspecies is rarely found on the mainland (COSEWIC 2004, pp. 13–14). Their habitat spans 800,000 km² (308,882 mi²) between 20 Queen Elizabeth islands and the other 3 island groups listed above (COSEWIC 2004, pp. vi, 19). Other than subsistence hunting when allowed, the Peary subspecies is generally not directly affected by human activities due to the remoteness of their habitat (COSEWIC 2004, p. 50).

The historical population and population trends are difficult to estimate due to differences in survey methodology, the remoteness of their island habitat, and the movements of Peary caribou between islands, and the taxonomic uncertainty prior to 2004. An assessment completed in 1991 indicated that between 1961 and 1987 the population of Peary caribou likely decreased by 86 percent (Miller 1991). COSEWIC further estimates that in the last 40 years, Peary caribou have declined 84 percent (COSEWIC 2004, pp. 36–37). In 2004, the total population estimate for Peary caribou was 7,890 individuals, including calves (COSEWIC 2004, p. 62). Although population estimates for the Peary caribou have been typically unreliable, in part due to the remoteness of the species, the 2004 estimate is believed to be fairly accurate.

Habitat Characteristics

Peary caribou migrate between the various islands based on availability of vegetation, and may recolonize islands that were abandoned in previous years (Ferguson and Messier 2000, p. 173). They have been documented migrating up to 450 km (280 mi) between islands in search of food and calving grounds (COSEWIC 2004, pp. 19, 30). Peary caribou migrate from northwestern Victoria Island to the Minto Inlet area (Gunn and Fournier 2000, pp. 15–57). However, some caribou remain faithful to one particular island despite the absence of food sources (Miller 2002 in COSEWIC 2004, p. 30). It is unclear why some caribou migrate and others do not, but the majority of caribou engage in some degree of migration.

Conservation Status

As of 2004, the Peary caribou is assessed as "endangered" by the Canadian Government (COSEWIC 2004, p. 19). Neither subspecies addressed in this finding is listed on any appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Caribou are protected by land claim agreements within Canada, and hunts are managed by regulatory entities such as the Nunavut Wildlife Management Board (NWMB) and hunting and trapping associations (COSEWIC 2004, p. 61). Native tribes who hunt caribou for subsistence have voluntarily placed moratoriums on hunts in the past; as of 2004, a moratorium was still in place. Peary caribou have been assessed as endangered since 1996 by the International Union for Conservation of Nature (IUCN).

Dolphin and Union Caribou

Description

The Dolphin and Union caribou is generally larger than Peary caribou but smaller than the mainland population of barren-ground caribou (*R. t. groenlandicus*). The pelage (coloring) of Dolphin and Union caribou is slightly darker than Peary caribou and their antler velvet is grey (like the Peary caribou) but is distinct from mainland barren-ground caribou, which do not have grey antler velvet.

Distribution and Population

The Dolphin and Union caribou primarily reside on the southern part of Victoria Island and its range does not overlap with Peary caribou. Seasonally, they cross the frozen ice of the Dolphin and Union Strait to winter on the mainland. Their range consists of the lower part of Victoria Island (excluding northwestern Victoria Island), and is estimated to be 195,417 km² (75,451 mi²) and Stefansson Island (4,463 km² (1723 mi²)).

A 1922 estimate (Anderson, cited in COSEWIC 2004, p. 41) indicated that between 100,000 and 200,000 caribou migrated across the Dolphin and Union Strait to Victoria Island. Using other caribou population densities as a proxy, Manning (1960), indicated that 100,000 was likely a more realistic estimate. In 1973, both subspecies experienced a population crash due to freezing rain and sheets of ice (Miller et al. 1977). In 1980, a survey by Jackimchuck and Carruthers indicated that there were approximately 3,400 Dolphin and Union caribou on Victoria Island (COSEWIC 2004, p. 41). Gunn et al. (2000, p. 43) estimated the southern Victoria Island population to be 14,600 caribou in 1994 and 27,800 caribou in 1997. This herd does not appear to have been surveyed since then. The 2004 COSEWIC report indicates the population is estimated to be approximately 25,000 and the population appears to be stable or increasing (pp. viii and 15).

Conservation Status

As of 2004, the Dolphin and Union caribou is assessed as "Special Concern" (COSEWIC 2004, p. 19) by the Canadian Government. It is not listed on any CITES appendices. Hunts are managed by boards such as the NWMB, the Canadian Department of Environment, and hunting associations (COSEWIC 2004, p. 61). Indigenous tribes who hunt caribou for subsistence have voluntarily placed moratoriums on hunts in the past. IUCN in 2008 listed *R. tarandus* at the species level, as least concern. The IUCN criteria are designed for global taxon assessments (IUCN 2003, p. 1). Before assessments of taxa below the species level (subspecies, variety or subpopulation) can be included on the IUCN Red List, an assessment of the full species is required. No assessment has been made of this subspecies by the IUCN.

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Following is a threats assessment in which we evaluate whether any of these factors threaten or endanger these two subspecies. This evaluation is specific to each subspecies unless specified that the evaluation is for both subspecies. In making this 90-day finding, we evaluated whether information regarding threats to both the Peary and Dolphin and Union subspecies, as presented in the petition and based on other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

Peary Caribou

A. The Present or Threatened Destruction, Modification, or Curtailment of the Peary Caribou's Habitat or Range

The petitioner asserts that global climate change due to global warming presents the largest threat to the Peary caribou's habitat in that previously frozen water surrounding the Queen Elizabeth Islands will become navigable to large ships associated with shipping and oil exploration and these ships will threaten caribou movement. In this finding, we will evaluate climate change threats under Factor E. *Other Natural or Manmade Factors Affecting the Species' Continued Existence.* Climate change was the only stressor asserted as having an effect on this subspecies under Factor A by the petitioner. Although we determined that the petition does not present substantial information indicating that listing the Peary caribou as endangered or threatened may be warranted under factor A, we intend to assess the present or threatened destruction, modification, or curtailment of the Peary caribou's habitat or range more thoroughly during the status review.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioner does not indicate that overutilization for commercial, recreational, scientific or educational purposes is currently contributing to the decline of the Peary caribou. Nor do we have other data in our files that this factor is a threat to the Peary caribou. Therefore, we determine that the petition does not present substantial information that the petitioned action may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

The petitioner acknowledged that disease is not thought to be a significant factor affecting either subspecies of caribou addressed in this finding. We concur with the petitioner that, based on the information provided with the petition and information available in our files, disease is not currently a threat to either subspecies.

The petitioner asserted that if climate change caused significant increases in snowfall, caribou could be more susceptible to attacks by wolves. We acknowledge that caribou are preyed upon by various predators such as wolves. However, information presented in the petition and available in our files does not indicate that the effect of increased predation by predators would increase such that it rises to the level of a threat to either subspecies (Miller 1998, in COSEWIC 2004, p. 50; Gunn 2005, pp. 10–11, 39–41). Therefore, we determined that the petition does not present substantial information that the petitioned action may be warranted due to disease or predation. However, all factors, including threats from disease or predation, will be evaluated when we conduct our status review.

D. The Inadequacy of Existing Regulatory Mechanisms

The petitioner asserts that the regulatory mechanisms with respect to climate change are inadequate to protect both the Peary caribou and the Dolphin and Union caribou. Because this factor is applicable to both subspecies, this evaluation under Factor D applies to both subspecies in this finding. The petitioner indicates that the inadequacy of existing regulatory mechanisms with respect to global climate change is the gravest threat to the long-term survival of these two subspecies. The petitioner discussed the ineffectiveness of various regulatory mechanisms associated with climate change such as the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, and United States climate initiatives.

Currently, there are no regulatory mechanisms in place that effectively address climate change and associated changes in habitat or sea-ice or greenhouse gas (GHG) emissions. International efforts to address climate change began with the UNFCCC, which was adopted in May 1992. The UNFCCC's objective is stabilization of GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system, but it does not impose any mandatory and enforceable restrictions on GHG emissions. The Kyoto Protocol became the first agreement to set GHG emissions targets for signatory counties, but the targets are not mandated. Current international efforts to regulate GHG emissions are focused on emissions targets, monitoring requirements, and voluntary actions. None of these mechanisms establish mandatory requirements limiting the amount of GHG that may be emitted. For several decades, the surface air temperatures in the Arctic have warmed at approximately twice the global rate (Christensen *et al.* 2007, p. 904). The observed and projected effects of climate change are most extreme during summer in northern high-latitude regions, in large part due to the ice-albedo (reflective property) feedback mechanism, in which melting of snow and sea ice lowers surface reflectivity, thereby further increasing surface warming from absorption of solar radiation.

The petitioner provided information with the petition that states that climate change may result in irregular winter events such as freezing rain or heavy snow accumulation, which may not allow caribou access to vegetation (COSEWIC 2004, pp. 51–52). Both subspecies of caribou forage by pushing snow away from vegetation and by breaking through hard-packed snow to reach vegetation. If these conditions occur, both species could suffer widespread starvation (Miller and Gunn, 2003, p. 6). Energetic costs will increase if they have to travel greater distances to locate food. Over time, poor body condition could lead to lower reproductive rates, greater susceptibility to disease or predation, and possibly higher mortality rates. Currently, there are no regulatory mechanisms in place that effectively address a warming climate and its consequences for both subspecies of caribou addressed in this finding due to associated changes in habitat. Accordingly, we conclude that there is substantial information presented in the petition or readily available in our files to indicate that regulatory mechanisms in place may be inadequate to effectively address changes in habitat or sea-ice habitat relied upon by these two subspecies of caribou. We find that the information provided presents substantial information indicating that the petitioned action may be warranted for both subspecies due to increased snowfall events and freezing rain based on the inadequacy of existing regulatory mechanisms. We will evaluate this factor further for each subspecies during the status review.

E. Other Natural or Manmade Factors Affecting the Subspecies' Continued Existence

The petitioner states that global warming due to global climate change presents the largest threat to both subspecies of caribou. The petitioner asserts that the Arctic is warming more rapidly than other areas on the globe. If warming occurs, there may be less sea ice available for crossing from one island to another in search of vegetation (COSEWIC 2004, pp. 54–55; Atkinson *et al.* 2006, pp. 350, 355, 357). The petitioner asserts that climate change will cause Peary caribou to use more energy in search of food by migrating farther. Some of the information provided with the petition supports these assertions (Thomas 1982, pp. 597–

602; Struzik 1998, pp. 38–44). Both subspecies of caribou forage by pushing snow away from vegetation and by breaking through hard-packed snow to reach vegetation. The petitioner provided information with the petition that states that climate change may result in irregular winter events such as freezing rain or heavy snow accumulation, which may not allow caribou access to vegetation (COSEWIC 2004, pp. 51–52). If these conditions occur, both species could suffer widespread starvation (Miller and Gunn, 2003, p. 6). This type of starvation has been the primary cause of decline in the past. The extreme mortality events—between 1973 and 1974 and between 1994 and 1997—coincided with extremely heavy snowfall, deep snow packs, and heavy icing in those same years (Miller and Gunn 2003, pp. 5–6). After reviewing the information provided in the petition and available in our files, we find that the information provided presents substantial information indicating that the petitioned action may be warranted for both subspecies due to increased snowfall events and freezing rain.

Low genetic diversity was an issue raised by the petitioner as a stressor on the subspecies. We will further evaluate this during the status review.

Dolphin and Union Caribou

A. The Present or Threatened Destruction, Modification, or Curtailment of the Dolphin and Union Caribou's Habitat or Range

The petitioner states that the waters of the Dolphin and Union Strait will become navigable to large ships in the near future based on decreased sea ice due to global warming, and that these ships will disrupt caribou movement. The petitioner suggested that shipping traffic has, in the past, interrupted the migration of the Dolphin and Union caribou. Other than expression of concern, the supporting information did not indicate that this increase in shipping traffic has had a negative impact on the subspecies (COSEWIC 2004, pp. 46–47). The petitioner also suggests that caribou will be adversely affected by the increasing development associated with shipping and oil exploration. Although oil development and increased shipping may occur, there is no evidence that it will have a significant effect on caribou. After reviewing the information provided in the petition and available in our files, it does not support the claim that oil exploration, and an increase in shipping, development, and related human activity will affect the Dolphin and Union caribou's habitat.

The petitioner provides no other information addressing Factor A, and we have no information in our files indicating that listing the subspecies due to the present or threatened destruction, modification, or curtailment of the Dolphin and Union caribou's habitat or range may be warranted. Therefore, we find that the petition does not present substantial information to indicate that the petitioned action may be warranted based on the present or threatened destruction, modification, or curtailment of its habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioner identifies hunting of the Dolphin and Union caribou as a possible factor in the decline of this subspecies. The petition reports that this subspecies is hunted by the Inuit for subsistence, and it is also hunted commercially along the mainland on the north coast bordering the Dolphin and Union Strait. Various management units such as the NWMB, the Wildlife Management Advisory Council for the Inuvialuit Settlement Region in the Northwest Territories, the Canadian Department of Environment, and the Inuit and Inuvialuit tribes play a role in the regulation of hunting of the various caribou populations at the larger scale. At more local scales, committees and trapper associations are involved in monitoring caribou. Hunting has not been implicated as a causative factor in any of the major caribou die-offs. The hunting of this subspecies appears to be sufficiently managed by the local hunting boards, the local indigenous peoples of Canada such as the Inuit and Inuvialuit, who are allowed to hunt caribou for subsistence. Based on the information available in the petition and in our files, hunting does not appear to be causing a decline in the Dolphin and Union caribou.

The petitioner did not indicate any other threats under this factor. After reviewing the information provided in the petition and available in our files, we find that the information provided does not present substantial information indicating that the petitioned action may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

Refer to the discussion under Factor C above for Peary caribou for additional information. Based on the information provided in the petition and available in our files, we find that the petition does not present substantial information indicating that listing the Dolphin and Union caribou as endangered or threatened may be warranted due to disease or predation.

D. The Inadequacy of Existing Regulatory Mechanisms

Refer to the discussion under Factor D above for Peary caribou for additional information. After reviewing the information provided in the petition and available in our files, we find that the information provided presents substantial information indicating that listing the Dolphin and Union caribou as endangered or threatened may be warranted due to the inadequacy of existing regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting the Continued Existence of Dolphin and Union Caribou

The petitioner states that global climate change presents the greatest threat to the Dolphin and Union caribou's habitat. We currently do not know the extent of the subspecies' capacity to adapt to potential changes in its habitat resulting from climate change. However, there is an upward trend in temperature which may decrease sea ice in the Dolphin and Union Strait (refer to discussion above). This subspecies crosses the sea ice in the Strait seasonally, and this decrease in sea ice may affect the species' migration patterns and availability to access food sources. Seasonally, herds congregate at the edge of the Strait while waiting for the ice to form. Energetic costs will increase if they have to travel greater distances to locate food sources, and foraging efficiency is reduced. Over time, poor body condition could lead to lower reproductive rates, greater susceptibility to disease or predation, and ultimately higher mortality rates. The loss of seasonal ice across the Dolphin and Union Strait could reduce access to traditional foraging areas and it may increase competition among individuals for food resources in areas close to staging grounds. After reviewing the information provided in the petition and available in our files, we find that the information provided presents substantial information indicating that the petitioned action may be warranted due to changes in sea ice (also refer to the discussion under Factor E above for Peary caribou). We intend to investigate the effects of climate change, particularly the changes in sea ice, on the Dolphin and Union caribou during the status review.

Finding

On the basis of our evaluation under section 4(b)(3)(A) of the Act, we find that the petition presents substantial scientific or commercial information indicating that listing both the Peary and Dolphin and Union caribou as endangered or threatened may be warranted. This finding is based on information evaluated under factors D and E for both subspecies. Because we have found that the petition presents substantial information indicating that listing these two subspecies may be warranted, we are initiating a status review to determine whether listing these two subspecies of caribou as endangered or threatened under the Act is warranted.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service (*see* **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff members of the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service (*see* **FOR FURTHER INFORMATION CONTACT**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 11, 2011.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–7653 Filed 4–4–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 660

[Docket No. 110218143–1209–01]

RIN 0648–BA49

Fisheries in the Eastern Pacific Ocean; Pelagic Fisheries; Vessel Identification Requirements

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to revise vessel identification requirements for U.S. vessels based out of the U.S. West Coast that fish for highly migratory species. The new measures would allow these vessels to be marked in accordance with the international standards that were implemented by NMFS for vessels fishing on the high seas in the Area of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention Area) in early 2010. Currently, the domestic marking requirements for some U.S. West Coast vessels do not comport with these international standards. The new measures would require vessels that fish in the Convention Area to display their International Telecommunication Union Radio Call Sign (IRCS), or if an IRCS has not been assigned to the vessel, the vessel would be required to display its official number, preceded by the characters "USA–". The intent of the proposed action is to bring the existing vessel identification requirements into conformity with the binding vessel identification requirements adopted by the Western and Central Pacific Fisheries Commission (WCPFC).

DATES: Comments must be received by 5 p.m., local time, on May 5, 2011.

ADDRESSES: You may submit comments, identified by 0648–BA49, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*.
- *Fax:* 562–980–4047, Attn: Heidi Hermsmeyer.
- *Mail:* Rodney R. McInnis, Regional Administrator, NMFS Southwest Regional Office (SWR), 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier "0648–BA49" in the comments.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

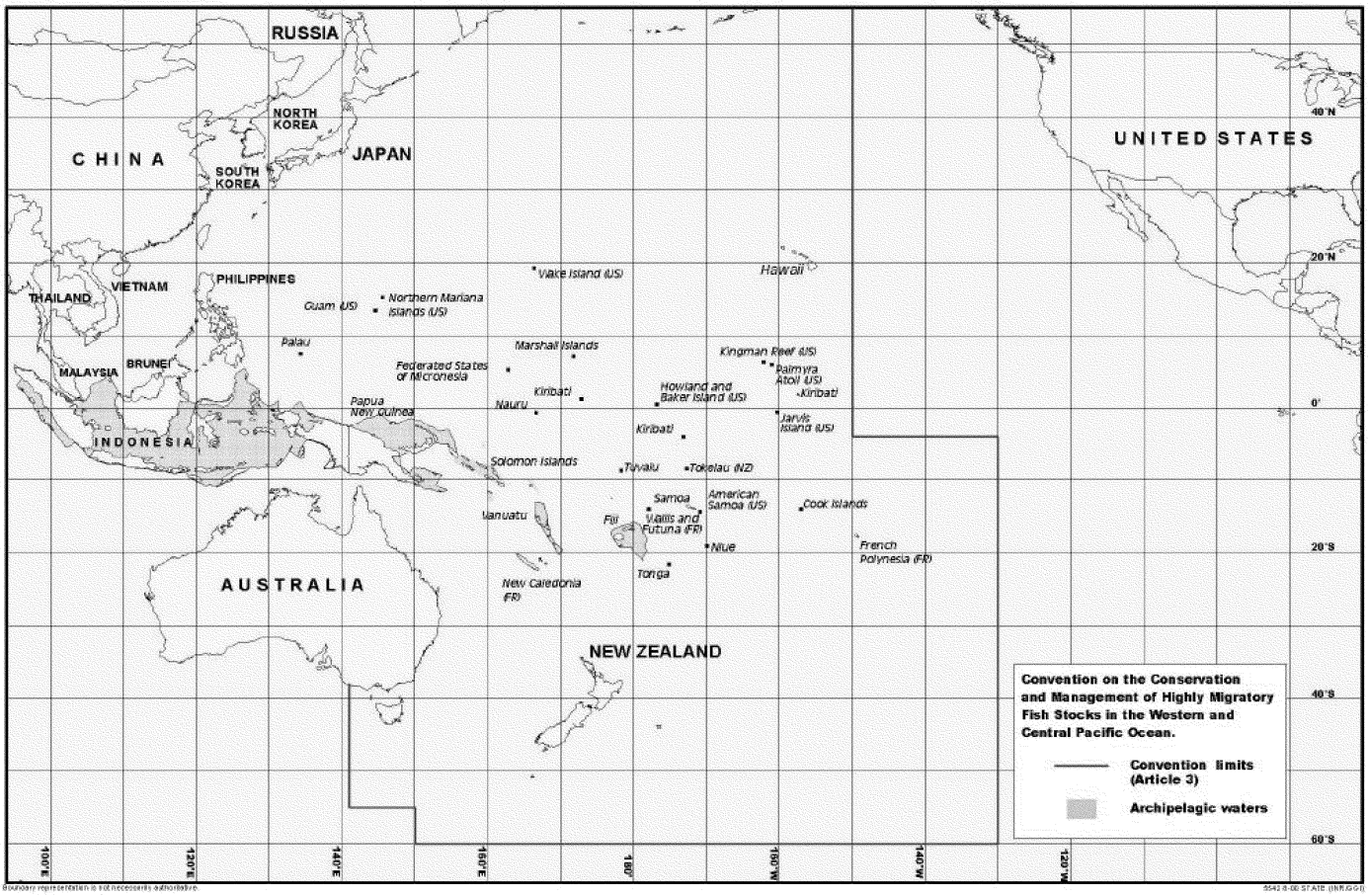
NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS SWR at the address above, and by e-mail to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Heidi Hermsmeyer, NMFS SWR, 562–980–4036.

SUPPLEMENTARY INFORMATION: The WCPFC was established under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). The Convention's objective is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean, including measures to manage and conserve tunas and to minimize impacts on protected resources, such as sea turtles and seabirds. Figure 1 is a map of the Convention Area. The Convention Area includes the operational areas of U.S. troll, pole-and-line, tuna purse seine, and pelagic longline fisheries.

Figure 1. Map of the Western and Central Pacific Fisheries Commission (WCPFC) Convention Area.



Map of WCPFC Convention Area

Under the Convention, vessels that are authorized to fish on the high seas in the Convention Area are required to be identified in accordance with the Standard Specifications for the Marking and Identification of Fishing Vessels of the Food and Agriculture Organization of the United Nations. By final rules published on January 21, 2010 (75 FR 3335 and 3416), NMFS implemented those standards for U.S. fishing vessels under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA, Pub. L. 109–479, sec. 501, *et seq.,* and codified at 16 U.S.C. 6901 *et seq.*). Specifically, U.S. vessels used for commercial fishing for highly migratory species (HMS) on the high seas with a NMFS-issued WCPFC Area Endorsement would be required to display its IRCS on the port and starboard sides of the hull or superstructure and deck surface. If an IRCS has not been assigned, the vessel must display its official number (*i.e.,* USCG documentation number or other registration number) preceded by the characters "USA" and a hyphen (*i.e.,* "USA—"). Only these markings would be allowed on the hull or superstructure, apart from the vessel's name and hailing port.

This proposed rule is consistent with the requirements established under the WCPFCIA as it would revise existing vessel identification regulations at Title 50, Code of Federal Regulations, §§ 660.704 and 300.173 to conform to the international standards. United States vessels that are issued a permit under 50 CFR 660.707, *i.e.,* vessels that fish for HMS off or land HMS in the States of California, Oregon, and Washington, and that fish for HMS on the high seas of the Convention Area would be required to display vessel markings as described above. Vessels that fish for pelagic species only within the U.S. Exclusive Economic Zone (EEZ) or on the high seas outside the Convention Area would have the option to be marked pursuant to the vessel identification requirements described above, or maintain markings pursuant to existing vessel identification requirements. The proposed rule would modify only the characters with which Federally-permitted pelagic fishing vessels are marked, and would not modify vessel operations or other aspects of the pelagic fisheries.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act (16 U.S.C. 1854(b)(1)(A)), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. All vessels having the potential to be affected by this action are considered to be small entities under the current Small Business Administration definition of small fish-harvesting businesses (gross receipts not in excess of $ 4.0 million).

The proposed rule would result in an estimated one-time cost to each vessel of around $10 dollars to conform to the new vessel marking requirements. It is estimated that at a maximum 125 vessels would be required to change their markings (estimate based on the current number of active vessels targeting HMS on the high seas that have the potential to fish in the WCPFC Convention Area). The majority, if not all, of these vessels would be troll and pole-and-line vessels targeting albacore tuna. The estimated 2008 average gross revenue per vessel for the troll and pole-and-line fisheries was approximately $52,000. Average gross revenues per vessel for other fisheries that have the potential to be affected would be equal to or greater than the estimate for the troll and pole-and-line fisheries. Therefore, the cost of vessel marking for those vessels represents less than one percent of gross revenues per vessel on average. It is highly unlikely that this action would result in any vessel's costs exceeding three percent of gross revenues (which would translate to an estimated cost of $1,550 for the troll and pole-and-line fisheries).

This proposed action contains no fishery management controls that affect the operations of the fishery, other than vessel identification. Thus, significant impacts to the profitability of a substantial number of small entities are not anticipated. This rule does not duplicate, overlap, or conflict with other Federal rules. There are no disproportionate economic impacts from this rule based on home port, gear type, or relative vessel size. The Pacific Fishery Management Council (Council) was briefed on this issue at their September 2008 meeting; in a letter dated November 20, 2008, the Council formally recommended that NMFS revise regulations accordingly.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NMFS Southwest Regional Office (SWR) has determined that, for the reasons described above, this rule will not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under control numbers 0648–0361 and 0648–0492. Public reporting burden for vessel identification requirements under 0648–0361 is estimated to average 45 minutes per response, and public reporting burden for vessel marking requirement under 0648–0492 is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS Southwest Regional Office (*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

50 CFR Part 300

Administrative practice and procedure, Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 660

Administrative practice and procedure, Reporting and recordkeeping requirements.

Dated: March 31, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 300 and 660 are proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 2431 *et seq.,* 31 U.S.C. 9701 *et seq.*

2. Section § 300.173 is revised to read as follows:

§ 300.173 Vessel identification.

Each U.S. vessel fishing under the Treaty must be marked for identification purposes, as follows:

(a) A vessel used to fish on the high seas within the Convention Area as defined in § 300.211 must be marked in accordance with the requirements at § 300.14 and 300.217.

(b) A vessel not used to fish on the high seas within the Convention Area as defined in § 300.211 must be marked in accordance with either:

(1) Sections 300.14 and 300.217, or

(2) The vessel's name and U.S. Coast Guard Documentation number (or if not documented, the state registration number) followed by the letter U must be prominently displayed where they will be clearly visible both from the air and from a surface vessel. Numerals and the letter U must meet the size requirements of § 660.704 of this title. Markings must be legible and of a color that contrasts with the background.

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 7001 *et seq.*

2. Section 660.704 is revised to read as follows:

§ 660.704 Vessel identification.

(a) *Applicability.* This section only applies to commercial fishing vessels that fish for HMS off, or land HMS in the States of California, Oregon, and Washington. This section does not apply to recreational charter vessels that fish for HMS off or land HMS in the States of California, Oregon, and Washington. Each fishing vessel must be marked for identification purposes, as follows:

(1) A vessel used to fish on the high seas within the Convention Area as defined in § 300.211 of this title must be marked in accordance with the requirements at § 300.14 and 300.217 of this title.

(2) A vessel not used to fish on the high seas within the Convention Area as defined in § 300.211 of this title must be marked in accordance with either:

(i) Sections 300.14 and 300.217 of this title, or

(ii) The vessel's official number must be affixed to the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft. The official number must be

affixed to each vessel subject to this section in block Arabic numerals at least 10 inches (25.40 cm) in height for vessels more than 25 ft (7.62 m) but equal to or less than 65 ft (19.81 m) in length; and 18 inches (45.72 cm) in height for vessels longer than 65 ft (19.81 m) in length. Markings must be legible and of a color that contrasts with the background.

(b) [Reserved].

[FR Doc. 2011–8075 Filed 4–4–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 110311192–1204–01]

RIN 0648–BA95

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2011 Tribal Fishery for Pacific Whiting

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is issuing this proposed rule for the 2011 Pacific whiting tribal fishery under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP) and the Magnuson Stevens Fishery Conservation and Management Act (Magnuson Act). Washington coastal treaty Indian tribes mean the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation. This proposed rule establishes an interim tribal allocation of Pacific whiting for the 2011 season only, based on discussions with the Makah and Quileute tribes and Quinault Indian Nation regarding their fishing plans. At the March, 2011 Pacific Fishery Management Council (Council) meeting, the Council recommended a coastwide Optimum Yield (OY) of 393,751 mt. This would result in a U.S. OY of 290,903 mt. The proposed rule, based on communications to date with the tribes, proposes a tribal allocation of 66,908 mt, for 2011 only, given the Council's recommended OY.

DATES: Comments on this proposed rule must be received no later than 5 p.m., local time on April 19, 2011.

ADDRESSES: You may submit comments, identified by RIN 0648–BA95 by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Fax:* 206–526–6736, *Attn:* Kevin C. Duffy
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, *Attn:* Kevin C. Duffy.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

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

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpoaccess.gov/fr/index.html.* Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

Background

The regulations at 50 CFR 660.50(d) establish the process by which the tribes with treaty fishing rights in the area covered by the Pacific Coast Groundfish Fishery Management Plan (FMP) request new allocations or regulations specific to the tribes, in writing, during the biennial harvest specifications and management measures process. The regulations state "the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus." These procedures employed by NOAA in implementing tribal treaty rights under the FMP, in place since May 31, 1996, were designed to provide a framework process by which NMFS can accommodate tribal treaty rights by setting aside appropriate amounts of fish in conjunction with the Pacific Fishery Management Council (Council) process for determining harvest specifications and management measures. The Council's groundfish fisheries require a high degree of coordination among the tribal, state, and federal co-managers in order to rebuild overfished species and prevent overfishing, while allowing fishermen opportunities to sustainably harvest over 90 species of groundfish managed under the FMP.

Since 1996, NMFS has been allocating a portion of the U.S. OY of Pacific whiting to the tribal fishery following the process established in 50 CFR 660.50(d). The tribal allocation is subtracted from the whiting OY before allocation to the non-tribal sectors. To date, there has been no determination of the total amount of whiting for which the tribes are entitled to fish under their treaty right. Therefore, allocations to date have been on an interim basis, and are not considered to set precedent with respect to the amount of the treaty right.

To date, only the Makah Tribe has prosecuted a tribal fishery for Pacific whiting. The Makah Tribe has annually harvested a whiting allocation every year since 1996 using midwater trawl gear. From 1999 until 2009, the tribal allocation was based on a statement of need for their tribal fishery. In recent years prior to 2009, the specific tribal amount was generally, although not always, determined using a sliding scale relative to the U.S. whiting OY of between 14 and 17.5 percent, depending on the specific OY determined by the Council. In general, years with a relatively low OY resulted in a tribal allocation closer to 17.5 percent, and years with a relatively high OY result in a tribal allocation closer to 14 percent.

Between 2000 and 2008, the U.S. OY ranged from a high of 269,545 mt in 2008 to a low of 129,600 mt in 2002. In absolute amounts, the tribal allocation from 2000 to 2008 ranged from a high of 35,000 mt in 2005, 2007, and 2008 to a low of 22,680 mt in 2002.

For the 2009 fishery, the Quileute Tribe first stated their intent to participate in the fishery. That year, the U.S. OY was 135,939 mt, and the tribal allocation was set at 50,000 mt (36.78 percent of the U.S. OY). A set-aside of 42,000 mt was established for the Makah, and an 8,000 mt set-aside was established for the Quileute. The final rule in 2009 anticipated the Makah managing their fisheries to achieve a harvest of no more than 42,000 mt, and the Quileute managing their fisheries to achieve a harvest of no more than 8,000 mt. For 2010, both the Makah and

Quileute stated their intent to participate in the Pacific whiting fishery. Based on the formula for the tribal allocation used in the proposed rule, and taking into account public comments received on the proposed rule, the tribal allocation of Pacific whiting in 2010 was 49,939 mt (25.75 percent of the U.S. OY). Although an allocation was made to account for participation by two tribes, only the Makah actually participated in the 2009 and 2010 tribal whiting fisheries.

NMFS and the co-managers have been involved in a process designed to determine the long-term tribal allocation for whiting. At the September 2008 Council meeting, NMFS, the states and the Quinault, Quileute, and Makah tribes met and agreed on a process in which NMFS would pull together the current information regarding whiting, circulate it among the co-managers, seek comment on the information and possible analyses, and then prepare analyses of the information to be used by the co-managers in developing a tribal allocation for use in 2010 and beyond. The goal was agreement among the co-managers on a total tribal allocation for incorporation into the Council's planning process for the 2010 season. The further goal was to provide the tribes the time and information to develop an inter-tribal allocation or other necessary management agreement. The process has been moving forward but final agreement on a long-term tribal allocation has not been reached. In 2009, NMFS shared a preliminary report summarizing scientific information available on the migration and distribution of Pacific whiting on the west coast. The co-managers have met to discuss this information and plan further meetings. During 2010, NMFS finalized the report summarizing scientific information available on the migration and distribution of Pacific whiting on the west coast. In addition, NMFS responded in writing to requests from the tribes for clarifications on the paper and requests for additional information. Additionally, NMFS met with each of the tribes in the fall of 2010 to discuss the paper and to discuss a process for negotiation of the long-term tribal allocation of Pacific whiting. Those discussions are ongoing and it is not anticipated that these issues will be resolved prior to the start of the 2011 Pacific whiting tribal fishery.

Tribal Allocation for 2011

Over the last three months, NMFS has met individually with each of the coastal tribes that have expressed a potential interest in fishing for whiting in 2011 to discuss this year's tribal fishery as well as the process for negotiating a long-term tribal allocation. For 2011, the Makah and the Quileute Tribes have indicated that they plan to participate in the 2011 fishery. The Quinault Indian Nation informed NMFS that while they are still pursuing entering the fishery in 2011, they have not yet made a final decision. Because the co-managers have not negotiated a long term tribal allocation, NMFS is again moving forward with this proposed rule as an interim measure to address the allocation for and management of the 2011 tribal Pacific whiting fishery. As with the 2010 allocation, this proposed rule is not intended to establish any precedent for future whiting seasons or for the long-term tribal allocation of whiting.

The proposed rule would be implemented under authority of Section 305(d) of the Magnuson Act, which gives the Secretary responsibility to "carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act." With this proposed rule, NMFS, acting on behalf of the Secretary, would ensure that the FMP is implemented in a manner consistent with treaty rights of the Washington tribes to fish in their "usual and accustomed grounds and stations" in common with non-tribal citizens. (*United States* v. *Washington,* 384 F. Supp. 313 (W.D. 1974)).

At the March, 2011 Pacific Fishery Management Council (Council) meeting, the Council recommended a coastwide Optimum Yield (OY) of 393,751 mt. This would result in a U.S. OY of 290,903 mt. The Makah Tribe has requested the opportunity to harvest up to 17.5 percent of the U.S. OY of whiting in 2011. The Quileute Tribe has stated that it plans to have two boats participating in the 2011 fishery, and that it believes that 8,000 mt of whiting per boat is necessary to ensure the economic viability of each boat.

Given past tribal allocations, the recent conversations with the Quinault Indian Nation, the Quileute Tribe, and the Makah Tribe, and the whiting U.S. OY recommendation from the Pacific Council, NMFS is proposing a 2011 interim tribal allocation of no higher than 66,908 mt, which is 23.00 percent of the recommended U.S. OY. NMFS is still in communication with the tribes on the 2011 interim allocation and the final allocation amount may differ from this proposal. In addition, NMFS has yet to consider and adopt the Council's recommendation for the U.S. OY of whiting. NMFS believes the proposed amount will allow for the anticipated 2011 participation in the fishery by the Makah and Quileute tribes, and for the potential 2011 participation by the Quinault Indian Nation.

Regarding the 2011 tribal whiting allocation, NMFS believes the proposed allocation, although higher than the absolute amounts of prior tribal allocations, is well within the range of past percentages (12.08–36.78 percent). As described above, while further negotiation on the long-term tribal allocation of Pacific whiting will occur in 2011, NMFS believes that current knowledge on the distribution and abundance of the coastal Pacific whiting stock supports a conclusion that the proposed tribal allocation of 66,908 mt lies within the range of the tribal treaty right to Pacific whiting.

Classification

At this time, NMFS has preliminarily determined that the management measures for the 2011 Pacific whiting tribal fishery are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making the final determination, will take into account the data, views, and comments received during the comment period.

NMFS has initially determined that this proposed rule is not significant for purposes of Executive Order 12866.

An Initial Regulatory and Flexibility Act (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from NMFS (*see* **ADDRESSES**).

Under the RFA, the term "small entities" includes small businesses, small organizations, and small governmental jurisdictions. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish

harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $7.0 million. The RFA defines small organizations as any nonprofit enterprise that is independently owned and operated and is not dominant in its field. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

In recent years the number of participants engaged in the Pacific whiting fishery has varied with changes in the whiting OY and economic conditions. Pacific whiting shoreside vessels (26 to 29), mothership processors (4 to 6), mothership catcher vessels (11 to 20), catcher/processors (5 to 9), Pacific whiting shoreside first receivers (8 to 16), and five whiting vessels participating in the Makah portion of the tribal whiting fishery, are the major units of this fishery. For 2011, there may be additional vessels participating in the tribal whiting fishery. NMFS records suggest the gross annual revenue for each of the catcher/processor and mothership operations participating in the Pacific coast whiting fishery exceeds $4.0 million. Therefore, they are not considered small businesses. NMFS records also show that 10–43 catcher vessels have taken part in the mothership fishery on an annual basis since 1994. These companies are all assumed to be small businesses, although some of these vessels may be affiliated with larger processing companies. Since 1994, 26–31 catcher vessels have annually participated in the shoreside whiting fishery. These companies are all assumed to be small businesses, although some of the vessels may be affiliated with larger processing companies. Vessels participating in the tribal whiting fishery are presumed to be small businesses, whereas the Tribes are presumed to be small government jurisdictions.

Pacific whiting has grown in importance, especially in recent years. Through the 1990s, the volume of Pacific whiting landed in the fishery increased. In 2002 and 2003, landings of Pacific whiting declined due to information showing the stock was depleted and the subsequent regulations that restricted harvest in order to rebuild the species. Over the years 2003–2007, estimated Pacific whiting ex-vessel values averaged about $29 million. In 2008, these participants harvested about 248,000 mt of whiting worth about $63 million in ex-vessel value based on shoreside ex-vessel prices of $254 per ton—the highest ex-vessel revenues and prices on record. In comparison, the 2007 fishery harvested about 224,000 mt worth $36 million at an average ex-vessel price of about $160 per mt. In 2009, tribal and non-tribal fleets harvested about 122,000 mt of Pacific whiting, worth approximately $14 million. During 2009, ex-vessel prices declined to about $119.00 per ton, presumably due to the worldwide recession. For 2010, the preliminary ex-vessel price returned to $160.00 per mt, leading to approximately $27 million in revenues, based on a total harvest of 170,000 mt.

For 2010, the tribes were initially allocated 49,939 mt. In September and October, NMFS reapportioned a total of 16,000 mt from the tribal allocation to the non-tribal shorebased, mothership, and catcher processor sectors.

Based on conversations with the tribes regarding their intent for the 2011 tribal whiting fishery, a proposed tribal allocation of 66,908 mt is being considered. Using the average ex-vessel price of $160.00 per ton, the ex-vessel value is estimated to be approximately $10,705,280.

NMFS did not consider a broad range of alternatives to the proposed allocation because the tribal allocation is based primarily on the requests of the tribes for a level of participation in the fishery that will allow them to exercise their treaty right to fish for whiting. Consideration of amounts lower than the tribal requests is not appropriate here, where based on the information available to NMFS the requested amount appears to be within the amount to which the tribes are entitled. A higher amount would arguably be within the scope of the treaty right, but would unnecessarily limit the non-tribal fishery. A no action alternative was considered, but the regulatory structure provides for a tribal allocation on an annual basis only. Therefore, no action would result in no allocation of Pacific whiting to the tribal sector in 2011, inconsistent with NMFS' obligation to manage the fishery consistent with the tribes' treaty rights. Given that the Makah and Quileute tribes have made specific requests for allocations in 2011, this alternative received no further consideration.

With the implementation of Fishery Management Plan amendments 20 and 21, the ability to reapportion Pacific whiting from tribal to non-tribal fisheries was eliminated. Similarly, unharvested whiting allocated to the non-tribal shoreside, mothership, and catcher-processor sectors cannot be reapportioned among these sectors. So, unlike 2010, the regulations do not provide NMFS a specific mechanism to reapportion unharvested tribal whiting to the non-tribal sectors, and will not be able to reapportion among the non-tribal sectors. Pending markets, available bycatch, and the ability of tribal fleets to develop the capacity to harvest the tribal allocation may result in unharvested Pacific whiting because there is no regulatory mechanism to reapportion. Similarly, there may be unharvested Pacific whiting in the other sectors as well.

Tribal fisheries include a mixture of activities similar to the non-tribal fisheries, where tribal fisheries will deliver shoreside for processing or to a mothership for at-sea processing. The processing facilities that the tribes use also process fish harvested by non-tribal fisheries. Increased allocations to tribal harvesters (harvest vessels are small entities, tribes are small jurisdictions) implies decreased allocations to non-tribal harvesters (a mixture of small and large businesses).

There are no reporting, recordkeeping or other compliance requirements in the proposed rule.

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

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

the destruction or adverse modification of critical habitat.

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999, Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 fish over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000 fish.

Since 1999, annual Chinook bycatch has averaged about 8,450 fish. The Chinook ESUs most likely affected by the whiting fishery has generally improved in status since the 1999 ESA section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior "no jeopardy" conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

The Southern Distinct Population Segment (DPS) of green sturgeon was listed as threatened under the ESA (71 FR 17757, April 7, 2006). The southern DPS of Pacific eulachon was listed as threatened on March 18, 2010, under the ESA (75 FR 13012). NMFS has reinitiated consultation on the fishery, including impacts on green sturgeon, eulachon, marine mammals, and turtles. After reviewing the available information, NMFS has concluded that, consistent with Sections 7(a)(2) and 7(d) of the ESA, the proposed action would not jeopardize any listed species, would not adversely modify any designated critical habitat, and would not result in any irreversible or irretrievable commitment of resources that would have the effects of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. NMFS has met and continues to meet with tribal officials and/or senior staff to address both their short and long term interests regarding Pacific whiting.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: March 31, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

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

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) * * *

(4) *Pacific whiting.* The tribal allocation for 2011 is 66,908 mt.

* * * * *

[FR Doc. 2011–8077 Filed 4–4–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 65
Tuesday, April 5, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committees on Rulemaking, Regulation, and Adjudication

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of public meetings of three committees of the Assembly of the Administrative Conference of the United States (ACUS). Each committee will meet to discuss recommendations for consideration by the full Conference. Complete details regarding each committee's meeting, related research reports, how to attend (including information about remote access and obtaining special accommodations for persons with disabilities), and how to submit comments to the committee can be found in the "Research" section of the ACUS Web site, at *http://www.acus.gov.*

Comments may be submitted by e-mail to *Comments@acus.gov,* with the name of the relevant committee in the subject line, or by postal mail to "[Name of Committee] Comments" at the address given below.

ADDRESSES: The meetings will be held at 1120 20th Street, NW., Suite 706 South, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer for the individual committee, ACUS, 1120 20th Street, NW., Suite 706 South, Washington, DC 20036; Telephone 202–480–2080.

SUPPLEMENTARY INFORMATION:

Committee on Rulemaking

The Committee on Rulemaking will meet to consider a draft recommendation concerning legal issues agencies face in conducting e-Rulemaking.

Date: Wednesday, April 20, 2011, from 9:30 a.m. to 12:30 p.m.

Designated Federal Officer: Emily F. Schleicher.

Committee on Regulation

The Committee on Regulation will meet to consider a draft recommendation addressing various issues associated with the timing, availability, confidentiality, and impact of comments submitted during agency rulemakings.

Date: Monday, April 25, 2011, from 2 p.m. to 5 p.m.

Designated Federal Officer: Reeve T. Bull.

Committee on Adjudication

The Committee on Adjudication will meet to consider a draft recommendation on the use of video hearings by Federal agencies, examining the costs and benefits of video hearings as they are currently being used and the possibilities for expanding their use by agencies. The Committee on Adjudication will also hear from Lenni B. Benson and Russell Wheeler, consultants for the ACUS study on Immigration Adjudication, who will provide information about the plan for the study and receive comments from the committee.

Date: Wednesday, April 27, 2011, from 9:15 a.m. to 12:15 p.m.

Designated Federal Officer: Funmi E. Olorunnipa.

Dated: March 31, 2011.

Jonathan R. Siegel,

Director of Research & Policy.

[FR Doc. 2011–8031 Filed 4–4–11; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Malheur National Forest; Oregon; Malheur National Forest Site-Specific Invasive Plants Treatment Project

AGENCY: Forest Service, USDA.

ACTION: Correction—Notice of intent to prepare an environmental impact statement.

SUMMARY: On March 31, 2006 the Malheur National Forest published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for a similar project (**Federal Register** Vol. 72, No. 62, page 16281–1628). There has been a delay in filing the 2006 draft EIS and the invasive plant inventory and proposed action have been updated since then resulting in this correction. The following information is the updated Proposed Action. The Forest Service proposes to eradicate, control, or contain invasive plants within the Malheur National Forest. The Proposed Action is to treat invasive plants using integrated methods including chemical (herbicides and adjuvants), physical treatments (mechanical and manual treatment), and biological controls. These treatments will be used on existing infestations (approximately 2,287 acres) or new infestations, including new plant species that currently are not found on the Forest. Treatment could be anywhere on Forest Service system lands including rangelands, wilderness, timber harvest areas, along roads and road rights-of-way (including decommissioned roads), along trail routes, at dispersed and developed recreation sites, and on other disturbed sites (*i.e.* fires, flood events, and rock sources) where invasive plants are located. Mulching, seeding and planting of competitive, desirable vegetation may occur to restore treated sites.

DATES: Comments concerning the scope of the analysis must be received by May 5, 2011. The draft environmental impact statement is expected March 2012 and the final environmental impact statement is expected March 2013.

ADDRESSES: Send written comments to Teresa Raaf, Forest Supervisor, Malheur National Forest, P.O. Box 909, John Day, OR 97845. Comments may also be sent via facsimile to 541–575–3002. Electronic comments in acceptable plain text (.txt), rich text (.rtf), or Word (.doc) may be submitted to: *comments-pacificnorthwest-malheur@fs.fed.us.* Please put "Malheur NF Invasive Plants Treatment Project" occurs in the subject line.

FOR FURTHER INFORMATION CONTACT: Carole Holly, Project Leader, Phone 541–575–3026 or *e-mail: cholly@fs.fed.us.*

Individuals who use telecommunication devices 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:

Purpose and Need for Action (Updated)

Invasive plants displace or alter native plant communities and cause

long-lasting economic and ecological problems within and outside the National Forest. They can increase fire hazards, degrade fish and wildlife habitat, out-compete native plants, impair water quality and watershed health, and adversely affect a wide variety of other resource values such as scenic beauty and recreational opportunities. Invasive plants can spread rapidly across the landscape to all land ownerships. Field inventories have identified about 30 different invasive plant species within the boundaries of the Forest. Species of greatest concern include Canada thistle, houndstongue, diffuse knapweed, Dalmatian toadflax, whitetop, and sulfur cinquefoil, among others. Our ability to prevent or minimize the adverse impacts of these and other invasive plants is greatest if populations can be treated while they are small and in the early stages of invasion. Additional benefits of early stage treatments include reduced treatment costs, less chemical use, and less ground and habitat disturbance. The purpose of treating invasive plant infestations is to maintain or improve the diversity, function, and sustainability of desired native plant communities and other natural resources that can be adversely impacted by invasive plant species. Without action, invasive plant populations will become increasingly difficult and costly to control and will further degrade forest and grassland ecosystems. Invasive plants will continue to expand and spread every year without effective treatment (the R6 2005 FEIS estimated a rate of 8–12 percent per year; this rate may be reduced due to adherence to prevention standards in the R6 2005 ROD).

The Malheur National Forest has been treating invasive plants without the authorization to rapidly respond to new infestations or the use of herbicides (an exception is that herbicides have been used in spot treatments totaling 10–20 acres/year along roads on the former Snow Mountain Ranger District—Ochoco National Forest). However, many invasive target species require herbicides for effective treatment. Monitoring has shown physical treatments alone cannot control invasive species. A previous attempt to authorize the use herbicides was made, but the project was litigated and enjoined. In December 2002, the U.S. District Court (Blue Mountain Biodiversity Project v. US Forest Service, CV 01–703–HA) concluded that the Malheur National Forest Environmental Assessment for invasive plant control was insufficient because it failed to address new information regarding herbicides and the causes of the spread of invasive plants.

The Pacific Northwest Region Invasive Plant Program Preventing and Managing Invasive Plants FEIS (referred to as the R6 2005 FEIS) (USDA Forest Service, 2005a) and Record of Decision for Invasive Plant Program Management (referred to as the R6 2005 ROD) (USDA Forest Service 2005b). Vectors and causes of invasive plant spread were explored in detail and new standards for prevention, site treatment and restoration, and an updated list of herbicides for effectively responding to invasive plant threats were added.

The prevention standards have been applied to land use decisions made since the R6 2005 ROD was adopted. However, the treatment and restoration part of the Malheur invasive plant control program is not consistent with the 2005 standards and needs to be updated. New and existing invasive plant populations on the Malheur National Forest require more timely, effective and cost-efficient treatment actions to comply with the intent of the R6 2005 ROD (which was incorporated into the Malheur Forest Plan).

In addition, after the R6 2005 ROD signed, a new herbicide (aminopyralid) became available. Aminopyralid (also known as Milestone TM) is specifically labeled for treatment of invasive plants in forested settings. This herbicide is effective on hard to control invasive plant species such as hawkweed, knapweed, and Canada thistle. It is preferred by invasive plant specialists at the state and county level.

Previous Public Outreach

The MNF scoped on this project previously (a (NOI) to prepare an EIS requesting public input was published in the **Federal Register** Volume 71, No. 62/March 31, 2006 on pages 16281–16282). Regional and local workload prevented us from being able to complete an EIS during the intervening years. The new Proposed Action is based on an updated inventory of invasive plants that was recently completed (February 2011).

Proposed Action

The Proposed Action is to treat invasive plants using integrated methods including chemical (herbicides and adjuvants), physical treatments (mechanical and manual treatment), and biological controls. Treatment could be anywhere on Forest Service system lands including rangelands, wilderness, timber harvest areas, along roads and road rights-of-way (including decommissioned roads), along trail routes, at dispersed and developed recreation sites, and on other disturbed sites (*i.e.* fires, flood events, and rock sources) where invasive plants are located. Mulching, seeding and planting of competitive, desirable vegetation may occur to restore treated sites. A map of invasive plant locations can be found on the Malheur National Forest Web site at *http://www.fs.fed.us/r6/malheur/land&resourcesmanagement/projects/.* Based on surveys, inventories and anecdotal reports accumulated over the last several years, target invasive species occupy approximately 2,287 acres on the Forest. The infestations are broadly distributed, often occurring in areas of high spread potential (*e.g.,* along roads). There are likely additional invasive plant sites that have not yet been identified.

The Proposed Action would treat existing infestations according to Forest Plan standards. Specific project design features would be implemented to minimize unintended, adverse effects to non-target plants, animals, water, and people. New invasive plants detected on the Forest (beyond the current inventory) would also be treated using an "Early Detection and Rapid Response (EDRR)" process.

Ground based herbicide application methods would be used based on accessibility, topography, and the size of treatment areas. No aerial treatment is proposed. Spot and selective spraying where individual and groups of plants are targeted would be the primary method of application; however some herbicide broadcasting may occur from ATV or trucks. Broadcast treatments would occur when necessary based on the size, density or distribution of target species. ATVs may be used to facilitate broadcast in otherwise inaccessible areas. Ongoing monitoring of each site would dictate the treatment method, whether herbicides are needed, and the type of continued or follow-up treatments needed. Acreage treated would average up to 2,300 acres per year, with a total of 23,000 acres treated over the life of the project (about 10 years). Herbicide treatments would be done in accordance with label advisories, USDA Forest Service policies, and Forest Plan management direction. Specific design features would be applied to minimize or eliminate the potential for invasive plant treatments to adversely affect non-target plants, animals, human health, water quality, and aquatic organisms.

The R6 2005 ROD (now part of the Malheur Forest Plan) authorized the use of ten herbicide active ingredients. Each of the ten herbicides is known to be effective on the target species found on

the Forest. A given herbicide may be effective on many target species but each site would usually be treated with only one of the ten approved herbicides (some tank mixes may be used); however, a different herbicide might be used in a follow-up treatment. The more herbicides choices in the toolbox, the better the effect expected over time (R6 2005 FEIS page 4–18, 4–26).

A site-specific, non-significant amendment to the Malheur Forest Plan is also proposed to add an 11th herbicide, aminopyralid, to the list of authorized herbicides for use on the Forest to treat invasive plants. Aminopyralid was not labeled for wildland use in 2005; however, the R6 2005 ROD Standard 16 acknowledges that new herbicides may be added given proper analysis. Aminopyralid has undergone extensive risk assessment since 2005. It is proposed for use because it would increase the effectiveness of treatment for some broadleaf target species, and reduce potential adverse impacts, compared to herbicides authorized in the R6 2005 ROD. Aminopyralid is likely to be effective on a large proportion of the current target species acreage.

Possible Alternatives

The Forest Service is considering an alternative of treating without the use of aminopyralid and only using the 10 herbicides approved in the R6 2005 ROD. The No Action alternative will also be considered, which would continue the current non-herbicide program on the Malheur National Forest.

Responsible Official

The Responsible Official is the Malheur National Forest Supervisor.

Nature of Decision To Be Made

The Forest Supervisor will make the following decisions based on the interdisciplinary analysis: (1) Whether or not to authorize site-specific invasive plant treatments using herbicides and other methods; (2) whether or not to implement an Early Detection and Rapid Response process for infestations that are detected over the next 5 to 15 years; (3) what mitigation measures (design features) are required and (4) what monitoring and adaptive management will occur.

Preliminary Issues

The following issues were identified in scoping that occurred in 2006:

Human Health: The health of forestry workers and the public may be at risk from exposure to herbicides. Chemical spray drift or contact by walking through recently sprayed areas may increase the risk, particularly to people who have heightened sensitivity to chemicals. In addition, health consequences could result from well water and other drinking water contaminated by herbicides.

Treatment Effectiveness: Existing invasive species populations may continue to expand and new populations could become established without using all methods aggressively.

Wildlife: Herbicides, particularly when applied through broadcast spraying, may harm terrestrial wildlife species.

Non-target Plants: Herbicides, particularly when applied through broadcast spraying, may harm non-target plants.

Soil Biology: Herbicide use may harm soil organisms or soil biology.

Fish and Water: Herbicide treatments on riparian areas have the potential to adversely affect water quality and aquatic ecosystems.

Permits or Licenses Required

Pesticide application licenses will be required for those implementing this project. Pesticide Use Proposals for wilderness herbicide applications need to be signed by the Regional Forester; otherwise Pesticide Use Proposals are signed by the Forest Supervisor. This project may involve riparian herbicide application subject to a Department of Environmental Quality water quality permit.

Scoping Process

This notice of intent initiates a new scoping process to guide the development of the environmental impact statement. Scoping comments from 2006 are part of the record and will be used to generate issues and alternatives for detailed study in the EIS. Scoping comments sent previously need not be re-sent; new comments are also welcome. No public meetings are planned.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, those who only submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215.

Dated: March 28, 2011.

Teresa Raaf,

Forest Supervisor.

[FR Doc. 2011–7727 Filed 4–4–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Prince William Sound Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Prince William Sound Resource Advisory Committee will meet in Whittier, Alaska. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to review, discuss and select projects to be funded thru the Secure Rural Schools Act.

DATES: The meeting will be held April 22nd and April 23rd, 2011.

ADDRESSES: The meeting will be held on the 15th floor of the Begich Towers Inc. building located at 100 Kenai Street, Whitter, AK. Written comments should be sent to Teresa Benson P.O. Box 280, Cordova, AK 99574. Comments may also be sent via e-mail to *tbenson@fs.fed.us,* or via facsimile to (907) 424–7214.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Cordova Ranger District (612 2nd Street, Cordova, AK) or the Glacier Ranger District (145 Forest Station Road, Girdwood, AK).

FOR FURTHER INFORMATION CONTACT: Teresa Benson, Designated Federal Official, c/o USDA Forest Service, P.O. Box 280, Cordova, Alaska 99574, telephone (907) 424–4742.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: The Prince William Sound Resource Advisory Committee (RAC) will be discussing and voting on proposals that have been received from communities of the Prince William Sound. The proposals that may receive funding would enhance forest ecosystems or restore and improve land health and water quality on the Chugach National

Forest and other near-by lands including the communities of Chenega, Cordova, Tatitlek, Valdez and Whittier. The RAC is responsible for approving projects with funds made available from years 2008–2012.

The public is welcome to attend the April 22–23 RAC meeting. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by April 21st will have the opportunity to address the Committee at those sessions.

Dated: March 23, 2011.

Teresa M. Benson,

District Ranger.

[FR Doc. 2011–8001 Filed 4–4–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[10–BIS–0001]

Manoj Bhayana, Respondent; Final Decision and Order

This matter is before me upon a Recommended Decision and Order ("RDO") of an Administrative Law Judge ("ALJ"), as further described below.[1]

I. Background

As discussed in the RDO, the allegations in this case stem from an investigation by the Bureau of Industry and Security ("BIS") of a sale and (unlicensed) export of graphite rods and pipes from the United States to Pakistan, via the United Arab Emirates ("UAE"), in which Respondent Manoj Bhayana directly participated. *See* RDO, at 2, 4. During the investigation, BIS sought to determine, *inter alia,* the type of graphite that had been exported by SparesGlobal, Inc. ("SparesGlobal"), of Pittsburgh, Pennsylvania, and the ultimate end-user of the items. Respondent was SparesGlobal's primary sales representative for the transaction, working directly with the U.S. supplier (Ameri-Source, Inc.) and freight forwarder (K.C. International Transport, Inc.), and with SparesGlobal's customer (Taif Trading, LLC), a trading company located in Dubai, UAE. *See* RDO, at 4–5; Order Partially Granting BIS's Motion for Summary Decision, at 3, 5.[2]

The transaction documentation included a mill test certificate certifying that the graphite being exported met the specifications for a type of graphite (CS grade extruded graphite) produced by UCAR Carbon Company, doing business as GrafTech International Ltd. ("UCAR/GrafTech"). As he later admitted, Respondent Bhayana knew that the exported graphite items were not UCAR graphite and had not been produced by UCAR/Graftech. He also knew that the mill test certificate, which was on UCAR/GrafTech letterhead, had been created at Ameri-Source, Inc. ("Ameri-Source"), not by UCAR/GrafTech. Respondent sent the mill test certificate to the freight forwarder to facilitate the export, which occurred in December 2003. RDO, at 4–5.

During the course of BIS's investigation of this matter, in a September 7, 2004 e-mail to a BIS Special Agent, Respondent denied having any knowledge of the origin of the mill test certificate. Following months of additional investigation, BIS executed a search warrant at SparesGlobal in November 2004. Bhayana was present and was interviewed by BIS Special Agents. During that interview, Respondent provided the mill test certificate in response to the Special Agents' questions about the exported items, knowing, but not informing the agents, that the certificate contained false and misleading information. *See* RDO, at 5–6.

In a Charging Letter issued on January 15, 2010, BIS alleged that Respondent Bhayana had committed two violations of the Export Administration Regulations ("EAR" or "Regulations").[3] Charge One alleged that Respondent had violated Section 764.2(b) of the Regulations when he caused, aided or abetted the submission of a false and misleading SED. In Charge Two, the remaining charge at issue here,[4] BIS alleged that respondent violated Section 764.2(g) by making false and misleading statements to BIS Special Agents during the course of a BIS investigation.

Charge Two alleged, in full, as follows:

Charge 2: 15 CFR 764.2(g): False Statement Made to BIS During an Investigation

Bhayana made false and misleading representations and statements in the course of a BIS investigation. On or about September 8, 2004, a BIS Special Agent asked about the mill certificate relating to the Shipper's Export Declaration (SED) filed on December 2, 2003, and referenced in Charge 1 above. In an e-mailed response to the Special Agent, Bhayana stated: "The test certificate was provided by [our supplier] to us. We do not have any knowledge about its origin." On or about November 3, 2004, Bhayana was again asked about the mill certificate during an in-person interview with BIS Special Agents, and again provided copies of this forged mill certificate to the Special Agents. During this interview, Bhayana also gave the BIS Special Agents a signed written statement referencing the mill test certificate specifications or "specs," in which, he indicated, "These specs which are being submitted here [to the Special Agents] are the material specs which were shipped under this shipment." In fact, Bhayana had worked with others to create the forged mill certificate falsifying the type of graphite rod being exported and knew that the certificate contained false information when he provided it to the Special Agents. When confronted later in the same interview by the Special Agents with evidence that the certificate had been forged, Bhayana signed a second written statement. In this second signed statement, Bhayana admitted that his earlier statements to the Special Agents were false. Specifically, Bhayana admitted that SparesGlobal's supplier, Ameri-Source, Inc., which was not the actual manufacturer or distributor of GrafTech's UCAR graphite, "suppl[ied] * * * the certificate on [GrafTech] UCAR letterhead showing the [false] specs and mill test reports," and then "prepared some certificate and faxed it to us for the approval." In so doing, Bhayana committed one violation of Section 764.2(g) of the Regulations.

[1] I received the certified record from the ALJ, including the original copy of the RDO, for my review on March 1, 2011. The RDO is dated February 28, 2011, and incorporates the ALJ's October 12, 2010 Order Partially Granting BIS's Motion for Summary Decision. As discussed further *infra,* BIS moved for summary decision as to Charge Two of the Charging Letter in July 2010. The Order Partially Granting BIS's Motion for Summary Decision granted BIS summary decision on Charge Two, but reserved ruling as to the recommended sanction because Charge One was still pending. In order to expedite resolution of this matter, BIS withdrew Charge One in November 2010. The Order Partially Granting BIS's Motion for Summary Decision is part of the RDO, but where that Order is cited, for ease of reference, the citations are made directly to the pertinent pages of that Order, rather than citing it as an attachment to the RDO.

[2] *See* note 1, *supra.*

[3] The Regulations, which are currently codified at 15 CFR parts 730–774 (2010), were issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (the "Act"). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 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 (Aug. 16, 2010)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*). The violation remaining at issue in this case occurred in 2004. The Regulations governing the violation at issue are found in the 2004 version of the Code of Federal Regulations (15 CFR parts 730–774 (2004)). The 2010 Regulations govern the procedural aspects of this case.

[4] As referenced *supra* at note 1 and as discussed further *infra,* BIS withdrew Charge One after BIS had moved for and been granted summary decision as to Charge Two.

Charging Letter, at 2.[5]

Respondent has been represented by counsel throughout this litigation. In response to requests for admission served by BIS, Respondent made a series of admissions, including that he knew throughout the investigation that the exported graphite rods and pipes were not UCAR graphite and had not been produced by UCAR/GrafTech; that the mill test certificate had been created at Ameri-Source, not by UCAR/GrafTech or any UCAR/GrafTech affiliate; and that when he was interviewed by BIS Special Agents in November 2004, he knew, but did not inform the agents, that the mill test certificate he handed to them contained false and misleading information. *See* Order Partially Granting BIS's Motion for Summary Decision, at 6–7, 9–10.

BIS moved for summary decision as to Charge Two on July 30, 2010, and as part of that motion requested that the ALJ recommend that Respondent's export privileges be denied for a period of at least two years. As set forth in his October 12, 2010 Order Partially Granting BIS's Motion for Summary Decision, the ALJ determined that Charge Two had been proven by BIS and granted the motion for summary decision as to that violation of Section 764.2(g), but reserved ruling on a recommended sanction because Charge One was still pending.

On November 12, 2010, BIS withdrew Charge One of the Charging Letter in order to expedite resolution of this case. A briefing schedule was established on the issue of sanctions, and on November 23, 2010, Respondent filed his Memorandum Regarding Possible Sanctions, contending at bottom that no sanction should be imposed against him. In his sanctions memorandum, Respondent asserted, *inter alia,* that he had started an "export business" after he had left SparesGlobal in November 2008, but that he could not afford to implement an effective export compliance program. *See* RDO, at 13–14 (discussing and citing Respondent's Memorandum Regarding Possible Sanctions, filed November 23, 2010, at 11). In response, on December 6, 2010, BIS renewed its request for a denial order of at least two years in order, in sum, to sanction Respondent's violation of Section 764.2(g) appropriately and to prevent or deter future violations.

On February 28, 2011, based on the entire record (including the findings and conclusions set forth in the Order Partially Granting BIS's Motion for Summary Decision), the ALJ issued the RDO to the parties, in which he recommended that a denial period of two years be assessed against Respondent Bhayana. The RDO contains a detailed review of the facts and applicable law relating to both merits and sanctions issues in this case.

Based on the record, the ALJ determined, *inter alia,* that Respondent knowingly and willfully made false and misleading statements during the course of a BIS investigation and that those statements impeded and hampered the investigation. *See* RDO, at 8 ("Respondent willfully committed a violation of the EAR" and "knowingly tried to hide the fact that [the] mill test certificate contained false and misleading information when questioned on it by BIS investigators."); *id.,* at 9 (Respondent "imped[ed] an export control investigation"); *id.,* at 10 ("Respondent's violation * * * was an intentional decision to provide misleading and false information rather than comply with the requirements of the law and regulations"); *id.,* at 11 ("Respondent's actions hampered BIS's investigation."); and *id.,* at 14 (a two-year denial order is an appropriate sanction in this case and "necessary for deterring persons from providing false and misleading information that frustrates enforcing compliance with the regulations.").

The ALJ determined that Respondent had demonstrated a serious disregard for his export compliance responsibilities when he made the false and misleading statements at issue. *See* RDO, at 9, 13–14. The ALJ also determined that the record shows that Respondent admittedly does not have the resources to implement an effective compliance program in connection with the "export business" that Respondent claims to have started after he left SparesGlobal in late 2008.[6] *Id.* at 13–14 (quoting and citing Respondent's Memorandum Regarding Possible Sanctions, at 11). The ALJ found, furthermore, that compliance with the export control laws still is not a priority for Respondent and that Respondent's continued efforts to excuse his misconduct "demonstrate[] Respondent's attitude towards ensuring compliance with the regulations *still* takes a backseat to personal factors." *Id.* (emphasis added).

The ALJ rejected Respondent's repeated attempts to attribute his false statements to an asserted lack of export experience, training, or knowledge of the Regulations. The ALJ ruled that even accepting Respondent's assertions as true, his unlawful conduct did not result from such factors. "Respondent's violation was not the result of a misinterpretation [of the Regulations], but instead was an intentional decision to provide misleading and false information rather than comply with the requirements of the law and regulations." RDO, at 10; *see also id.,* at 12 ("Respondent's actions were not an unintentional or unknowing violation of the [R]egulations."); *see generally id.,* at 9–13.

The ALJ also rejected Respondent's efforts to attribute responsibility for his statements to his "low level" position at SparesGlobal or justify his misconduct based on his asserted fear that he would lose his job or work visa, concluding as follows:

> Even if this [assertion] is accepted as accurate, it does not provide a defense to making false statements to Government officials during a formal investigation. * * * When a person provides information or statements during an investigation, the law allows persons to either provide truthful statements or make an assertion of privilege. This applies equally to all individuals, even "lower" level employees, during the course of investigations so [that] violations at all levels can be effectively investigated. In summary, Respondent chose to mislead the investigators and appease his bosses, instead of being truthful with BIS and complying with the regulations. Such a decision does not show a good-faith misinterpretation of the rules and is not a valid basis for mitigation of sanctions.
>
> RDO, at 12–13.

II. Review Under Section 766.22

The RDO, together with the entire record in this case, has been referred to me for final action under Section 766.22 of the Regulations. I find that the record supports the ALJ's findings of fact and conclusions of law that Respondent violated Section 764.2(g) by making false and misleading statements and representations to BIS during the course of an investigation. In addition to other evidence submitted by BIS, Respondent effectively admitted the violation during discovery in response to BIS's requests for admission. Moreover, Respondent has not asserted in his response to the RDO that the ALJ committed any error as to the merits or that any of the ALJ's findings or conclusions on the merits is erroneous.

[5] As a result of the investigation, criminal charges were brought against SparesGlobal, which in October 2007, pled guilty in the United States District Court for the Western District of Pennsylvania to conspiracy under 18 U.S.C. 371. BIS filed administrative charges against Ameri-Source (Case No. 08–BIS–15) and Ameri-Source director Thomas Diener (Case No. 08–BIS–16) in December 2008. Ameri-Source and Mr. Diener settled those charges shortly after they were filed, with the final settlement orders issuing on February 6, 2009.

[6] As noted *supra,* BIS filing the Charging Letter in January 2010, and the record also indicates that BIS issued a Proposed Charging Letter to Respondent in January 2009.

I also find that the two-year denial order recommended by the ALJ upon his review of the entire record is appropriate, given the nature of the violations, the facts of this case, and the importance of deterring Respondent and others from seeking, through the provision of false and misleading information to BIS Special Agents, to thwart or impede BIS's enforcement of the Regulations.[7] Those who make false or misleading statements to BIS Special Agents during the course of an investigation strike at the heart of BIS's efforts to protect and promote the national security. A denial order also is appropriate here given the ALJ's findings, which are fully supported by the record, that Respondent does not possess the resources or the necessary commitment to meet his compliance obligations under the export control laws.[8]

Accordingly, based on my review of the entire record, I affirm the findings of fact and conclusions of law in the RDO without modification, but with one clarification. The RDO states at one point that "[w]hile it may not fit clearly within Mitigation Factor 4 [of the EAR's Penalty Guidance], the fact that sensitive materials were not involved is given some weight in mitigation" and that "since Respondent's representation seems to concern a non-sensitive item, that is a factor that can be considered toward mitigation." *Id.* at 11. I note first that the violation at issue is for making false statements during an investigation, not for making or causing an unlicensed export. Moreover, the false statements made by Respondent went directly to the type and specifications of the items that had been exported, information that was crucial for BIS to assess whether the export at issue required a license and the extent to which it could harm the national security. Although the mitigation credit discussion quoted above did not affect the outcome of this case, I want to clarify that a respondent who makes false statements to BIS during an investigation cannot properly claim, and should not be accorded, mitigation credit relating to the subject of those false statements.

In short, a respondent should not be allowed to reap any benefit from such false or misleading statements. With this clarification, I affirm the RDO.[9]

Accordingly, it is therefore ordered,

First, that, for a period of two (2) years from the date that this Order is published in the **Federal Register**, Manoj Bhayana, of 65 W. Manila Avenue, Pittsburgh, Pennsylvania 15220, and his representatives, assigns, agents or employees (hereinafter collectively referred to as "Denied Person") may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that 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.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Manoj Bhayana by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that 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.

Fifth, that this Order shall be served on Manoj Bhayana and on BIS, and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision and Order, except for the section related to the Recommended Order, shall also be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the **Federal Register**.

[7] *See, e.g.,* Guidance on Charging and Penalty Determinations in Settlement of Administrative Enforcement Cases ("Penalty Guidance"), Supplement No. 1 to part 766 of the Regulations, at ¶ III.A (Degree of Willfulness) (in cases involving a knowing or willful violation, a denial of export privileges is appropriate, and/or a greater monetary penalty than BIS typically would seek); *see also id.* (even in cases involving simple negligence, a denial order may be appropriate where, for example, the violation involves essential interests protected by the Regulations, the violation is of such a nature that a monetary penalty is an insufficient sanction, or the nature of the violation indicates that a denial order is needed to prevent future violations).

Although focused on the settlement context, the Penalty Guidance can be instructive where considered and applied consistent with the factual context of a litigated case.

[8] *See, e.g.,* Penalty Guidance, Supp. No. 1 to part 766, at ¶ IV.B ("An otherwise appropriate denial or exclusion order will be suspended on the basis of adverse economic consequences only if it is found that future export control violations are unlikely and if there are adequate measures (usually a substantial civil penalty) to achieve the necessary deterrent effect.") (parenthetical in original).

[9] The RDO inadvertently included (as Attachment B) an outdated version of Section 766.22(e) of the Regulations, regarding a possible appeal of the Final Decision and Order. Section 766.22(e) recently was deleted. *See Export Administration Regulations; Technical Amendments,* 75 FR 33,682 (June 15, 2010). Thus, Respondent should disregard Attachment B of the RDO.

Dated: March 28, 2011.

Eric L. Hirschhorn,

Under Secretary of Commerce for Industry and Security.

Certificate of Service

I hereby certify that, on this 29st day of March, 2011, I have served the foregoing DECISION AND ORDER signed by Eric L. Hirschhorn, Under Secretary of Commerce for Industry and Security, in the matter of Manoj Bhayana (Docket No: 10–BIS–0001) to be send via United Parcel Service postage pre-paid to:

Louis W. Emmi, Esquire, Attorney At Law, 201 Lebanon Shops, 300 Mt. Lebanon Boulevard, Pittsburg, PA 15234, (fax): 412–341–8464 (By Facsimile and United Parcel Service).

Adrienne Frazier, Joseph Jest, John Masterson, Attorneys for Bureau of Industry and Security, Office of Chief Counsel for Industry and Security, U.S. Department of Commerce, Room HCHB 3839, 14th Street and Constitution Ave., NW., Washington, DC 20230, (fax): 202–482–0085 (Served via hand delivery).

Honorable Michael J. Devine, U.S. Coast Guard, U.S. Customs House, 40 South Gay Street, Room 412, Baltimore, MD 20102, (fax): 410–962–5155, (By Facsimile and United Parcel Service).

ALJ Docketing Center, Attention: Hearing Docket Clerk, 40 S. Gay Street, Room 412, Baltimore, Maryland 20212–4022 (By Untied Parcel Service).

Andrea A. Monroe

Office of the Under Secretary for Industry and Security

United States of America Department of Commerce Bureau of Industry and Security

IN THE MATTER OF: Manoj Bhayana, Respondent.

Docket No. 10–BIS–0001

Recommended Decision and Order

Issued: February 28, 2011

Issued By: Hon. Michael J. Devine Presiding

Appearances

For the Bureau of Industry and Security
Adrienne Frazier, Esq., Office of Chief Counsel for Industry & Security, U.S. Department of Commerce, Room H–3839, 14th Street & Constitution Ave., NW, Washington, DC 20230.

For Respondent Manoj Bhayana
Louis W. Emmi, Esq., 201 Lebanon Shops, 300 Mt. Lebanon Boulevard, Pittsburgh, PA 15234.

I. Preliminary Statement

This case arises from Manoj Bhayana's (Respondent) violation of the Export Administration Regulations (EAR or Regulations).[10] On January 15, 2010, the Bureau of Industry and Security (BIS or Agency) issued a Charging Letter against Respondent. In that Letter, BIS alleged Respondent committed two (2) violations of the Export Administration Act of 1979 (Act), as amended and codified at 50 U.S.C. App. §§ 2401–20 (2000), and the Export Administration Regulations (EAR or Regulations), as amended and codified at 15 CFR parts 730–74 (2000 & 2007) [11] while working for SparesGlobal, Inc (SparesGlobal). The charges read as follows:

Charge 1 15 CFR 764.2(b)—Causing, Aiding or Abetting a Violation of the Regulations

On or about December 2, 2003, Bhayana, while employed as a sales representative at SparesGlobal, Inc., caused, aided, abetted and permitted the submission of false and misleading representations and statements to the U.S. Government in connection with the preparation and submission of a Shipper's Export Declaration (SED), an export control document. The SED falsely represented and stated that the item being exported from the United States was "UCAR–GRAPHITE" and that the ultimate consignee was located in the United Arab Emirates (UAE). Bhayana and others created a forged mill certificate to indicate that the item was "UCAR–GRAPHITE." Bhayana submitted the fraudulent mill certificate to the freight forwarder and told the freight forwarder that the ultimate consignee was in the UAE, when the actual ultimate consignee was in Pakistan. Based on the information provided by Bhayana, the freight forwarder filed the SED stating that the item was "UCAR GRAPHITE" and the ultimate consignee was in the UAE. In so doing, Bhayana committed one violation of Section 764.2(b) of the regulations.

Charge 2 15 CFR 764.2(g)—False Statement Made to BIS During an Investigation

Bhayana made false and misleading representations and statements in the course of a BIS investigation. On or about September 8, 2004, a BIS Special Agent asked about the mill certificate relating to the Shipper's Export Declaration (SED) filed on December 2, 2003, and referenced in Charge 1 above. In an emailed response to the Special Agent, Bhayana stated: "The test certificate was provided by [our supplier] to us. We do not have any knowledge about its origin." On or about November 3, 2004, Bhayana was asked again about the mill certificate during an in-person interview with BIS Special Agents, and again provided copies of this forged mill certificate to the Special Agents. During this interview Bhayana also gave the BIS Special Agents a signed written statement referencing the mill test certificate specifications or "specs," in which he indicated, "These specs which are being submitted here [to Special Agents] are the material specs which were shipped under this shipment." In fact, Bhayana had worked with others to create the forged mill certificate falsifying the type of graphite rod being exported and knew that the certificate contained false information when he provided it to the Special Agents. When confronted later in the same interview by the Special Agents with evidence that the certificate had been forged, Bhayana signed a second written statement. In this second signed statement, Bhayana admitted that his earlier statements to the Special Agents were false. Specifically, Bhayana admitted that SparesGlobal's supplier, Ameri-Source, Inc., which was not the actual manufacturer or distributer of GrafTech's UCAR graphite, "suppl[ied] * * * the certificate on [GrafTech] UCAR letterhead showing the [false] specs and mill test reports," and the "prepared some certificate and faxed it to us for the approval." In so doing, Bhayana committed one violation of Section 764.2(g) of the Regulations.

On July 30, 2010, BIS filed a Motion for Summary Decision (BIS Motion) on Charge 2, asserting it was entitled to summary decision as a matter of law. Attached to its motion were fifteen (15) exhibits marked *Government Exhibit* (Gov't Ex.) 1–15. In support of the Motion BIS argued there were no genuine issues as to any material fact because of Bhayana's statements to BIS Special Agents during the course of a BIS investigation and due to Bhayana's admissions regarding the false mill certificate in the transaction that is the subject of this matter. BIS's Motion did not address Charge 1.

On October 12, 2010, the undersigned issued an Order Partially Granting BIS's Motion for Summary Decision. In that Order, the undersigned found Charge 2 had been proven, but reserved ruling as to the recommended sanction for the violation because Charge 1 remained

---

[10] The Export Administration Regulations, 15 CFR parts 730–744, are issued under the Export Administration Act of 1979 (EAA). The Act is codified at 50 U.S.C. app. §§ 2401–20 (2000), as amended by the Notice on August 13, 2009 (74 FR 41,325 (Aug. 14, 2009)).

[11] The EAA and all regulations promulgated there under expired on August 20, 2001. *See* 50 U.S.C. App. 2419. Three days before its expiration, on August 17, 2001, the President declared the lapse of the EAA constitutes a national emergency. *See* Exec. Order. No. 13222, *reprinted in* 3 CFR at 783–784, 2001 Comp. (2002). Exercising authority under the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. 1701–1706 (2002), the President maintained the effectiveness of the EAA and its underlying regulations throughout the expiration period by issuing Exec. Order. No. 13222 on August 17, 2001. *Id.* The effectiveness of the export control laws and regulations were further extended by successive Notices issued by the President; the most recent being that of August 15, 2007. *See* Notice: Continuation of Emergency Regarding Export Control Regulations, 72 FR 46, 137 (August 15, 2007). Courts have held that the continuation of the operation and effectiveness of the EAA and its regulations through the issuance of Executive Orders by the President constitutes a valid exercise of authority. *See Wisconsin Project on Nuclear Arms Control* v. *United States Dep't of Commerce,* 317 F.3d 275, 278–79 (DC Cir. 2003); *Times Publ'g Co.* v. *U.S. Department of Commerce,* 236 F.3d 1286, 1290 (11th Cir. 2001).

pending. That Order included Findings of Fact and Ultimate Findings of Fact and Conclusions of Law and is included as Attachment A of this Recommended Decision and Order.

On November 5, 2010, a prehearing conference was held to discuss scheduling concerns in light of the Order Partially Granting Summary Decision. During that prehearing conference call, BIS informed the undersigned and Respondent they intended to withdraw Charge 1. On November 12, 2010, BIS filed its Notice of Withdrawal of Charge 1.

With the withdrawal of Charge 1, the only issue remaining is the appropriate sanction for the violation found proved in Charge 2. On November 23, 2010, Respondent filed his final written brief and closing arguments. On December 6, 2010, BIS submitted their final written brief and closing arguments. The following recommended findings of fact and recommended decision is based on a careful review of the facts and record as a whole including the parties final briefs, the facts found in the Order Partially Granting the BIS Motion for Summary Decision and the applicable law and regulations.

II. Recommended Findings of Fact

1. SparesGlobal, Inc., of Pittsburgh, PA, exported graphite rods and pipes from the United States on or about December 2, 2003. (BIS Motion—Ex. 5 at 3–4; Ex. 6).
2. Respondent was SparesGlobal's primary sales contact for this transaction. (BIS Motion—Ex. 5 at 1).
3. During the transaction, Respondent was in contact with the U.S. company that supplied the graphite rods and pipes for the transaction, Ameri-Source, Inc.; the freight forwarder for the transaction, K.C. International Transport, Inc.; and SparesGlobal's customer Taif Trading, LLC, located in Dubai, UAE. (BIS Motion—Ex. 5 at 4–5).
4. The transaction documentation included a mill test certificate certifying that the graphite being exported met the specifications for a type of graphite (CS grade extruded graphite) produced by UCAR Carbon Company and Respondent sent this certificate to the freight forwarder, K.C. International Transport, Inc. to facilitate the export transaction at issue. (BIS Motion—Ex. 5 at 4–5; Ex. 8)
5. Respondent admitted that the exported graphite rods were not UCAR graphite and were not produced by UCAR/GrafTech. (BIS Motion—Ex. 5 at 5).
6. Respondent knew the mill test certificate had been created by Ameri-Source, Inc., and that it had been created using UCAR/GrafTech letterhead. (BIS Motion—Ex. 5 at 6–8).
7. During a BIS investigation concerning this export transaction, in a September 7, 2004 email that he sent to a BIS Special Agent, Respondent denied having any knowledge of the origin of the mill test certificate. (BIS Motion—Ex. 5 at 7).
8. As part of BIS's investigation, Respondent was interviewed by BIS Special Agents at SparesGlobal's offices on or about November 3, 2004. (BIS Motion—Ex. 5 at 7–8).
9. During the interview, Respondent handed the BIS Special Agents his file relating to this export transaction, which included the fraudulent mill test certificate. (BIS Motion—Ex. 5 at 7–8).[12]

III. Recommended Ultimate Findings of Fact and

Conclusions of Law

1. Respondent and the subject matter of this proceeding are properly within the jurisdiction of the BIS in accordance with the Export Administration Act of 1979 (50 U.S.C. App. §§ 2401–2420) and the Export Administration Regulations (15 CFR parts 730–774).
2. When Respondent handed the file and the mill test certificate to the BIS Special Agents on or about November 3, 2004, he knew the certificate had been created at Ameri-Source and not by UCAR/GrafTech or any UCAR/GrafTech affiliate. (BIS Motion—Ex. 5 at 7–8).
3. When Respondent handed the BIS Special Agents the file and mill test certificate on or about November 3, 2004, Bhayana knew the certificate contained false and misleading information. (*Id.*).
4. When Respondent handed the file and certificate to the BIS Special Agents on or about November 3, 2004, he knew, but did not inform the agents that some of the information in the file contained false, inaccurate, and/or misleading information. (*Id.*).
5. Respondent is found to have made false and misleading representations to BIS Special Agents during the course of an investigation subject to the EAR, a violation of 15 CFR 764.2(g).

IV. Recommended Sanction

A. Regulations

Section 764.3 of the EAR establishes the sanctions that BIS may seek for the violations charged in this proceeding. The sanctions permitted include: (1) A civil penalty, (2) a denial of export privileges under the Regulations, and (3) an exclusion from practice. *See* 15 CFR 764.3. Supplement Number 1 to 15 CFR part 766 (Supplement No. 1) provides published nonbinding guidance on what BIS considers in making penalty determinations in considering settlement of civil administrative enforcement cases. Various factors are considered by BIS including the degree of willfulness, the destination involved, whether there were any related violations, and the timing of any settlement. Both parties have referenced Supplement No. 1 in their final arguments and briefs in support of their position in this matter.

Both general factors and specific mitigating and aggravating factors are discussed in Supplement No. 1. Certain factors may be given greater weight than other factors. The Mitigating Factors include:

1. The party self-disclosed the violations (given great weight).
2. The party created an effective export compliance program (given great weight).
3. The violations resulted from a good-faith misinterpretation.
4. The export would likely have been granted upon request.
5. The party does not have a history of past export violations.
6. The party cooperated to an exception degree during the investigation.
7. The party provided substantial assistance in the BIS investigation.
8. The violation did not involve harm of the nature the regulations were intended to protect.
9. The party had little export experience and was not familiar with the requirement.

15 CFR part 766, Supp No. 1, at § III(B).

The Aggravating Factors include:

1. The party deliberately hid the violations (given great weight).
2. The party seriously disregarded export responsibilities (given great weight).
3. The violation was significant in view of the sensitivity of the item (given great weight).
4. The violation was likely to involve harm of the nature the regulations intended to protect.
5. The value of the exports was high, resulting in need to serve an adequate penalty for deterrence.
6. Other violations of law and regulations occurred.
7. The party has a history of past export violations.
8. The party lacked a systematic export compliance effort.

15 CFR part 766, Supp No. 1, at § III(B).

By examining the basic factors associated with the violations and by considering the appropriate mitigating and aggravating circumstances, an appropriate penalty is determined. A review of the factors and circumstances specific to this case are discussed below.

B. Respondent's Violations

In this case, Respondent is found to have provided false or misleading statements to a BIS Special Agent during the course of an investigation. (Order Partially Granting BIS's Motion for Summary Decision (Order)).[13] As set

[12] The legal analysis for the determination to grant the Motion for Summary Decision is contained in the discussion section of that Order. *See* Attachment A.

[13] The Order Partially Granting BIS's Motion for Summary Decision issued by this court on October 12, 2010 is Attachment A of this recommended

forth in the Ultimate Findings of Fact and Conclusions of Law, Respondent handed BIS Special Agents a file and mill test certificate that Respondent knew contained false and misleading information. (Order at 4). When Respondent handed the file and certificate to the BIS Special Agents, he knew, but did not inform the agents that some of the information in the file contained false, inaccurate, and/or misleading information. (*Id.*). Upon further investigation by BIS, Respondent admitted to his false statements. (Order at 6).

Aggravating Factors

As addressed within the Ultimate Findings of Fact and Conclusions of Law, Respondent willfully committed a violation of the EAR. While Respondent has presented argument asserting his excuses for providing false information to BIS, he nevertheless knowingly and willfully provided misleading information. An aggravating factor that is given great weight is a party's deliberateness in hiding a violation, Aggravating Factor 1. 15 CFR part 766, Supp No. 1, at § III(B). In this case, Respondent knowingly tried to hide the fact that a mill test certificate contained false and misleading information when questioned on it by BIS investigators. The court finds Respondent attempted to deliberately hide a violation. It was only after further investigation and confrontation with BIS Special Agents that Respondent eventually admitted to his attempt to hide the true facts.

An additional aggravating factor is when a party demonstrates a serious disregard for export compliance responsibilities, Aggravating Factor 2. *Id.* One such responsibility is to provide truthful statements to BIS Special Agents as they work to enforce our country's export control laws. In this case, Respondent seriously disregarded his export compliance responsibilities. While working as an exporter, Respondent is found to have misled BIS during the course of an investigation to enforce export controls. Respondent's explanation for his actions included his assertions that he was just a low level employee, that the value of the shipment was low, and that he might lose his job if he told the truth. Even if considered as accurate, Respondent's justifications for impeding an export control investigation demonstrate that compliance with his export responsibilities was of secondary importance. If an individual intends to engage in the export of goods, compliance with export controls is mandatory, and maintaining employment is not an excuse for violating the regulations.

No other aggravating factors seem applicable in this case. No evidence was presented that would establish Respondent's violation had circumstances that fit within one of the other aggravating factors. While Respondent admits his current company has not created a systematic export compliance effort, no evidence was presented that shows he was responsible for or lacked a systematic export compliance effort at the time of the violation. However, as discussed above, two aggravating factors are found to exist that are given great weight when determining an appropriate sanction. First, Respondent made a deliberate attempt to hide or conceal the violation and second, Respondent's conduct demonstrated a serious disregard for export compliance responsibilities.

Mitigating Factors

Within Respondent's Memorandum Regarding Possible Sanctions for his Violation (Memorandum), Respondent argues that several mitigating factors are relevant in his case. First, he suggests the violation was an isolated occurrence or the result of a good-faith misinterpretation. (*See* Memorandum at 7). This mitigation factor follows the general principle that while ignorance of the law is typically not an excuse for non-compliance, willful violations often receive higher penalties than unintentional violations. *See Cheek* v. *U.S.,* 498 U.S. 192, 199 (1991); *See also Iran Air* v. *U.S.,* 996 F.2d 1253 (DC Cir. 1993). To support this assertion, Respondent states he was a low level employee, worked long hours and did not take vacations, and felt great pressure to obey his superior's orders. However, this does not present a good-faith misinterpretation of the regulations. Instead, this argument highlights the fact Respondent knew he was misleading investigators. Even if his assertions are accepted as accurate, it demonstrates only that he decided to commit a violation because he felt pressure from the company to do so. Respondent's violation was not the result of a misinterpretation, but instead was an intentional decision to provide misleading and false information rather than comply with the requirements of the law and regulations.

Respondent's second argument for mitigation is based upon the assertion that the product he lied about did not require a license to ship, thus falling within Mitigation Factor 4. *See* 15 CFR part 766, Supp No. 1, at § III(B). The record does not contain any evidence that shows the exported goods (graphite) were a prohibited item. BIS asserts this mitigation factor should not apply, since the items in question were materials subject to the EAR (15 CFR 734.3(a)) and Respondent was charged with making a false statement, not with making an unlicensed export. It appears the export transaction that formed the basis of the misrepresentation and violation would likely have been granted anyway. While it may not fit clearly within Mitigation Factor 4, the fact that sensitive materials were not involved is given some weight in mitigation. If Respondent had made false statements about a highly sensitive and controlled item, such as nuclear material, that would certainly be an aggravating factor. Likewise, since Respondent's misrepresentation seems to concern a non-sensitive item, that is a factor considered towards mitigation.

Respondent's third argument for mitigation is that he has not been found to have committed any past export violations, Mitigation Factor 5. *See id.* No evidence has been provided showing Respondent has violated the EAR in the past. As such, Mitigation Factor 5 applies in this case.

Respondent's fourth argument for mitigation is that he cooperated to an exceptional degree with BIS's efforts to investigate SparesGlobal's conduct, Mitigation Factor 6 and 7. *See id.* This argument is not persuasive. The central violation relevant to this case revolves around Respondent making false and misleading statements to BIS during the course of an investigation. Attempting to mislead the investigator does not equate to providing an exceptional degree of cooperating with BIS's investigation. To the contrary, Respondent's actions hampered BIS's investigation.

Respondent's fifth argument for mitigation is that at the time of the violation he had little or no export experience and was not familiar with export practices, Mitigation Factor 9. *See id.* This mitigation factor is seemingly in place to account for individuals who unknowingly violate an export regulation, despite their good intentions to follow the regulations. In this case, even if Respondent had little export experience, it has been found he knowingly mislead investigators. Respondent's actions were not an unintentional or unknowing violation of the regulations. To the contrary, Respondent made a conscious effort to mislead in an attempt to appease his bosses. Since Respondent's violation is not a result of his inexperience with

decision and order. In that Order, Respondent was found to have violated Charge 2—providing false or misleading statements to a BIS Special Agent during the course of an investigation.

export regulations, Mitigation Factor 9 is found not to apply to this case.

Finally, Respondent also asserts throughout his pleadings that because he was a low level employee, seemingly more important people should be more culpable. Even if this is accepted as accurate, it does not provide a defense to making false statements to Government officials during a formal investigation. Allowing lower level employees to escape liability based on ignorance would provide an avenue to frustrate enforcement of legal export requirements. Additionally, violations by other persons or entities and actions against other persons or entities for violating the law are a collateral matter that is not demonstrated to be relevant to these proceedings. In response to Respondent's assertions, BIS contends the administrative proceedings against Respondent were apparently part of an enforcement effort against Respondent's employer, SparesGlobal.[14] The Court's decision is limited to the matters properly presented in the record. When a person provides information or statements during an investigation, the law allows persons to either provide truthful statements or make an assertion of a privilege. This applies equally to all individuals, even "lower" level employees, during the course of investigations so violations at all levels can be effectively investigated. In summary, Respondent chose to mislead the investigators and appease his bosses, instead of being truthful with BIS and complying with the regulations. Such a decision does not show a good-faith misinterpretation of the rules and is not a valid basis for mitigation of sanctions.

C. Denial of Export Privileges

In addition to the above mitigating factors, Respondent also argues that adverse financial hardships would result from a denial of export privileges. Respondent asserts that his only source of income is from his exporting business, which made $29,450 last year. (Memorandum at 14). Furthermore, he states if he is prevented from working in the export field, he would lose his Green Card status and would be forced to return to India with his family. (Memorandum at 15).

In accordance with the regulations, the financial impact of a denial of export privileges can be considered in determining if such a denial should be suspended. 15 CFR part 766, Supp No. 1, at § IV(B). However, a denial of export privileges will only be suspended if it is found that future export control violations are unlikely and if there are adequate measures to achieve a necessary deterrent, usually a substantial civil penalty. *Id.* Here, since Respondent asserts he has limited means, providing a suspended civil penalty would not provide the intended future deterrence.

Additionally, while Respondent has apparently accepted the court's ruling in regards to Charge Two, Respondent's arguments minimize his responsibility for his own lapse of judgment. In his Response, Respondent continues to attempt to excuse his actions by describing his lower level position with the company and excusing the behavior on the outside pressures he felt. The desire for continued employment is not a valid excuse for providing false and misleading information to investigators. Second, Respondent now runs his own company; however, he has not developed an effective export compliance program. (Memorandum at 11). Respondent excuses his failure to develop an effective export compliance program because "[h]e is not currently in a financial position * * *" to do so. (*Id.*) Such a response demonstrates Respondent's attitude towards ensuring compliance with the regulations still takes a backseat to personal factors. There could be pressure from a company he is working with to violate the regulations and the pressure to do so to maintain a profit would seem to be no different that the pressure from SparesGlobal to keep his job. Finally, the reference to any offers discussed during settlement negotiations by either party is generally inappropriate.

While Respondent has pointed to mitigating factors that apply, including his otherwise clean exporting history and the non-sensitive nature of the parts he was exporting, I find that a two (2) year denial of export privileges as suggested by BIS is appropriate.

Respondent seems to have many personal factors affecting his ability to comply with the export regulations. And, while the court is sympathetic to Respondent's predicament, the court's determination in this matter is limited to issuing a decision in keeping with the law and regulations to ensure compliance with the export regulations. The court finds the argument of BIS persuasive. An appropriate sanction is necessary for deterring persons from providing false and misleading information that frustrates enforcing compliance with the regulations. In this case, a two (2) year denial of export privileges is deemed appropriate. Respondent may continue to seek administrative clemency from the Undersecretary in keeping with 15 CFR § 766.17(c) and 766.22.

V. Recommended Order [6]

Redacted Section (Pages 15 to 18)

Within thirty (30) days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order, affirming, modifying, or vacating the Recommended Decision and Order. *See* 15 CFR 766.22(c). A copy of the Agency regulations for Review by the Under Secretary can be found as *Attachment B.*

Hon. Michael J. Devine,

Administrative Law Judge.

Done and dated February 28, 2011 at Baltimore, Maryland.

Attachment A: Summary Decision Order of October 12, 2010.

Attachment B: Notice of Review and Appeal rights 15 CFR 766.22.

Attachment B

Notice of Review by Under Secretary

15 CFR 766.22 Review by Under Secretary.

(a) *Recommended decision.* For proceedings not involving violations relating to part 760 of the EAR, the administrative law judge shall immediately refer the recommended decision and order to the Under Secretary. Because of the time limits provided under the EAA for review by the Under Secretary, service of the recommended decision and order on the parties, all papers filed by the parties in response, and the final decision of the Under Secretary must be by personal delivery, facsimile, express mail or other overnight carrier. If the Under Secretary cannot act on a recommended decision and order for any reason, the Under Secretary will designate another Department of Commerce official to receive and act on the recommendation.

(b) *Submissions by parties.* Parties shall have 12 days from the date of issuance of the recommended decision and order in which to submit simultaneous responses. Parties thereafter shall have eight days from receipt of any response(s) in which to submit replies. Any response or reply must be received within the time specified by the Under Secretary.

(c) *Final decision.* Within 30 days after receipt of the recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order of the administrative law judge. If he/she vacates the recommended decision and order, the Under Secretary may refer the case back to the administrative law judge for further proceedings. Because of the time

[14] The issues of selective prosecution or abuse of discretion in proceeding in this matter have not been raised in this matter.

limits, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing, and any submissions by the parties concerning the recommended decision.

(d) *Delivery.* The final decision and implementing order shall be served on the parties and will be publicly available in accordance with § 766.20 of this part.

(e) *Appeals.* The charged party may appeal the Under Secretary's written order within 15 days to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. § 2412(c)(3).

[FR Doc. 2011–7847 Filed 4–4–11; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Weather Modification Activities Reports

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 6, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Karen Williams, (301) 734–1196 or *karen.williams@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 6(b) of Public Law 92–205 requires that persons who engage in weather modification activities (*e.g.,* cloud seeding) provide reports prior to and after the activity. They are also required to maintain certain records. The requirements are detailed in 15 CFR part 908. NOAA uses the data for scientific research, historical statistics, international reports and other purposes.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include e-mail of electronic forms, mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0025.

Form Number: NOAA Forms 17–4 and 17–4A.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 55.

Estimated Time Per Response: 30 minutes per report (2 reports each).

Estimated Total Annual Burden Hours: 55.

Estimated Total Annual Cost to Public: $275.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 31, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–8002 Filed 4–4–11; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Gulf of Mexico Red Snapper IFQ Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 6, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Rich Malinowski, (727) 824–5305 or *Rich.Malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection. National Marine Fisheries Service (NMFS) Southeast Region manages the Unites States (U.S.) fisheries of the exclusive economic zone (EEZ) off the South Atlantic, Caribbean, and Gulf of Mexico under the Fishery Management Plans (FMP) for each Region. The Regional Fishery Management Councils prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. NMFS manages the red snapper fishery in the waters of the Gulf of Mexico under the Reef Fish FMP. The Individual Fishing Quota (IFQ) program was implemented to reduce the overcapacity in the fishery and end the derby fishing conditions that resulted from that overcapitalization.

The recordkeeping and reporting requirements at 50 CFR part 622 form the basis for this collection of information. NMFS Southeast Region requests information from fishery participants. This information, upon

receipt, results in an increasingly more efficient and accurate database for management and monitoring of the fisheries of the EEZ of Gulf of Mexico.

II. Method of Collection

Paper applications, electronic reports, and telephone calls are required from participants, and methods of submittal include internet, electronic forms, and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0551.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 11,685.

Estimated Total Annual Burden Hours: 1,038.

Estimated Time Per Response: Notification of Landing Time Form, three minutes; Dealer Account Activation, Shareholder Account Activation, and Transfer of Allocation, 5 minutes; Dealer Transaction Report, seven minutes; Annual Dealer Report, Fisherman Account Activation, Annual Shareholder Report, and Active Vessels Report, 10 minutes; Transfer for Allocation Form, 15 minutes.

Estimated Total Annual Cost to Public: $383,764.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 31, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–8045 Filed 4–4–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Cooperative Charting Programs

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 6, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Ken Forster, (301) 713–2717 x153 or *ken.forster@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a current information collection.

The U.S. Coast Guard Auxiliary members report observations of changes that require additions, corrections or revisions to Nautical Charts, on the NOAA Form 77–05. The U.S. Power Squadrons use a Web site to report the same information. The information provided is used by NOAA National Ocean Service to maintain and prepare new additions that are used nationwide by commercial and recreational navigators.

II. Method of Collection

Methods of submittal include Internet and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0022.

Form Number: NOAA 77–5.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; not-for-profit institutions.

Estimated Number of Respondents: 600.

Estimated Time per Response: 2 hours, 30 minutes.

Estimated Total Annual Burden Hours: 2,400.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 21, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–8015 Filed 4–4–11; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP18

Marine Mammals; File No. 14334

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that that the Alaska SeaLife Center (ASLC), 301 Railway Avenue, Seward, AK 99664 (Dr. Ian Dutton, Responsible Party), has been issued a major amendment to Permit No. 14334.

ADDRESSES: The permit amendment and related documents are available for review upon written request or by appointment in the following offices:

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)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: On December 13, 2010, notice was published in the **Federal Register** (75 FR 77616) that a request for an amendment Permit No. 14334 to conduct research on Steller sea lions (*Eumetopias jubatus*) had been submitted by the above-named applicant. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 14334–01 increases the number of Steller sea lion mortalities allowed under the permit (from two to four over the duration of the permit), authorizes the transfer of sea lions to and from an additional facility (The Dolfinarium in Harderwijk, Netherlands), and makes a correction to an error in the take table.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), NMFS has determined that the activities proposed are consistent with the Preferred Alternative in the Final Programmatic Environmental Impact Statement for Steller Sea Lion and Northern Fur Seal Research (NMFS 2007), and that issuance of the permit would not have a significant adverse impact on the human environment.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 21, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–8074 Filed 4–4–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA346

Marine Mammals; File Nos. 14330 and 14335

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

ACTION: Notice; issuance of permit amendments.

SUMMARY: Notice is hereby given that the following applicants have been issued major amendments to permits for research on marine mammals in Alaska: (File No. 14330) the Aleut Community of St. Paul Island, Tribal Government, Ecosystem Conservation Office, St. Paul Island, AK; and (File No. 14335) the Alaska SeaLife Center, Seward, AK.

ADDRESSES: The permit amendments and related documents are available for review upon written request or by appointment in the following offices:

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) 713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Amy Sloan, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The requested permit amendments have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

File No. 14330. On January 4, 2011, notice was published in the **Federal Register** (76 FR 329) that a request for an amendment Permit No. 14330 to conduct research on Steller sea lions (*Eumetopias jubatus*) had been submitted by the Aleut Community of St. Paul Island. The permit has been amended to include authorization for harassment of additional Steller sea lions and harbor seals (*Phoca vitulina*) on St. Paul, St. George, Otter, and Walrus Islands, and Sea Lion Rock, all of the Pribilof Island group in the Bering Sea during collection of scat samples to be used for characterizing the diet of marine mammals in the region. The amendment is valid through August 31, 2014.

File No. 14335. On December 22, 2010, notice was published in the **Federal Register** (75 FR 80470) that a request for an amendment Permit No. 14335 to conduct research on Steller sea lions had been submitted by the Alaska SeaLife Center. The permit has been amended to revise terms and conditions related to mitigation for temporary captivity, and associated post-surgical and hot-branding monitoring.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), NMFS has determined that the activities proposed are consistent with the Preferred Alternative in the Final Programmatic Environmental Impact Statement for Steller Sea Lion and Northern Fur Seal Research (NMFS 2007), and that issuance of the permit amendments would not have a significant adverse impact on the human environment.

As required by the ESA, issuance of these permit amendments was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 31, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–8076 Filed 4–4–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA348

Endangered Species; File No. 16174

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Michael Salmon, PhD, Florida Atlantic University, 777 Glades Road, P.O. Box 3091, Boca Raton, FL 33431, has applied in due form for a permit to take green sea turtles (*Chelonia mydas*) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before May 5, 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. 16174 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

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) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division:

- By e-mail to *NMFS.Pr1Comments@noaa.gov* (include the File No. in the subject line of the email),
- By facsimile to (301) 713–0376, or
- At the address listed above.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Colette Cairns or Amy Hapeman, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Dr. Salmon proposes to characterize juvenile green turtle abundance and distribution in nearshore developmental habitats off the East coast of southern Florida. Annually, up to 30 green sea turtles would be captured by hand, transported to shore, measured, weighed, photographed, passive integrated transponder and flipper tagged, temporarily carapace marked, satellite tagged, held overnight, transported to site of capture, released, and recaptured at the conclusion of the study for gear removal. No mortalities would be authorized under the permit. The permit would be valid for 5 years from the date of issuance.

Dated: March 31, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–8069 Filed 4–4–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–08]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, DoD

ACTION: Notice

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–08 with attached transmittal, and policy justification.

Dated: March 30, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

MAR 2 9 2011

The Honorable John Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-08, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Greece for defense articles and services estimated to cost $160 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with the principles set forth in subsection 620C(b) of that Act as codified in section 2373 of title 22, United States Code.

Sincerely,

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Section 620C(d)

Transmittal No. 11-08

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Greece

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$160 million
TOTAL	$160 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: a Foreign Military Sale Order (FMSO) to provide funds for blanket order requisitions FMSO II, under the Cooperative Logistics Supply Support Agreement (CLSSA) for spare parts in support of F-16, E/RF-4E, C-130H/B, C-27J, T-6A/C, and other aircraft with systems/subsystems of U.S. origin in the inventory of the Hellenic Air Force.

(iv) Military Department: Air Force (KIW)

(v) Prior Related Cases, if any:
FMS Case KIO-$40M-30 Apr 2007

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: MAR 2 9 2011

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece – Cooperative Logistics Supply Support Agreement (CLSSA) Foreign Military Sale Order (FMSO)II Support

The Government of Greece requests a Foreign Military Sale Order (FMSO) to provide funds for blanket order requisitions FMSO II, under the Cooperative Logistics Supply Support Agreement (CLSSA) for spare parts in support of F-16, E/RF-4E, C-130H/B, C-27J, T-6A/C, and other aircraft with systems/subsystems of U.S. origin in the inventory of the Hellenic Air Force. The estimated cost is $160 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a NATO ally.

The uninterrupted supply of spare parts will allow Greece to keep its aircraft fleet at the highest state of readiness

The proposed sale of this equipment and support will not alter the basic military balance in the region.

Procurement of these items will be from many contractors providing similar items to the U.S. forces. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. government or contractor representatives to Greece.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

CERTIFICATION PURSUANT TO § 620C(d) OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED

Pursuant to Section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 and State Department Delegation of Authority No. 293-1, I hereby certify that the furnishing to Greece of Foreign Military Sale Order (FMSO) II Support for spare parts in support of F-16, E/RF-4E, C-130H/B, C-27J, T-6A/C, and other aircraft with systems/subsystems of U.S. origin in the inventory of the Hellenic Air Force is consistent with the principles contained in Section 620C(b) of the Act.

This certification will be made part of the notification to Congress under Section 36(b) of the Arms Export Control Act, as amended, regarding the proposed sale of the above-named articles and services and is based on the justification accompanying such notification, of which such justification constitutes a full explanation.

Ellen O. Tauscher
Under Secretary of State for
Arms Control and International
Security

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

MAR 2 9 2011

The Honorable John F. Kerry
Chairman, Committee on Foreign Relations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-08, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Greece for defense articles and services estimated to cost $160 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with the principles set forth in subsection 620C(b) of that Act as codified in section 2373 of title 22, United States Code.

Sincerely,

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Section 620C(d)

[FR Doc. 2011–7970 Filed 4–4–11; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 10–78]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 10–78 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: March 30, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer,

Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

MAR 3 0 2011

The Honorable John Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-78, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $299 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 10-78

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Iraq

(ii) Total Estimated Value:

Major Defense Equipment*	$ 89 million
Other	$ 210 million
TOTAL	$ 299 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 6 AN/TPQ-36(V)10 FIREFINDER Radar Systems, 18 AN/TPQ-48 Light Weight Counter-Mortar Radars, 3 Meteorological Measuring Sets, 36 export variant Single Channel Ground and Airborne Radio Systems, 6 Advanced Field Artillery Tactical Data Systems, 3 Position and Azimuth Determining Systems, government furnished equipment, common hardware and software, communication support equipment, tools and test equipment, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering, logistics, and technical support services, and other related elements of logistics support.

(iv) Military Department: Army (UDN and UDU)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex

(viii) Date Report Delivered to Congress: MAR 3 0 2011

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Iraq – AN/TPQ-36(V)10 FIREFINDER Radars

The Government of Iraq has requested a possible sale of 6 AN/TPQ-36(V)10 FIREFINDER Radar Systems, 18 AN/TPQ-48 Light Weight Counter-Mortar Radars, 3 Meteorological Measuring Sets, 36 export variant Single Channel Ground and Airborne Radio Systems, 6 Advanced Field Artillery Tactical Data Systems, 3 Position and Azimuth Determining Systems, government furnished equipment, common hardware and software, communication support equipment, tools and test equipment, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering, logistics, and technical support services, and other related elements of logistics support. The estimated cost is $299 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. This proposed sale directly supports the Iraq government and serves the interests of the Iraqi people and the U.S.

The proposed sale of the FIREFINDER radars will advance Iraq's efforts to develop an integrated ground defense capability and to develop a strong and dedicated military force. The FIREFINDER radars will enable Iraq to assume some of the missions currently accomplished by U.S. and coalition forces and to sustain itself in its efforts to establish stability to Iraq.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be Thales Raytheon Systems in Fullerton, California, Northrop Grumman in Los Angeles, California, Smith-Detection Technologies in Edgewood, Maryland, ITT Corporation, Defense Electronics Services in McLean, Virginia, Raytheon Company in Waltham, Massachusetts, L-3 Communications in New York, New York, and SRCTec, Incorporated in North Syracuse, New York. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require U.S. Government or contractor representatives to travel to Iraq for up to three years for equipment de-processing/fielding, system checkout, new equipment training, and logistics support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 10-78

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AN/TPQ-36(V)10 FIREFINDER Radar is a counter-battery artillery radar set. The FIREFINDER Radar includes no classified equipment or material. There is no sensitive or restricted information contained in the AN/TPQ-36(V)10 hardware or software.

2. The Single Channel Ground and Airborne Radio System (SINCGARS) provides commanders with a highly reliable, secure, easily maintained Combat Net Radio that has both voice and data handling capability in support of command and control operations. SINCGARS, with the Internet Controller, provides the communications link for the digitized force. The system operates on any of the 2,320 channels between 30-88 megahertz and is designed to survive in a nuclear environment. SINCGARS is operable in a hostile environment through use of Electronic Counter Countermeasures. The export version of SINCGARS provided under this program contains no classified or controlled unclassified information.

3. The Advanced Field Artillery Tactical Data System (AFATDS) is an automated C3 (Command, Control and Communications) system for the battlefield functional area. It provides the commander with integrated, responsive, and reliable fire support. AFATDS is a fully automated fire support system, which minimizes the sensor-to-shooter timeline and increases the hit ratio. It provides fully automated support for planning, coordinating and controlling mortars, field artillery cannons, rockets, close air support, attack helicopter and naval gunfire, for close support, counter-fire, interdiction, and deep operations. The export version of AFATDS provided under this program contains no classified information.

4. The AN/TPQ-48(V)2 Light Weight Counter-Mortar Radar (LCMR) automatically detects and locates mortar firing positions by detecting and tracking in-flight mortar shells and backtracking them to their point-of-origin. As such, the radar provides continuous 360 degree surveillance, makes use of an electronically scanned antenna, and generates incoming round warnings and weapon location reports. The hardware, software, and technical publications provided with the sale are Unclassified. However, the system itself contains sensitive technology that instructs the system on how to operate in the presence of countermeasures.

5. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

MAR 3 0 2011

The Honorable John F. Kerry
Chairman, Committee on Foreign Relations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-78, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $299 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

[FR Doc. 2011–7971 Filed 4–4–11; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0034]

Defense Transportation Regulation, Part IV

AGENCY: United States Transportation Command (USTRANSCOM), DOD.

ACTION: Notice.

SUMMARY: Reference **Federal Register** Notice (FRN), Docket ID: DOD–2010–OS–0034, published 1 April 2010, DOD has updated portions of the Phase III draft Business Rules for the Defense Personal Property Program (DP3) in the Defense Transportation Regulation (DTR) Part IV (DTR 4500.9R). The updates/revisions to the Phase III business rules include the elimination of the Domestic and International Local Move (dLM and iLM) and Intra-Country Move (iCM) Tender of Service. Requirements for Domestic Local Moves (dLM) can be met using the existing DP3 domestic "dHHG" market using intrastate/interstate domestic shipment code "D" and the 400NG solicitation. In addition, Phase III development efforts will incorporate International Local Moves (iLM) into the DP3 international "iHHG" market using a new shipment code of service (COS) "C" and the SDDC International Tender (IT). Implementation timelines will be based on completion of Defense Personal Property System (DPS) Phase III programming to account for the above efforts projected for FY14.

DATES: Comments must be received on or before June 6, 2011.

ADDRESSES: Do not submit comments directly to the point of contact under **FOR FURTHER INFORMATION CONTACT** or mail your comments to any address other that what is shown below. Doing so will delay the posting of the submission. You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Teague, United States Transportation Command, TCJ5/4–PI, 508 Scott Drive, Scott Air Force Base, IL 62225–5357; (618) 256–9605.

SUPPLEMENTARY INFORMATION: Request comments be submitted in the identified Excel-format sample posted with the business rules.

In furtherance of DOD's goal to develop and implement an efficient personal property program to facilitate quality movements for our military members and civilian employees, the Phase III Business Rules were developed by the Military Services and SDDC. The following revised Phase III iCM Business Rules are available for review and comment on the USTRANSCOM Web site at: *http://www.transcom.mil/dtr/part-iv/phaseiii.cfm:*

Attachment V.C.3—TSP Qualifications;

Attachment V.D.3—Rate Filing;

Attachment V.E.3—Customer Satisfaction Survey;

Attachment V.F.3—Best Value Score;

Attachment V.G.3—Electronic Bill Payment;

Attachment V.J.3—Shipment Management.

All associated proposed changes will be incorporated into the 400NG and IT and posted on the SDDC Web site prior to rate filing. In addition, SDDC will conduct an "Open Season" to allow companies that currently service Local Move shipments in CONUS and OCONUS and those that currently service intra-theater moves to qualify and participate in these extended markets.

Any subsequent modification(s) to the business rules beyond the above stated changes will be published in the **Federal Register** and incorporated into the Defense Transportation Regulation (DTR) Part IV (DTR 4500.9R). These program requirements do not impose a legal requirement, obligation, sanction or penalty on the public sector, and will not have an economic impact of $100 million or more.

Additional Information:

A complete version of the DTR is available via the Internet on the USTRANSCOM homepage at *http://www.transcom.mil/j5/pt/dtr_part_iv.cfm.*

Dated: March 30, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–8011 Filed 4–4–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notification of Open Meeting of the National Defense University Board of Visitors (BOV)

AGENCY: National Defense University, DoD.

ACTION: Notice of Open Meeting; Date Change.

SUMMARY: On January 10, 2011 (76 FR 1408), the Department of Defense published a notice of an open meeting of the National Defense University (NDU) Board of Visitors. The dates of the meeting have been changed and are updated below. The location remains unchanged.

DATES: The meeting will be held on May 24 & 25, 2011 from 11:30 a.m. to 5 p.m. on the 24th and continuing on the 25th from 8 a.m. to 12:30 p.m.

ADDRESSES: The Board of Visitors meeting will be held at Marshall Hall, Building 62, Room 155, the National Defense University, 300 5th Avenue, SW., Fort McNair, Washington, DC 20319–5066.

FOR FURTHER INFORMATION CONTACT: The point of contact for this notice of Open Meeting is Ms. Joycelyn Stevens @ (202) 685–0079, Fax (202) 685–3920 or *StevensJ7@ndu.edu.*

Dated: March 25, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–8012 Filed 4–4–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Reserve Forces Policy Board (RFPB) Member Solicitation

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of Advisory Committee Member Solicitation.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of

Defense announces the following Federal advisory committee member solicitation:

Name of Committee: Reserve Forces Policy Board (RFPB).

Background: Secretary of Defense, George C. Marshall, abolished the Civilian Components Policy Board in June, 1951 and created the Reserve Forces Policy Board. The Congress and President Harry S. Truman codified this decision in the Armed Forces Reserve Act of July 1952. The Reserve Forces Policy Board, thus created, has remained essentially the same in its mission and responsibility for nearly sixty years. There is in the Office of the Secretary of Defense a Reserve Forces Policy Board.

Changes to Functions: Ike Skelton National Defense Authorization Act for Fiscal Year 2011. SEC. 514. Revision of Structure and Functions of the Reserve Forces Policy Board.

10 USCS § 10301. Reserve Forces Policy Board

"(b) Functions.—The Board shall serve as an independent adviser to the Secretary of Defense to provide advice and recommendations to the Secretary on strategies, policies, and practices designed to improve and enhance the capabilities, efficiency, and effectiveness of the reserve components.

"(c) Membership.—The Board consists of 20 members, appointed or designated as follows:

"(6) Ten persons appointed or designated by the Secretary of Defense, each of whom shall be a United States citizen having significant knowledge of and experience in policy matters relevant to national security and reserve component matters and shall be one of the following:

"(A) An individual not employed in any Federal or State department or agency.

"(B) An individual employed by a Federal or State department or agency.

"(C) An officer of a regular component of the armed forces on active duty, or an officer of a reserve component of the armed forces in an active status, who—

"(i) is serving or has served in a senior position on the Joint Staff, the headquarters staff of a combatant command, or the headquarters staff of an armed force; and "(ii) has experience in joint professional military education, joint qualification, and joint operations matters.

The Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.) and the FACA Implementing Regulations (FACA Regulations)(41 CFR 101–6 and 102–3) provide the basis for and guidance concerning the management and operation of Federal advisory committees. Typically, groups subject to FACA require open, pre-announced meetings; public access to discussions, deliberations, records and documents; opportunity for the public to provide, at a minimum, written comments; fairly balanced membership; and the evaluation of conflicts of interest for certain members. Section 5(b)(2) of the FACA requires "* * * the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee."

Forward Nominations for Membership: A biography describing professional background and qualifications should be submitted either by *e-mail: RFPB@osd.mil,* or by (703) 692–1062 (Facsimile—FAX) to the Reserve Forces Policy Board's Designated Federal Officer No Later Than The Close Of Business Wednesday, April 13, 2011. The Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Note: All nominees will be subject to Congressional Lobbyist Disclosure. Individuals appointed by the Secretary of Defense to serve on the Reserve Forces Policy Board will be appointed as experts and consultants under the authority of 5 U.S.C. 3109, serve as special government employees and be required to comply with all Department of Defense ethics requirements, to include the filing of confidential financial disclosure statements. In addition, those appointed will serve without compensation except for travel and per diem in conjunction with official Board business.

FOR FURTHER INFORMATION CONTACT: Lt Col Julie A. Small, Designated Federal Officer, (703) 697–4486 (Voice), (703) 693–5371 (Facsimile), *RFPB@osd.mil.* Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300. Web site: *http://ra.defense.gov/rfpb/.*

Dated: March 30, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–8013 Filed 4–4–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2011–0005]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Add a New System of Records.

SUMMARY: The Department of the Navy proposes to add a new system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. § 552a), as amended.

DATES: The changes will be effective on May 5, 2011 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Patterson (202) 685–6545, or HEAD, FOIA/Privacy Act Policy Branch, Acting, the Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350–2000.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, has been published in the **Federal Register** and is available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed systems reports, as required by 5 U.S.C. 552a (r) of the Privacy Act of 1974, as amended, were submitted on March 25, 2011, to the House Committee on Government Report, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individual," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 29, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N07510–1

SYSTEM NAME:

Naval Audit Service Information Management System (NASIMS).

SYSTEM LOCATION:

Department of the Navy Assistant for Administration, Office of Information Technology, 1000 Navy Pentagon, Washington, DC 20350–1000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of the Navy military members, civilians employed by the Navy and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

First, middle and last name, nickname, last four digits of Social Security Number (SSN), Electronic Data Interchange Personal Identifier (EDIPI) (also known as the Department of Defense personal identifier), date of birth, race, gender, photograph, entered on duty date, position title, directorate, division, team, pay plan, pay grade, series, security clearance level, educational information, location, room, home address, mailing address, work phone number, work cell phone number, work e-mail address, personal e-mail address, home phone number, personal cell phone number, and emergency contact name, home phone number, cell phone number, and work phone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 5013, Department of the Navy; 10 U.S.C. 5014, Office of the Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; 5 U.S.C. 301, Departmental Regulations; DoD Directive 8320.1, DoD Data Administration; DoD Manual 7600.7–M, DoD Audit Manual; SECNAVINST 7510.7F, Department of the Navy Internal Audit and E.O. 9397 (SSN), as amended.

PURPOSE:

NASIMS is used by the Naval Audit Service to effectively and efficiently manage and track the personnel and administrative functions and business processes of the agency. The information is used to maximize staff resources and to provide project cost summary data; to track staff hours allocated towards project preparation and active projects which will allow for more effective scheduling of unassigned personnel and to categorize indirect time expended for end-of-year reporting; to plan workloads, to assist in providing time and attendance to the centralized payroll system; and to request, schedule and track auditor training requirements.

ROUTINE USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are stored on electronic storage media.

RETRIEVABILITY:

Records about individuals are retrieved using a combination of name, geographic and demographic characteristics (such as name, last four digits of Social Security Number (SSN), series, grade, dates of service and duty station).

SAFEGUARDS:

Access to this system of records and personal information is restricted by the use of Common Access Card (CAC). Access to personal information is restricted to those who require the records in the performance of their official duties. This system of records is profile or role based, which limits the user to specific data and/or application functions. Users in a specific profile cannot view data outside of that profile's restriction. All individuals to be granted access to this system of records are to have received Information Assurance and Privacy Act training. Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

Internal Audit Policy records are maintained for 3 years then destroyed, or destroyed 1 year after guidance is superseded. Management Information Systems Reports are destroyed when no longer needed for administrative, legal, audit, or other operational purposes, whichever is later. Audit Schedules are maintained for 3 years then destroyed, or destroyed when no longer needed. Annual Audit Plan records are maintained for 11 years then destroyed. Time and attendance records are maintained for 6 years then destroyed. Records are destroyed by degaussing or erasing from the system.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Director, Information Management and Analysis, Naval Audit Service, 1006 Beatty Place SE., Washington Navy Yard, DC 20374–5005.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to Naval Audit Service, Attn: FOIA, 1006 Beatty Place SE., Washington Navy Yard, DC 20374–5005.

The request should be signed and include full name, dates of service, last four digits of Social Security Number (SSN), series, grade, duty station and a complete mailing address. The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to Naval Audit Service, *Attn:* FOIA, 1006 Beatty Place SE., Washington Navy Yard, DC 20374–5005.

The request should be signed and include full name, dates of service, last four digits of Social Security Number (SSN), series, grade, duty station and a complete mailing address. The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

CONTESTING RECORD PROCEDURE:

The Navy's rules for accessing records and for contesting contents and appealing initial agency determinations are published in SECNAVINST 5211.5 series and 32 CFR part 701 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained primarily from the individual and/or Naval Audit Service Human Resources staff and from official Department of Navy and Department of Defense official programs of record: Defense Civilian Personnel

Data System (DCPDS); Defense Enrollment Eligibility Reporting System (DEERS); and Joint Personnel Adjudication System (JPAS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–8010 Filed 4–4–11; 8:45 am]

BILLING CODE 5001–06–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, Information Management and Privacy 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 June 6, 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, D.C. 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, Information Management and Privacy 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: March 31, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title of Collection: Special Education-Individual Reporting on Regulatory Compliance Related to the Personnel Development Program's Service Obligation and the Government Performance and Results Act (GPRA).

OMB Control Number: 1820–0686.

Agency Form Number(s): N/A.

Frequency of Responses: On Occasion; Monthly; Quarterly; Semi-Annually; Biennially.

Affected Public: Businesses or other for-profit; Federal Government; Individuals or households Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 82,642.

Total Estimated Number of Annual Burden Hours: 30,029.

Abstract: The data collection under this revision and renewal request is governed by the "Additional Requirements" section of the Personnel Preparation to Improve Services and Results for Children with Disabilities—Combined Priority for Personnel Preparation and Preparation of Leadership Personnel notice, published in the **Federal Register** on March 25, 2005 and by Sections 304.23–304.30 of the June 5, 2006, regulations that implement Section 662(h) of the Individual with Disabilities Education Act Amendments of 2004, which require that individuals who receive a scholarship through the Personnel Development Program funded under the Act subsequently provide special education and related services to children with disabilities for a period of two years for every year for which assistance was received. Scholarship recipients who do not satisfy the requirements of the regulations must repay all or part of the cost of assistance, in accordance with regulations issued by the Secretary. These regulations implement requirements governing, among other things, the service obligation for scholars, reporting requirements by grantees, and repayment of scholarships by scholars. In order for the federal government to ensure that the goals of the program are achieved, certain data collection, recordkeeping, and documentation are necessary. In addition this data collection is governed by the Government Performance Results Act (GPRA). GPRA requires Federal agencies to establish performance measures for all programs, and the Office of Special Education Programs' has established performance measures for the Personnel Development Program. Data collection from scholars who have received scholarships under the Personnel Development Program is necessary to evaluate these measures.

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 4557. 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. 2011–8046 Filed 4–4–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before May 5, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: March 31, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management.

Office of Postsecondary Education

Type of Review: Extension.

Title of Collection: Annual Student Activities Report.

OMB Control Number: 1840–0781.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 190.

Total Estimated Annual Burden Hours: 570.

Abstract: Section 703 of the Higher Education Act of 1965, as amended, authorizes the Secretary to award fellowships under the Jacob K. Javits Fellowship Program for graduate study in the arts, humanities, and social sciences. The fellowships support graduate students of superior ability selected on the basis of demonstrated achievement, exceptional promise and financial need. This information collection provides the U.S. Department of Education with information needed to determine if fellows have made substantial progress toward meeting the program's objectives and allows program staff to monitor and evaluate time-to-degree completion and the graduation rate of Javits fellows. Congress has mandated, through the Government Performance Results Act of 1993, that the U.S. Department of Education provide documentation regarding the progress being made by the program.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4495. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–8094 Filed 4–4–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—Evaluation of Teacher Residency Programs

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of a new system of records entitled "Evaluation of Teacher Residency Programs" (18–13–24). The National Center for Education Evaluation and Regional Assistance at the Department's Institute of Education Sciences (IES) commissioned this evaluation. It will be conducted under a contract that IES awarded in February 2010.

The central research questions that the study will address are: What are the characteristics of Teacher Residency Programs (TRPs)? What are the characteristics of participants in TRPs? What is the average performance of novice TRP teachers as measured by value-added estimates benchmarked against novice and all teachers in the district? What are the retention rates of novice TRP teachers and their novice colleagues who did not go through TRPs?

The system will contain information on approximately 255 residents and 270 mentors from 15 teacher residency programs and approximately 800 teachers and 20,000 students from 8 districts.

DATES: The Department seeks comment on the new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on the proposed routine uses for the system of records referenced in this notice on or before May 5, 2011.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 31, 2011. This system of records will become effective at the later date of—(1) the expiration of the 40-day period for OMB review on May 10, 2011, unless OMB waves 10 days of the 40-day review period for compelling reasons shown by the Department, or (2) May 5, 2011, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about the proposed routine uses to Dr. Audrey Pendleton, Acting Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208–0001. Telephone: (202) 208–7078. If you prefer to send comments through the Internet, use the following address: *comments@ed.gov.*

You must include the term "Evaluation of Teacher Residency

Programs" in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice at the U.S. Department of Education in room 502D, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Audrey Pendleton. *Telephone:* (202) 208–7078. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in part 5b of title 34 of the Code of Federal Regulations (CFR).

The Privacy Act applies to information about individuals that contains individually identifying information and that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a "record," and the system, whether manual or computer-based, is called a "system of records."

The Privacy Act requires each agency to publish a notice of a system of records in the **Federal Register** and to prepare and send a report to OMB whenever the agency publishes a new system of records. Each agency is also required to send copies of the report to the Chair of the Senate Committee on Homeland Security and Governmental Affairs and the Chair of the House Committee on Oversight and Government Reform. These reports are included to permit an evaluation of the probable effect of the proposal on the privacy rights of individuals.

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 via the Federal Digital System at: *http://www.gpo.gov/fdsys.*

Dated: March 31, 2010.

John Q. Easton,

Director, Institute of Education Sciences.

For the reasons discussed in the preamble, the Director of the Institute of Education Sciences, U.S. Department of Education, publishes a notice of a new system of records to read as follows:

18–13–24

SYSTEM NAME:

Evaluation of Teacher Residency Programs.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

(1) Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences (IES), U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208–0001.

(2) Mathematica Policy Research, Inc., 600 Alexander Park, Princeton, NJ 08540 (contractor).

(3) Decision Information Resources, Inc., 2600 Southwest Freeway, Suite 900, Houston, TX 77098 (subcontractor).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on approximately 255 residents and 270 mentors from approximately 15 teacher residency programs and 800 teachers and 20,000 students from 8 districts.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records will include personally identifying information about the students in the participating teacher classrooms, including demographic information such as race, ethnicity, gender, age, and educational background; information on attendance and disciplinary incidences; and scores on reading and mathematics achievement tests. The system of records will also include personally identifying information about the mentors, residents and teachers participating in the evaluation, including demographic information, such as race, ethnicity, gender, and educational background, and teaching experience. The system of records will also include employment information on the teachers participating in the evaluation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The evaluation is authorized under sections 171(b) and 173 of the Education Sciences Reform Act of 2002 (ESRA) (20 U.S.C. 9561(b) and 9563), and section 202(h)(1) of the Higher Education Act, as amended by the Higher Education Opportunity Act of 2008 (HEA) (20 U.S.C. 1022a(h)). The grant programs that are the subject of this evaluation are authorized under Part A of Title II of the HEA (sec. 201–204) (20 U.S.C. 1022–1022c).

PURPOSE(S):

The information contained in the records maintained in this system is used for the following purpose:

To describe Teacher Residency Programs (TRPs) and summarize the teacher retention and student achievement outcomes of TRP participants. The study will address the following research questions:

(1) What are the characteristics of TRPs?

(2) What are the characteristics of participants in TRPs?

(3) What is the average performance of novice TRP teachers as measured by value-added estimates benchmarked against novice and all teachers in the district?

(4) What are the retention rates of novice TRP teachers and their novice colleagues who did not go through TRPs?

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the

consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement. Any disclosure of individually identifying information from a record in this system must also comply with the requirements of section 183 of the ESRA (20 U.S.C. 9573) providing for confidentiality standards that apply to all collections, reporting, and publication of data by IES.

Contract Disclosure. If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Department maintains records on CD–ROM, and the contractor (Mathematica Policy Research, Inc.) and sub-contractor (Decision Information Resources, Inc.) maintain data for this system on computers and in hard copy.

RETRIEVABILITY:

Records in this system are indexed and retrieved by a number assigned to each individual that is cross-referenced by the individual's name on a separate list.

SAFEGUARDS:

All physical access to the Department's site and to the sites of the Department's contractor and subcontractor, where this system of records is maintained, is controlled and monitored by security personnel. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a need-to-know basis, and controls individual users' ability to access and alter records within the system. The contractor and subcontractor will establish a similar set of procedures at their sites to ensure confidentiality of data. The contractor and subcontractor are required to ensure that information identifying individuals is in files physically separated from other research data. The contractor and subcontractor will maintain security of the complete set of all master data files and documentation. Access to individually identifying data will be strictly controlled. All data will be kept in locked file cabinets during nonworking hours, and work on hardcopy data will take place in a single room, except for data entry. Physical security of electronic data will also be maintained. Security features that protect project data include: Password-protected accounts that authorize users to use the contractor's and subcontractor's systems but to access only specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; and additional security features that the network administrators will establish for projects as needed. The contractor's and subcontractor's employees who "maintain" (collect, maintain, use, or disseminate) data in this system shall comply with the requirements of the confidentiality standards in section 183 of the ESRA (20 U.S.C. 9573).

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the Department's Records Disposition Schedules (ED/RDS, Part 3, Item 2b and Part 3, Item 5a).

SYSTEM MANAGER AND ADDRESS:

Acting Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the systems manager. Your request must meet the requirements of regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to your record in the system of records, contact the system manager. Your request must meet the requirements of regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

This system contains records on residents, mentors, teachers, and students participating in an evaluation of teacher residency programs. Data will be obtained through student records maintained by the school districts, assessments administered to students, and surveys of residents, mentors, and teachers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–8067 Filed 4–4–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–603–000]

Commission Information Collection Activities (FERC–603); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A) (2006) (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the proposed information collection described below.

DATES: Comments in consideration of the collection of information are due June 3, 2011.

ADDRESSES: Comments may be filed either electronically (eFiled) or in paper format, and should refer to Docket No. IC11–603–000. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp.* eFiling instructions are available at: *http://www.ferc.gov/docs-filing/efiling.asp.* First time users must follow eRegister instructions at: *http://www.ferc.gov/docs-filing/eregistration.asp,* to establish a user name and password before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of eFiled comments. Commenters making an

eFiling should not make a paper filing. Commenters that are not able to file electronically must send an original and two (2) paper copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp.* All comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's eLibrary at *http://www.ferc.gov/docs-filing/elibrary.asp,* by searching on Docket No. IC11–603. For user assistance, contact FERC Online Support by e-mail at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

FOR FURTHER INFORMATION: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–603 "Critical Energy Infrastructure Information" (OMB No. 1902–0197) is used by the Commission to implement procedures for gaining access to critical energy infrastructure information (CEII) that would not otherwise be available under the Freedom of Information Act (5 USC 552). On February, 21, 2003, the Commission issued Order No. 630 (66 FR 52917) to address the appropriate treatment of CEII in the aftermath of the September 11, 2001 terrorist attacks and to restrict unrestrained general access due to the ongoing terrorism threat. These steps enable the Commission to keep sensitive infrastructure information out of the public domain, decreasing the likelihood that such information could be used to plan or execute terrorist attacks. The process adopted in Order No. 630 is a more efficient alternative for handling requests for previously public documents than FOIA The Commission has defined CEII to include information about "existing or proposed critical infrastructure that (i) relates to the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, and (iv) does not simply give the location of the critical infrastructure. Critical infrastructure means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters. A person seeking access to CEII may file a request for that information by providing information about their identity and reason as to the need for the information. Through this process, the Commission is able to review the requester's need for the information against the sensitivity of the information. The compliance with these requirements is mandatory.

Action: The Commission is requesting a three-year extension of the current expiration date, with changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Data collection	Number of respondents annually [1] (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
FERC–603	200	1	.30	60

[1] The number of respondents corresponds to the number of requests received annually while recognizing that some CEII requests are filed by multiple parties.

The estimated total cost to respondents is $4,080. The cost per respondent = $20.40. (60 hours @ $68 hourly rate (rounded off)).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, 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 *e.g.* permitting electronic submission of responses.

Dated: March 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7991 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–588]

Duke Energy Carolinas, LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters

b. *Project No.:* 2232–588

c. *Date Filed:* November 3, 2010

d. *Applicant:* Duke Energy Carolinas, LLC

e. *Name of Project:* Catawba-Wateree Hydroelectric Project

f. *Location:* The proposed non-project use would be located on Lake Wateree in Fairfield County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791a–825r

h. *Applicant Contact:* Kevin K. Reagan, Manager, Lake Services, P.O. Box 1006, Charlotte, NC 28201–1006; telephone (704) 382–9386.

i. *FERC Contact:* Jade Alvey: (202) 502–6864; e-mail: *Jade.Alvey@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* April 17, 2011.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. Please include the project number (P–2232–588) on any comments, motions, or recommendations filed.

k. *Description of Request:* The licensee is requesting authorization to permit James Rion to lease 3.61 acres of project lands for a commercial marina (Sutton's Landing) consisting of eight cluster docks with a total of ninety-six boat slips. The proposed marina would impact a total of approximately 700 linear feet of shoreline within the project boundary. The slips would include downward-illuminating pedestal lights. The licensee is also requesting a change in the classification of the shoreline area from "Existing Residential Marina" to "True Public Marina."

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: March 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7982 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2210–207]

Appalachian Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Updated shoreline management plan

b. *Project No:* 2210–207

c. *Date Filed:* January 3, 2011, supplemented on February 18, 2011

d. *Applicant:* Appalachian Power Company

e. *Name of Project:* Smith Mountain Pumped Storage Project

f. *Location:* Headwaters of the Roanoke River, in Bedford, Campbell, Franklin, and Pittsylvania Counties, Virginia

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791a—825r

h. *Applicant Contact:* Elizabeth Parcell, Appalachian Power Company, 996 Old Franklin Turnpike, Rocky Mount, VA, 24151

i. *FERC Contact:* Mark Carter, telephone (678) 245–3083, e-mail *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* April 15, 2011

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration,

using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. Please include the project number (P–2210–207) on any comments or motions filed.

k. *Description of Application:* Appalachian Power Company (licensee) filed an updated shoreline management plan (SMP) for Smith Mountain Lake and Leesville Lake, the two project reservoirs. The licensee developed the proposed SMP pursuant to the project license. The proposed SMP strives to balance environmental and recreational resources with local economic interests, and includes provisions for shoreline use classifications, shoreline and lake use regulations, a permitting program, and cooperation with appropriate government agencies and stakeholders.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field (P–2210) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: March 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7992 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 459–299]

Union Electric Company, dba AmerenUE; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 459–299.

c. *Date Filed:* June 24, 2010.

d. *Applicant:* Union Electric Company, dba AmerenUE.

e. *Name of Project:* Osage Hydroelectric Project.

f. *Location:* The proposed non-project use would be located near mile marker 19.5 of the Osage River channel on the Lake of the Ozarks, in Camden County, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Jeff Green, Shoreline Supervisor, AmerenUE, P.O. Box 993, Lake Ozark, MO 65049, (573) 365–9214.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502–8674, or *shana.high@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests: April 29, 2011.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. Please include the project number (P–459–299) on any comments, motions, or recommendations filed.

k. *Description of Request:* The licensee requests Commission authorization to permit, after-the-fact, Kelly's Port Marina's use and maintenance of four commercial docks at their existing location and in their current configuration. Two of the docks have been on the lake over twenty years, and were permitted by AmerenUE before the current license requirements. The other docks were installed and/or modified without the proper review or permits. The marina accommodates 94 boats and 20 personal watercraft.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-

mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: March 30, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8022 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4784–081]

Teton Power Funding, LLC; Topsham Hydro Partners Limited Partnership; Topsham Hydroelectric Generating Facility Trust No. 1; Brown Bear Power, LLC; Notice of Application for Partial Transfer of License, and Soliciting Comments and Motions To Intervene

On March 9, 2011, Teton Power Funding, LLC (transferor), Topsham Hydro Partners Limited Partnership, Topsham Hydroelectric Generating Facility Trust No. 1 (co-licensees) and Brown Bear Power, LLC (transferee) filed an application for the partial transfer of license for the Pejepscot Project No. 4784, located on the Androscoggin River in Sagadahoc, Cumberland, and Androscoggin counties, Maine.

Applicants seek Commission approval to partial transfer of the license for the Pejescot Project from the transferor to transferee.

Applicants' Contact: Transferor: Teton Power Funding, LLC: Paul Rapisarda, c/o Atlantic Power Corporation, 200 Clarendon Street, 25th Floor, Boston, MA 02116, (617) 977–2491. Co-licensees: Topsham Hydroelectric Generating Facility Trust No. 1: Nicole Poole, Topsham Hydroelectric Generating Facilities Trust No. 1, c/o U.S. Bank National Association, not in its individual capacity, but solely as Owner Trustee, 300 Delaware Avenue, 9th floor, Wilmington, DE 19801, (302) 576–3704. Topsham Hydro Partners Limited Partnership: Christine M. Miller, Brown Bear GP, LLC, c/o ArcLight Capital Partners, LLC, 200 Clarendon Street, 55th Floor, Boston, MA 02117, (617) 531–6338. Transferee: Christine M. Miller, Brown Bear Power, LLC, c/o ArcLight Capital Partners, LLC, 200 Clarendon Street, 55th Floor, Boston, MA 02117, (617) 531–6338.

FERC Contact: Patricia W. Gillis (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments and motions to intervene: 20 days from the issuance date of this notice. Comments and motions to intervene may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–4784) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: March 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7983 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–133–000]

Tennessee Gas Pipeline Company; Notice of Application

Take notice that on March 9, 2011, Tennessee Gas Pipeline Company (Tennessee), filed an application in Docket No. CP11–133–000 pursuant to section 7(b) and (c) of the Natural Gas Act and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity to upgrade and modify compression facilities to be located in New York (Station 230C Project).

Tennessee proposes to replace two compressor units with two larger compressor units, as well and make other enhancements at its compressor Station 230C near Lockport, New York, in order to enhance the operational flexibility of the Niagara Spur Loop Line (NSLL), a Canadian border crossing, and thereby enhance the flexibility and reliability of transportation services provided to shippers on the interstate pipeline systems owned by National Fuel Gas Supply Corporation (National Fuel) and Tennessee. As operator of jointly-owned facilities, Tennessee proposes the Station 230C

enhancements in order to operate the NSLL and the Canadian border crossing bi-directionally. In a related application, National Fuel filed on March 7, 2011 in Docket No. CP11–128–000, seeking authorization to enhance and modify facilities on its system to offer bi-directional flow, and for the transportation of natural gas to, and on the NSLL facilities for delivery to the facilities of TransCanada PipeLines, Ltd. at Niagara (Northern Access Project). Both the Northern Access Project and the Station 230C Project enhancements will allow for bi-directional firm transportation service for National Fuel's shipper to the facilities of TransCanada PipeLines, Ltd. at Niagara, all as more fully set forth in the applications which are on file with the Commission and open for public inspection. Tennessee estimates the cost of the Station 230C Project to be $20,055,000.

Any questions concerning this application may be directed to James D. Johnston, Associate General Counsel, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, *phone:* (713) 420–4998, *fax:* (713) 420–1601, *e-mail: james.johnston@elpaso.com,* or Thomas Joyce, Manager, Rates and Regulatory Affairs, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, *phone:* (713) 420–3299, *fax:* (713) 420–1605, *e-mail: tom.joyce@elpaso.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: April 7, 2011.

Dated: March 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7990 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–132–000]

Gulf South Pipeline Company, LP; Notice of Application

Take notice that on March 9, 2011, Gulf South Pipeline Company, LP (Gulf South), 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, filed in Docket No. CP11–132–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon by sale to Boardwalk Field Services, LLC (Field Services) the Pettus Lateral Facilities in Bee and Refugio Counties, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.[1] The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Gulf South proposes to abandon by sale the 40-mile long, 18-inch diameter Pettus Lateral and associated laterals and gathering systems with related meters, receipt taps, and other associated facilities located in Bee and Refugio Counties, to Field Services. Gulf South states that the Pettus Lateral Facilities have a capacity of approximately 27,000 Dekatherms per

[1] Both Gulf South and Field Services are subsidiaries of Boardwalk Pipeline Partners, LP.

day (D/th) of natural gas; however, production has declined and the current line usage is approximately four percent of capacity. Gulf South further states that Field Services would use the facilities to transport high Btu-content shale gas being developed in the Eagle Ford shale formation in South Texas. Gulf South also states that its proposed abandonment would not have an adverse effect on Gulf South's current shippers.

Any questions regarding this application should be directed to M. L. Gutierrez, Director, Regulatory Affairs, Gulf South Pipeline Company, LP, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, or by telephone (713) 215–4015, facsimile (713) 479–1745, or e-mail to *Nell.Gutierrez@bwpmlp.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 7, 2011

Dated: March 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7989 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–128–000]

National Fuel Gas Supply Corporation; Notice Application

Take notice that on March 7, 2011, National Fuel Gas Supply Corporation (National Fuel), filed an application in Docket No. CP11–128–000 pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity to construct and operate its Northern Access Project. National Fuel requests authorization to: (1) Construct a new compressor station in East Aurora, Erie County, New York, (2) make piping changes at the Concord Compressor Station in Erie County, New York to permit bi-directional flow, and (3) install two additional compressor units at its existing Ellisburg Compressor Station in Potter County, Pennsylvania. National Fuel also proposes to upgrade facilities at Rose Lake near Ellisburg, to serve as a new interconnection facility with Tennessee Gas Pipeline Company (Tennessee). In a related application submitted by Tennessee in Docket No. CP11–133–000 on March 9, 2011, National Fuel and Tennessee propose to modify and upgrade certain facilities on the jointly-owned Niagara Spur Loop Line (NSLL) facilities so that the NSLL can be operated bi-directionally (Station 230C Project). Both proposals will allow for bi-directional firm transportation service of 320,000 Dekatherms per day of natural gas from the Rose Lake interconnect to the facilities of TransCanada PipeLines, Ltd. at Niagara, all as more fully set forth in the applications which are on file with the Commission and open for public inspection. The estimated total cost of the Northern Access Project and the Station 230C Project is $59,991,948.

Any questions regarding this application should be directed to Antoinetta Mucilli, Senior Attorney for National Fuel, 6363 Main Street, Williamsville, New York 14221, or call at (716) 857–7067.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to

the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: April 7, 2011.

Dated: March 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7988 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–98–000; Docket No. PR11–99–000; Not Consolidated]

Humble Gas Pipeline Company; Cobra Pipeline Ltd.; Notice of Baseline Filings

Take notice that on March 28, 2011, the applicants listed above submitted a revised baseline filing of their Statement of Operating Conditions for services provided under section 311 of the Natural Gas Policy Act of 1978 ("NGPA").

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, April 8, 2011.

Dated: March 30, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8019 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12680–003; Project No. 12711–003]

Ocean Renewable Power Company, LLC; Notice of Change in Docket Number

On July 24, 2009, Ocean Renewable Power Company, LLC (ORPC) filed a draft hydrokinetic pilot license application (DLA) for the proposed Eastport Tidal Energy Project, a proposal that unified two preliminary permits held by ORPC, the Cobscook Bay Tidal Energy Project preliminary permit (P–12711–004) and the Western Passage Tidal Energy Project preliminary permit (P–12680–004). The DLA was assigned a single docket number, P–12680–003, to represent the Eastport Tidal Energy Project pre-filing proceeding. ORPC has since dropped the Western Passage preliminary permit area from its pilot project proposal and is pursuing a pilot project license solely for the Cobscook Bay preliminary permit area. Due to this change in project proposal, ORPC has changed the name of its proposed pilot project from the Eastport Tidal Energy Project to the Cobscook Bay Tidal Energy Project.[1] Due to Western Passage no longer being a part of the pilot project proposal, the docket number P–12680–003 has been closed and the docket number P–12711–003 has been created and assigned to the Cobscook Bay Tidal Energy Project pre-filing proceeding. As part of this change in docket number, all current filings and issuances associated with the Eastport Tidal Energy Project pre-filing proceeding have been cross-referenced with P–12711–003. All future issuances and filings for the Cobscook Bay Tidal Energy Project pre-filing proceeding should solely reference docket number P–12711–003.

[1] ORPC letter filed March 16, 2011.

Dated: March 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7984 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–128–000; Docket No. CP11–133–000]

National Fuel Gas Supply Corporation; Tennessee Gas Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Northern Access Project and Station 230c Project, Request for Comments on Environmental Issues, and Notice of Public Environmental Site Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of two related projects proposed by National Fuel Gas Supply Corporation (National Fuel) and Tennessee Gas Pipeline Company (TGP). National Fuel's Northern Access Project would involve construction and operation of facilities in Erie County, New York and Potter County, Pennsylvania. TGP's Station 230C Project would involve construction and operation of facilities in Niagara County, New York. This EA will be used by the Commission in its decision-making process to determine whether these projects are in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the projects. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on April 28, 2011.

Commission staff will conduct two onsite environmental reviews of National Fuel's proposed East Aurora Compressor Station site and its Ellisburg Compressor Station expansion. All interested parties planning to attend must provide their own transportation. Those attending should meet at the following locations:

East Aurora Compressor Station Site Review April 11, 2011, at 2 pm, Meet at Tops Plaza, 65 Grey Street, East Aurora, New York 14052.

Ellisburg Compressor Station Site Review April 14, 2011, at 8 am, Meet at the Westgate Inn Hotel (Lobby), 307 Route 6 West, Coudersport, Pennsylvania 16915.

This notice is being sent to the Commission's environmental mailing list for these projects. State and local government representatives are asked to notify their constituents of these proposed projects and encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice National Fuel and TGP provided to landowners. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*http://www.ferc.gov*).

Summary of the Proposed Projects

National Fuel's proposed Northern Access Project would provide about 320,000 dekatherms per day of firm Marcellus Shale natural gas transportation service to northeastern and Canadian markets. The Northern Access Project would consist of the following:

- A new East Aurora Compressor Station, totaling 4,470-horsepower (hp), and auxiliary facilities in Erie County, New York;
- Piping modifications at the existing Concord Compressor Station in Erie County, New York to permit bidirectional flow;
- Two additional compressor units, totaling 9,470-hp, at the existing Ellisburg Compressor Station in Potter County, Pennsylvania; and
- Upgrades to the existing Rose Lake Interconnection metering facilities at the Ellisburg Compressor Station.

TGP's proposed project would include upgrades and modifications at its existing Compressor Station 230C in Niagara County, New York, located on the Niagara Spur Loop Line (NSLL). TGP states that the purpose of the Station 230C Project is to make the NSLL facilities, jointly owned with National Fuel, a bi-directional pipeline. TGP's and National Fuel's projects would make the proposed receipt and delivery service available to the northeastern and Canadian markets. TGP's project would consist of the following facilities at the Compressor Station 230C:

- Abandonment by replacement of the A2 and A3 compressor engines;
- Restaging of centrifugal compressors for units A2, A3, and A4 to match bi-directional flow conditions;
- Piping modifications to allow reverse flow;
- New discharge flow check meters and check valves along the existing 20- and 30-inch pipelines;
- New station discharge cooling equipment; and
- Modification to station automation systems and installation of yard valves to allow bi-directional flow.

The general locations of the projects' facilities are shown in appendix 1.[1]

Land Requirements for Construction

Construction of the Northern Access Project facilities would disturb a total of about 12.6 acres of land for the aboveground facilities. Following construction, a total of about 11.4 acres would be maintained for permanent operation of the project's facilities.

Construction of the Station 230C Project facilities would disturb about 7 acres of land for the compressor station upgrades and modifications; this includes 4.6 acres of temporary workspace outside the existing station fence line. About 2.4 acres of land within the station fence line would be required for operation of the project facilities.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed projects under these general headings:

- Geology and Soils;
- Land Use;
- Water Resources, Fisheries, and Wetlands;
- Endangered and Threatened Species;

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last two pages of this notice.

[2] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

- Vegetation and Wildlife;
- Cultural Resources;
- Air Quality and Noise; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed projects or portions of the projects, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section beginning on page 5.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Offices (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the projects' potential effects on historic properties.[3] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPOs as the projects are further developed. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for these projects will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the projects. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before April 28, 2011.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket numbers (CP11–128–000 and CP11–133–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the projects. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed projects.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site.

Additional Information

Additional information about the projects is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *http://www.ferc.gov* using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP11–128 or CP11–133). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: March 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8030 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR11–95–000]

American Midstream (Louisiana Intrastate), LLC; Notice of Filing

Take notice that on March 16, 2011, American Midstream (Louisiana Intrastate), LLC (AMLI) filed to revise its Fuel Retention percentage and to revise section 3.2 of its Statement of Operating Conditions to remove obsolete and unnecessary language as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 24, 2011.

Dated: March 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7987 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–31–000]

City of Springfield, Illinois, City Water, Light and Power; Notice of Filing

Take notice that on March 24, 2011, The City of Springfield, Illinois, City Water, Light and Power (CWLP), filed its proposed rate schedule, which specified CWLP's cost-based revenue requirements for Reactive Supply and Voltage Control from Generation Sources Service supplied by five CWLP generating units, pursuant to the Open Access Transmission and Energy Markets Tariff of the Midwest Independent Transmission System Operator, Inc, along with supporting testimony and data.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 14, 2011.

Dated: March 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8028 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–97–000]

Jefferson Island Storage & Hub, L.L.C.; Notice of Filing

Take notice that on March 28, 2011, Jefferson Island Storage & Hub, L.L.C. (Jefferson Island) submitted a revised Statement of Operating Conditions (SOC) for services provided under section 311 of the Natural Gas Policy Act of 1978 ("NGPA"). Jefferson Island proposes to revise its SOC to provide its customers the option to use pooling points as additional points of receipt and/or delivery under their service agreements, as more fully described in the application.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant.

Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, April 8, 2011.

Dated: March 30, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8027 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Availability of a Memorandum of Understanding Between the Federal Energy Regulatory Commission and the U.S. Fish and Wildlife Service To Promote Conservation of Migratory Birds

This notice announces the availability of a Memorandum of Understanding (MOU) between the Federal Energy Regulatory Commission (FERC) and the U.S. Fish and Wildlife Service (FWS) to Promote Conservation of Migratory Birds signed March 30, 2011. The MOU provides for strengthening migratory bird conservation by identifying and implementing strategies that promote conservation and reduce or eliminate adverse impacts on migratory birds through enhanced collaboration between FERC and FWS.

The MOU identifies specific activities where cooperation between FERC and FWS will contribute to the conservation of migratory birds and their habitat, and outlines a collaborative approach to promoting the conservation of migratory bird populations and furthering implementation of the migratory bird conventions, the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, and other pertinent statutes. The implementation of the MOU will be coordinated through ongoing communication between the FERC Office of Energy Projects and the FWS Division of Migratory Bird Management.

The MOU will be available on the FERC (*http://www.ferc.gov/legal/maj-ord-reg/mou.asp*) and FWS (*http://www.fws.gov/migratorybirds/PartnershipsAndIniatives.html*) Web sites.

For further information, contact Alan Mitchnick, 202–502–6074, *alan.mitchnick@ferc.gov* (hydropower); Medha Kochhar, 202–502–8964, *medha.kochhar@ferc.gov* (natural gas pipelines); or Shannon Crosley, 202–502–8853, *shannon.crosley@ferc.gov* (transmission lines).

Dated: March 30, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8021 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–6–003]

J–W Pipeline Company; Notice of Motion for Extension of Rate Case Filing Deadline

Take notice that on March 28, 2011, J–W Pipeline Company (J–W) filed a request for an extension consistent with the Commission's revised policy of periodic review from a triennial to a five year period. The Commission in Order No. 735 modified its policy concerning periodic reviews of rates charges by section 311 and Hinshaw pipelines to extend the cycle for such reviews from three to five years.[1] Therefore, J–W requests that the date for its next rate filing be extended to November 21, 2013, which is five years from the date of J–W's most recent rate filing with this Commission.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, April 8, 2011.

Dated: March 30, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8026 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

[1] Contract Reporting Requirements of Intrastate Natural Gas Companies, Order No. 735, 131 FERC ¶ 61,150 (May 20, 2010).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–30–000; Docket No. CP11–41–000]

Tennessee Gas Pipeline Company; Dominion Transmission, Inc.; Notice of Onsite Environmental Review

On April 12 and 13, 2011, the Office of Energy Projects (OEP) staff will be in Wyoming County, New York, and Tioga and Bradford Counties, Pennsylvania to gather data for the environmental analysis of two related projects

proposed by Tennessee Gas Pipeline Company (TGP) and Dominion Transmission, Inc. (DTI). On April 12, 2011, OEP staff will visit the location for the proposed Silver Springs Compressor Station associated with DTI's Ellisburg to Craigs Project under consideration in Docket No. CP11–41–000. On April 13, 2011, OEP staff will visit the proposed Loop 315 pipeline route associated with TGP's Northeast Supply Diversification Project under consideration in Docket No. CP11–30–000. These onsite reviews will assist staff in completing its evaluation of the environmental impacts of the proposed projects. Viewing of the areas is anticipated to be from public access points and adjacent existing right-of-way.

All interested parties planning to attend must provide their own transportation. Those attending should meet at the following locations:

Silver Springs Compressor Station Site Review, April 12, 2011, 9 a.m. (EST), Meet at DTI Randall Gate Site, 4478 Oak Hill Road (near intersection of, Oak Hill Road and West Lake Road), Silver Springs, NY 14550.

Loop 315 Site Review, April 13, 2011, 1 p.m. (EST), Meet at TGP Compressor Station 317, 1249 Tennessee Gas Road, (near intersection of Routes 14 and 514), Troy, PA 16947.

Please use the Federal Energy Regulatory Commission's free eSubscription service to keep track of all formal issuances and submittals in these dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm.*

Information about specific onsite environmental reviews is posted on the Commission's calendar at *http://www.ferc.gov/EventCalendar/EventsList.aspx.* For additional information, contact Office of External Affairs at (866) 208–FERC.

Dated: March 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8029 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13810–000]

Lock Hydro Friends Fund LII; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 12, 2010, Lock Hydro Friends Fund LII, filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of hydropower at the U.S. Army Corps of Engineers (Corps) Green River Lock and Dam located on the Green River in Henderson County, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) Two prefabricated concrete walls attached to the downstream side of the Corps dam which would support one frame module; (2) the frame module would be 109 feet long, 40 feet high, and weigh 1.16 million pounds and contain 10 generating units with a total combined capacity of 19.0 megawatts (MW); (3) a new switchyard containing a transformer; (4) a proposed 5.0-mile-long, 69-kilovolt (kV) transmission line to an existing distribution line. The proposed project would have an average annual generation of 83.277 gigawatt-hours (GWh), which would be sold to a local utility.

Applicant Contact: Mr. Wayne Krouse, Hydro Green Energy LLC, 5090 Richmond Avenue #390, Houston, TX 77056; phone (877) 556–6566 x709.

FERC Contact: Michael Spencer, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13810–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7985 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13818–000]

Lock Hydro Friends Fund LI; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 16, 2010, Lock Hydro Friends Fund LI, filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of hydropower at the U.S. Army Corps of Engineers (Corps) Kentucky River Lock and Dam located on the Kentucky River in Carroll County, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) Two prefabricated concrete walls attached to the downstream side of the Corps dam which would support one frame

module; (2) the frame module would be 52 feet long, 40 feet high, and weigh 600,000 pounds and contain 4 generating units with a total combined capacity of 2.0 megawatts (MW); (3) a new switchyard containing a transformer; (4) a proposed 2.0-mile-long, 69-kilovolt (kV) transmission line to an existing distribution line. The proposed project would have an average annual generation of 8.766 gigawatt-hours (GWh), which would be sold to a local utility.

Applicant Contact: Mr. Wayne Krouse, Hydro Green Energy LLC, 5090 Richmond Avenue #390, Houston, TX 77056; phone (877) 556–6566 x709.

FERC Contact: Michael Spencer, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13818–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7986 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14106–000]

Kahawai Power 5, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 1, 2011, Kahawai Power 5, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Wailua Reservoir Water Power (Wailua Reservoir project) to be located on the Wailua reservoir in the vicinity of Wailua Homesteads, in Kauai County, Hawaii. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project will utilize flows from the existing 1,400-foot-long earth-fill dam on the Wailua Reservoir, which is owned and operated by State of Hawaii's Department of Land and Natural Resources. New project features would consist of the following: (1) An intake structure at the existing 36-inch low-level outlet structure with a trash rack and control gate; (2) 14,600-foot-long, 42-inch-diameter steel penstock from the intake structure to the powerhouse; (3) a 50-foot by 40-foot reinforced concrete powerhouse containing one two-jet Turgo turbine with a capacity of 2 megawatts; (4) a 45-foot-long, 15-foot-wide tailrace channel; (5) an approximately 12,500-foot-long, 69-kilovolt transmission line which will tie into the existing grid near the Lyngate switchyard; and (6) appurtenant facilities. The estimated annual generation of the Wailua Reservoir project would be 11.5 gigawatt-hours.

Applicant Contact: Ramya Swaminthan, Kawahai Power 5, LLC, 239 Causeway St., Boston, MA 02114; phone: (978) 226–1531.

FERC Contact: Ryan Hansen (202) 502–8074 or through e-mail at *ryan.hansen@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14106–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 30, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8025 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–144–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

Take notice that on March 22, 2011, El Paso Natural Gas Company (El Paso), Post Office Box 1087, Colorado Springs, CO 80944, filed a prior notice request pursuant to sections 157.205(b) and 157.208(f) of the Federal Energy Regulatory Commission's regulations and pursuant to El Paso's Part 157 blanket certificate issued in Docket No. CP82–435–000. El Paso proposes to increase the certificated Maximum Allowable Operating Pressure (MAOP) of a 1.2 mile, 2-inch outer-diameter segment of pipe located in El Paso County, Texas. Specifically, El Paso requests authorization to increase the certificated MAOP of a segment of Line No. 2053 running from the El Paso-

Douglas Line to the U.S. Detention Prison from its currently certificated MAOP of 700 psig to 837 psig. El Paso avers the increase in MAOP will reduce operational and maintenance cost by eliminating the need to monitor and maintain pressure control and overpressure protection equipment. El Paso also states that there will be no effect to capacity on either the segment being increased or the remainder of Line No. 2053, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Susan C. Stires, Post Box Office 1087, Colorado Springs, CO 80944, telephone no. (719) 667–7514, facsimile no. (719) 667–7534, and e-mail: *EPNGregulatoryaffairs@elpaso.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Dated: March 30, 2011 .

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8020 Filed 4–4–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9289–8]

Monthly Public Meetings of the Local Government Advisory Committee's Small Community Advisory Subcommittee

AGENCY: Environmental Protection Agency.

ACTION: Meeting notice.

SUMMARY: Under the Federal Advisory Committee Act, the U.S. Environmental Protection Agency's Local Government Advisory Committee's Small Community Advisory Subcommittee is meeting monthly, via teleconference calls, to discuss EPA regulation, policy, and the significant environmental issues that affect small communities and are relevant to its scope and charge as set forth by the Administrator of the EPA. These monthly teleconference meetings are an opportunity for Small Community Advisory Subcommittee members to work together and discuss relevant issues, as well as allow an opportunity for the public to listen and comment.

DATES: The meeting dates are:

1. April 14, 2011, 2:30 p.m. to 3:30 p.m., teleconference meeting.
2. May 12, 2011, 2:30 p.m. to 3:30 p.m., teleconference meeting.
3. June 9, 2011, 2:30 p.m. to 3:30 p.m., teleconference meeting.
4. July 14, 2011, 2:30 p.m. to 3:30 p.m., teleconference meeting.

ADDRESSES: The Small Community Advisory Subcommittee meetings will be held by teleconference on the dates provided above. The Committee's meeting summary will be available after the meeting online at: *http://www.epa.gov/ocir/scas* and can be obtained by written request to the DFO.

FOR FURTHER INFORMATION CONTACT: Paula Zampieri, the Designated Federal Officer for the Small Community Advisory Subcommittee at (202) 566–2496 or e-mail at *zampieri.paula@epa.gov.*

SUPPLEMENTARY INFORMATION: This is an open meeting and all interested persons are invited to participate. The Committee will allow time for public comment between 2:45 p.m. to 3:15 p.m. during the teleconference meeting dates listed above. Individuals or organizations wishing to address the Committee will be allowed a maximum of five minutes to present their point of view. Also, written comments should be submitted electronically to *zampieri.paula@epa.gov.* Please contact the Designated Federal Officer (DFO) at the number listed to schedule agenda time. Time will be allotted on a first come first serve basis, and the total period for comments may be extended if the number of requests for appearances requires it. *Information on Services for Those with Disabilities:* For inquiry and more detailed information on access or services for individuals with disabilities, please contact Paula Zampieri at (202) 566–2496 or *zampieri.paula@epa.gov.* To request accommodation of a disability, please request it 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 29, 2011.

Paula Zampieri,

Designated Federal Officer, EPA's Small Communities Advisory Subcommittee within the Local Government Advisory Committee.

[FR Doc. 2011–8017 Filed 4–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9289–9]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Bayonne Municipal Utilities Authority, Bayonne, NJ

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality]

to the Bayonne Municipal Utilities Authority, New Jersey (Authority), for the purchase of a foreign manufactured wind turbine generator that meets the Authority's design and performance specifications, which is to be installed at its existing Oak Street Pumping Station site. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on project specific circumstances. Based upon information submitted by the Authority and its consulting engineer, EPA has concluded that there are currently no domestic manufactured wind turbines available in sufficient and reasonable quantity and of a satisfactory quality to meet the Authority's project design and performance specifications, and that a waiver is justified. The Regional Administrator is making this determination based on the review and recommendations of the State Revolving Fund Program Team. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605(a) of ARRA. This action permits the purchase of foreign manufactured wind turbine generator by the Authority, as specified in its December 15, 2010 waiver request.

DATES: *Effective Date:* April 5, 2011.

FOR FURTHER INFORMATION CONTACT: Alicia Reinmund-Martínez, Environmental Engineer, (212) 637–3827, State Revolving Fund Program Team, Division of Environmental Planning and Protection, U.S. EPA, 290 Broadway, New York, NY 10007.

SUPPLEMENTARY INFORMATION:

In accordance with ARRA Sections 1605(c) and 1605(b)(2), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to the Authority for the purchase of a Leitwind LTW 77 wind turbine generator, manufactured by Leitner-Poma, that meets the Authority's design and performance specifications to be installed at its existing Oak Street Pumping Station site. EPA has evaluated the Authority's basis for the procurement of a foreign made wind turbine generator. Based upon information submitted by the Authority and its consulting engineer, EPA has concluded that there are currently no domestic manufactured wind turbines available in sufficient and reasonable quantity and of a satisfactory quality to meet the Authority's project design and performance specifications.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project are produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided under Section 1605(b) of ARRA if EPA determines that (1) applying these requirements would be inconsistent with public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

EPA has determined that the Authority's waiver request is timely even though the request was made after the construction contract was signed. Consistent with the direction of the Office of Management and Budget (OMB) regulations at 2 CFR 176.120, EPA has evaluated the Authority's request to determine if the request, though made after the contract date, can be treated as if it were timely made. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as "late" if submitted after the contract date. However, in this case, EPA has determined that the Authority's request may be treated as timely because the need for a waiver was not foreseeable at the time the contract was signed. The Authority submitted this waiver request after the contract date because the domestic manufacturer of a 1.5 megawatt (MW) wind turbine generator that met project specifications ultimately withdrew from the project. The need for a waiver was not determined until on or about November 6, 2010, when the domestic manufacturer notified the Authority that it was unwilling to provide a 1.5 MW wind turbine generator on the basis that the project site did not meet the manufacturer's property setback requirements as well as other siting requirements. The Authority's subsequent research indicated that no other domestic manufactured 1.5 MW wind turbine generators met project specifications. Accordingly, EPA will evaluate the request as a timely request.

The Authority's wind power project includes the installation of a 1.5 MW wind turbine generator at its existing Oak Street Pumping Station, which is the main combined and sanitary pumping station serving all of the City of Bayonne's (City) approximate 62,000 residents. The wind turbine generated electricity will drive the Oak Street Pumping Station, which is operational 24 hours per day and has an average daily dry weather flow of 8 million gallons per day (MGD), and a total capacity of 18 MGD. The wind turbine generator will also be interconnected with the nearby East 5th Street storm water relief pumping station, which has four 150 horsepower (HP) lift pumps and one 60 HP lift pump that help prevent localized flooding in a residential area of the City. The project was designed for a 1.5 MW domestic manufactured wind turbine generator and will be located on a 22.95 acre property owned by the Authority that is situated in a predominantly industrial area.

The Authority is requesting a waiver for the purchase of a Leitwind LTW77 wind turbine, manufactured by Leitner-Poma, because according to the Authority, there is only one domestic manufacturer that produces a wind turbine generator that meets the project design and performance specifications. However, that domestic manufacturer withdrew from the project on November 6, 2010, on the basis of its own internal siting and setback recommendations that could not be met at the project site. Although the site did not meet the domestic manufacturer's setback requirements, the Authority had worked with the domestic manufacturer's engineers to develop other mitigation measures to prevent damage or injury from shedding ice. These measures include, but are not limited to, sensors to detect ice buildup and stop the wind turbine generator when ice is detected with manual restart and the repositioning of the turbine blades to minimize ice shedding issues. Despite the Authority's efforts, the domestic manufacturer was not willing to supply their product and ultimately withdrew from the project.

The Authority examined twenty other available domestic and foreign wind turbine generators and only the Leitwind LTW 77 model meets all project specifications. Of the other five domestic manufacturers contacted, several produce wind turbine generators that are larger than the 1.5 MW allowed by the project specifications. In addition, many of the domestic

machines were much heavier than the wind turbine generator produced by the domestic manufacturer that withdrew from the project. The use of a heavier machine would add significantly to project expenses and delay the project schedule because a foundation redesign would be required and the foundation for this project is already under construction. Lastly, the Authority concluded that none of the domestic manufacturers contacted could meet the City's zoning law requirement that the wind turbine generator emit less than 104 decibels of noise.

The Authority states that only the Leitwind LTW 77 foreign manufactured model meets the size and noise requirements for this project. Although the Leitwind LTW 77 does not use the same site consideration limitations that are used by the domestic manufacturer that withdrew from the project and notwithstanding that there are currently no local, State, or Federal requirements regulating the setback distances associated with the operation of wind turbines, the Authority has indicated that it has taken all necessary precautions to eliminate ice shedding. Such mitigation measures include, but are not limited to, the incorporation of controls with three levels of redundancy to shut down the turbine during potential glaze icing events and the restarting of the turbine only after a detailed visual inspection is completed, vibration sensors on the blades that recognize if the blades are out of balance due to ice formation, and the positioning of the shut down turbine to facilitate ice shedding directly into a fenced enclosure with posted warning signs directly below the turbine.

Also, the Federal Aviation Administration (FAA) notified the Authority that its study revealed that a wind turbine generator on the site would not be a hazard to air navigation, provided that the turbine structure is marked and/or lighted, in accordance with FAA Advisory Circular 70/7640–1 K Change 2. The Authority confirmed that the LTW 77 specifications fall within the scope of the FAA's determination and that the Authority will mark and/or light the turbine in accordance with FAA requirements.

Based on the technical evaluation of the Authority's waiver request and supporting documentation conducted by EPA's national contractor, the Authority's claim that no domestic manufacturer can produce and site a 1.5 MW wind turbine generator that meets the project specifications is supported by the available evidence. In addition, the evaluation of the supporting documentation indicates that at least one foreign manufacturer, Leitner-Poma, will provide a 1.5 MW wind turbine generator at the site that can meet project design and performance specifications.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are already "shovel ready" by requiring entities, such as the Authority, to revise their design standards and specifications and potentially choose a more costly, less efficient project. The imposition of ARRA Buy American requirements on such projects otherwise eligible for State Revolving Fund assistance would result in unreasonable delay and potentially the cancellation of this project as sited. The delay or cancellation of this construction would directly conflict with the fundamental economic purpose of ARRA, which is to create or retain jobs.

The April 28, 2009, EPA Headquarters Memorandum, "Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' " (Memorandum), defines: *reasonably available quantity* as "the quantity of iron, steel, or the relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design," and *satisfactory quality* as "the quality of iron, steel, or the relevant manufactured good as specified in the project plans and designs."

The Region 2 State Revolving Fund Program Team has reviewed this waiver request and has determined that the supporting documentation provided by the Authority establishes both a proper basis to specify the particular good required and that the manufactured good is not available from a producer in the United States to meet the design specifications for the proposed project. The information provided is sufficient to meet the criteria listed under Section 1605(b) of ARRA, OMB regulations at 2 CFR 176.60–176.170, and in the EPA Headquarters April 28, 2009 Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2). Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the Authority's technical specifications, a waiver from the Buy American requirement is justified.

The Administrator's March 31, 2009, Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, the Authority is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of a Leitner-Poma Leitwind LTW 77 1.5 MW wind turbine generator, as specified in its December 15, 2010 waiver request. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers "based on a finding under subsection (b)."

Authority: Pub. L. 111–5, Section 1605.

Dated: March 10, 2011.

Judith A. Enck,

Regional Administrator, Environmental Protection Agency, Region 2.

[FR Doc. 2011–8018 Filed 4–4–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 11–41; FCC 11–30]

Improving Communications Services for Native Nations

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission seeks comment on a wide range of issues concerning how its rules and policies could be modified to provide greater economic, market entry, communication adoption opportunities, and incentives for Native Nations. The Commission also seeks government-to-government consultation with Native Nations, input from inter-Tribal government associations and Native representative organizations, and input from the public on the best ways to move forward. The Commission is committed to ensuring that all Americans have access to emerging services and technologies, with Native Nations being at the forefront of the Commission's efforts.

DATES: Comments are due on or before May 20, 2011, and reply comments due on or before July 5, 2011.

ADDRESSES: You may submit comments, identified by [CG Docket No. 11–41 and/or FCC 11–30], by any of the following methods:

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS) *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, which in this instance is CG Docket No. 11–41.

• Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in response.

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight 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 Street, SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours are 8 a.m. to 7 p.m.

• 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.

In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, or via email to *fcc@bcpiweb.com.* Parties must also send a courtesy copy of their filing to Rod Flowers, Office of Native Affairs and Policy, Federal Communications Commission, 445 12th Street, SW., Room 4–C487, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Cynthia Bryant, Office of Native Affairs and Policy at (202) 418–8164 (voice), (202) 418–0431 (TTY), or e-mail at *Cynthia.Bryant@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Improving Communications Services to Native Nations,* Notice of Inquiry (*Native Nations NOI*), document FCC 11–30, adopted on March 3, 2011, and released on March 4, 2011, in CG Docket No. 11–41.

The full text of document FCC 11–30 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, *telephone:* (800) 378–3160, fax: (202) 488–5563, or Internet: *http://www.bcpiweb.com.* Document FCC 11–30 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov* or *http://www.fcc.gov/indians.*

Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments and reply comments must include a short and concise summary of the substantive discussion and questions raised in the document FCC 11–30. The Commission further directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. The Commission strongly encourages that parties track the organization set forth in document FCC 11–30 in order to facilitate its internal review process. Comments and reply comments must otherwise comply with 47 CFR 1.48 and all other applicable sections of the Commission's rules.

Pursuant to 47 CFR 1.1200 *et seq.,* this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

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 and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Synopsis

The *Native Nations NOI* seeks consultation and comment on 11 specific categories of communications issues affecting Native Nations and Americans living on Tribal lands—the lands of federally recognized American Indian Tribes and Alaska Native Villages—as well as Hawaiian Home Lands. The first five sections of the document seek comment on issues that cut broadly across the many different substantive areas within the Commission's regulatory mission. With a better understanding of these critical issues, the Commission can more effectively work with Native Nations to break down barriers and find genuine solutions. For example, the NOI seeks comment on whether a Native Nations priority, analogous to the one presently found in the Commission's rules for radio broadcast licensing, should be adopted more broadly to make it easier for Native Nations to provide other communications services to their own communities.

The *Native Nations NOI* also seeks comment on the basic tools that Native Nations need in order to build sustainable business and deployment models to address the significant communications infrastructure needs, market challenges, and demand aggregation requirements specific to Tribal lands. Further, recognizing the uniqueness of Tribal lands, the document seeks comment on the challenges and barriers faced by Native Nations in achieving broadband adoption and utilization. The *Native Nations NOI* also seeks comment on whether the Commission should adopt a single definition of Tribal lands for all communications-related regulation and, if so, precisely what that definition should encompass. The other issues on which the Native Nations NOI seeks comment delve into specific substantive areas of the Commission's existing rules. For example, the *Native Nations NOI* seeks comment on the Universal Service Fund's eligible telecommunications carrier (ETC) designation process on Tribal lands, including the nature and extent of those designations and requirements for the consultative process with Native Nations. The *Native*

Nations NOI also examines public safety and interoperability challenges on Tribal lands, including the widespread lack of 911 and E–911 services.

The *Native Nations NOI* also seeks comment on how to improve the Commission's processes and Best Practices—pursuant to Section 106 of the National Historic Preservation Act—for the protection of Native sacred sites and consultation with Native Nations and Native Hawaiian Organizations in the review of communications tower sitings. In addition, the *Native Nations NOI* seeks comment on ways to make satellite-based services available for Native Nations, by addressing issues of cost, equipment, and market-entry points for Native Nations.

The *Native Nations NOI* seeks comment on the extent to which persons with disabilities living on Tribal lands experience barriers in using communications services and advanced technologies, and asks how the Commission can address those barriers. The *Native Nations NOI* also asks how the Commission can best structure a productive and efficient nation-to-nation consultation process unique to the mission of the Commission and the needs of Native Nations, recognizing that many consultations with the Federal government are occurring on many different and inter-related issues at any given time.

Finally, recognizing that the *Native Nations NOI* may not cover all of the communications challenges facing Native Nations and their communities, the document invites comment on other matters involved in the provision of communications services to Native communities that may warrant future Commission action.

Ordering Clauses

Pursuant to sections 1, 2, 4(i), 4(j), 7(a), 11, 214, 225, 254, 255, 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, 332, 403, 706, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 157(a), 161, 214, 225, 254, 255, 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, 332, 404, 706, and 716, and section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, document FCC 11–30 *is adopted.*

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager.

[FR Doc. 2011–7961 Filed 4–4–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 11–04]

Worldwide Logistics Co., Ltd.; Possible Violations of Sections 10(a)(1) and 10(b)(2) of the Shipping Act of 1984; Order of Investigation and Hearing

Worldwide Logistics Co., Ltd. (Worldwide) is a company based in the People's Republic of China, providing service as a non-vessel-operating common carrier (NVOCC). Worldwide registered with the FMC as a foreign-based NVOCC in September 2004. Worldwide's reported address is 14F–16F Junjiang International Tower, No. 228 Ning Guo Road, Yangpu District, Shanghai, PRC 200090. It is a part of the Worldwide Logistics Group, said to be one of the leading integrated logistics service providers in China.[1]

Worldwide currently holds itself out as an NVOCC pursuant to its automated tariff No. 019194–001. Its tariff is maintained by Distribution Publications, Inc., and is published electronically at *https://www.dpiusa.com.* Worldwide currently maintains an NVOCC bond with Navigators Insurance Company, 6 International Drive, Rye Brook, NY 10573.

It appears that Worldwide originated and substantially participated in an ongoing practice of misdescribing cargo to the transporting ocean common carrier since at least April 2008. With respect to those shipments apparently misdescribed, Worldwide was identified as the shipper signatory to various service contracts with ocean common carriers[2] and as the person for whose account the transportation was being provided. Contemporaneous documentation such as the commercial invoice or the NVOCC house bill of lading reflect that shipments declared to the vessel operator as "fabric" or "cotton fabric" actually were loaded with garments or with other miscellaneous finished textile goods. Due to the difference between the rate Worldwide paid to ship the misdescribed goods and the rate at which the cargo should have moved under the various service contracts used by Worldwide, it appears that Worldwide obtained lower than applicable rates for these shipments, in violation of section 10(a)(1) of the Shipping Act.

It also appears that for these same shipments, Worldwide acted as a common carrier in relation to its NVOCC customers and issued its own NVOCC bill of lading. Worldwide has maintained an electronic tariff since September 17, 2004. However, as indicated by Worldwide's debit notes, the rate assessed by Worldwide to its NVOCC customers appears to differ substantially from its published rates. Accordingly, it appears that Worldwide provided service that was not in accordance with its published tariff, in violation of 10(b)(2) of the Shipping Act.

Now therefore, it is ordered, That pursuant to sections 10, 11, and 13 of the Shipping Act, 46 U.S.C. 41102, 41104, and 41107–41109, an investigation is instituted to determine:

(1) whether Worldwide Logistics Co., Ltd. violated section 10(a)(1) of the Shipping Act by obtaining transportation at less than the rates and charges otherwise applicable by an unjust or unfair device or means;

(2) whether Worldwide Logistics Co., Ltd. violated section 10(b)(2) of the Shipping Act by providing service other than at the rates, charges, and classifications set forth in its published NVOCC tariff or applicable NSA;

(3) whether, in the event violations of sections 10(a)(1) or 10(b)(2) of the Shipping Act are found, civil penalties should be assessed against Worldwide Logistics Co., Ltd. and, if so, the amount of penalties to be assessed;

(4) whether, in the event violations of sections 10(a)(1) or 10(b)(2) of the Shipping Act are found, the tariff(s) of Worldwide Logistics Co., Ltd. should be suspended; and

(5) whether, in the event violations are found, an appropriate cease and desist order should be issued.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding Administrative Law Judge only after consideration has been given by the parties and the presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn

[1] *http://www.worldwide-logistics.cn/en/ourservice.aspx?id=8.*

[2] As relevant herein, these contracts include, but are not limited to: Evergreen S/C # SC325398, # SC34303, and # SC37000; Hanjin S/C # AEF24208; K Line S/C # 41033; Maersk S/C # 275214; NYK S/C # SC0109828, # SC0114261, and # SC0114580; and OOCL S/C # PE084981.

statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That Worldwide Logistics Co., Ltd. is designated Respondent in this proceeding;

It is further ordered, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the Federal Register, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 2 of the Commission's Rules of Practice and Procedure, 46 CFR 502.2 (formerly § 502.118), and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by March 29, 2012 and the final decision of the Commission shall be issued by July 27, 2012.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–7999 Filed 4–4–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

March 30, 2011.

TIME AND DATE: 11 a.m., Tuesday, April 12, 2011.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Federal Mine Safety and Health Review Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Cumberland Coal Resources, LP,* Docket No. PENN 2008–189. (Issues include whether the judge erred in determining that four violations of 30 CFR 75.380(d)(7)(iv), which requires effective escapeway lifelines, were not "significant and substantial.")

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2011–8129 Filed 4–1–11; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL TRADE COMMISSION

[File No. 102 3136]

Google, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

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

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Google, File No. 102 3136" to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC Web site, at *http://www.ftc.gov/os/publiccomments.shtm.*

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential * * * as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2)." Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: *https://ftcpublic.commentworks.com/ftc/googlebuzz* and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: *https://ftcpublic.commentworks.com/ftc/googlebuzz.* If this Notice appears at *http://www.regulations.gov/search/index.jsp,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Web site at *http://www.ftc.gov/* to read the Notice and the news release describing it.

A comment filed in paper form should include the "Google, File No. 102 3136" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

delay due to heightened security precautions.

The Federal Trade Commission Act ("FTC Act") and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm.*

FOR FURTHER INFORMATION CONTACT: Kathryn Ratte (202–326–3514), FTC Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 30, 2010), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from Google Inc. ("Google").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

On February 9, 2010, Google launched a social networking service called Google Buzz ("Google Buzz" or "Buzz") within Gmail, its web-based email product. Google Buzz is a platform that allows users to share updates, comments, photos, videos, and other information through posts or "buzzes" made either publicly or privately to individuals or groups of users. Google used the information of consumers who signed up for Gmail, including first and last name and email contacts, to populate the social network, which, in many instances, resulted in certain previously private information being made public.

The Commission's complaint alleges that Google violated Section 5(a) of the FTC Act by falsely representing to users signing up for Gmail that it would use their information only for the purpose of providing them with web-based email. The complaint also alleges that Google falsely represented to consumers that it would seek their consent before using their information for a purpose other than that for which it was collected. The complaint further alleges that Google deceived consumers about their ability to decline enrollment in certain features of Buzz. In addition, the complaint alleges that Google failed to disclose adequately that certain information would become public by default through the Buzz product. Finally, the complaint alleges that Google misrepresented its compliance with the U.S.-EU Safe Harbor Framework, a mechanism by which U.S. companies may transfer data from the European Union to the United States consistent with European law.

The proposed order contains provisions designed to prevent Google from engaging in the future in practices similar to those alleged in the complaint with respect to all Google products and services, not only Gmail or Buzz.

Part I of the proposed order prohibits Google from misrepresenting the privacy and confidentiality of any "covered information," as well as the company's compliance with any privacy, security, or other compliance program, including but not limited to the U.S.-EU Safe Harbor Framework. "Covered information" is defined broadly to include an individual's: (a) First and last name; (b) home or other physical address, including street name and city or town; (c) email address or other online contact information, such as a user identifier or screen name; (d) persistent identifier, such as IP address; (e) telephone number, including home telephone number and mobile telephone number; (f) list of contacts; (g) physical location; or any other information from or about an individual consumer that is combined with (a) through (g) above.

Part II of the proposed order requires Google to give Google users a clear and prominent notice and to obtain express affirmative consent prior to sharing the Google user's information with any third party in connection with a change, addition or enhancement to any product or service, where such sharing is contrary to stated sharing practices in effect at the time the Google user's information was collected. This provision is limited to users of Google's products and services whom Google has identified at the time it shares their information with third parties, for example, users who are logged into a Google product.

Part III of the proposed order requires Google to establish and maintain a comprehensive privacy program that is reasonably designed to: (1) Address privacy risks related to the development and management of new and existing products and services, and (2) protect the privacy and confidentiality of covered information. The privacy program must be documented in writing and must contain privacy controls and procedures appropriate to Google's size and complexity, the nature and scope of its activities, and the sensitivity of covered information. Specifically, the order requires Google to:

- Designate an employee or employees to coordinate and be responsible for the privacy program;
- Identify reasonably-foreseeable, material risks, both internal and external, that could result in the unauthorized collection, use, or disclosure of covered information and assess the sufficiency of any safeguards in place to control these risks;
- Design and implement reasonable privacy controls and procedures to control the risks identified through the privacy risk assessment and regularly

test or monitor the effectiveness of the safeguards' key controls and procedures;

- Develop and use reasonable steps to select and retain service providers capable of appropriately protecting the privacy of covered information they receive from respondent, and require service providers by contract to implement and maintain appropriate privacy protections; and
- Evaluate and adjust its privacy program in light of the results of the testing and monitoring, any material changes to its operations or business arrangements, or any other circumstances that it knows or has reason to know may have a material impact on the effectiveness of its privacy program.

Part IV of the proposed order requires that Google obtain within 180 days, and on a biennial basis thereafter for twenty (20) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that: it has in place a privacy program that provides protections that meet or exceed the protections required by Part III of the proposed order; and its privacy controls are operating with sufficient effectiveness to provide reasonable assurance that the privacy of covered information is protected.

Parts V through IX of the proposed order are reporting and compliance provisions. Part V requires that Google retain all "widely disseminated statements that describe the extent to which respondent maintains and protects the privacy and confidentiality of any covered information, along with all materials relied upon in making or disseminating such statements, for a period of three (3) years. Part V further requires Google to retain, for a period of six (6) months from the date received, all consumer complaints directed at Google, or forwarded to Google by a third party, that allege unauthorized collection, use, or disclosure of covered information and any responses to such complaints. Part V also requires Google to retain for a period of five (5) years from the date received, documents that contradict, qualify, or call into question its compliance with the proposed order. Finally, Part V requires that Google retain all materials relied upon to prepare the third-party assessments for a period of three (3) years after the date that each assessment is prepared.

Part VI requires dissemination of the order now and in the future to principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having supervisory responsibilities relating to the subject matter of the order. Part VII ensures notification to the FTC of changes in corporate status. Part VIII mandates that Google submit an initial compliance report to the FTC and make available to the FTC subsequent reports. Part IX is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner J. Thomas Rosch

I concur in accepting, subject to final approval, a consent agreement from Google Inc. ("Google) for public comment. However, it should be emphasized that this consent agreement is being accepted, subject to final approval. I have substantial reservations about Part II of the consent agreement. My concerns are threefold. Before I describe them, however, I want to make clear that I do not mean to defend Google. Google can—and should—speak for itself. However, I believe that, as a Commission, we must always be concerned that a consent agreement, like a litigated decree, is consistent with the public interest. For that reason, I am opposed to accepting consent agreements that may be contrary to the public interest because a party is willing to agree to terms that hurt other competitors as much or more than the terms will hurt that party. That may occur, for example, when a consent agreement is used as "leverage in dealing with the practices of other competitors." Part II of the proposed consent order may be susceptible to this happening.

More specifically, the crux of the violation alleged in the Complaint is that Google represented in its general "Privacy Policy" that "When you sign up for a particular service that requires registration, we ask you to provide personal information. If we use this information in a manner different from the purpose for which it was collected, then we will ask for your consent prior to such use. However, when Google initiated its social networking service ("Google Buzz") it used personal information previously collected for other purposes without asking for users' consent prior to this use. Part II of the proposed consent order prohibits Google, without prior "express affirmative consent" (an "opt-in" requirement) from engaging in any "new or additional sharing" of previously collected personal information "with any third party" that results from "any change, addition, or enhancement" to any Google product or service. First, Google did not represent in its general "Privacy Policy" (or otherwise, according to the Complaint) that the "consent" it would seek would require consumers to "opt in" as required by Part II. Indeed, the Complaint does not allege that Google ever asked consumers to signify their "consent" by "opting in" (as opposed to "opting out"). To be sure, insofar as Google did not seek "consent" at all, its representation in its general "Privacy Policy" was deceptive in violation of Section 5. But the "opt in" requirement in Part II is seemingly brand new. It does not echo what Google promised to do at the outset. In the separate Statement that I issued when the staff issued its preliminary Privacy Report, I expressed concern about whether an "opt in" requirement in these circumstances might sometimes be contrary to the public interest. Then, as now, I was concerned that it might be used as leverage in consent negotiations with other competitors.

Second, Part II of the proposed consent order applies whenever Google engages in any "new or additional sharing" of previously collected personal information "with any third party" for the next twenty years, not just any "material" new or additional sharing of that information. Because internet business models (and technology) change so rapidly, Google (and its competitors) are bound to engage in "new or additional" sharing of previously collected information with third parties during that period. That means that Part II is certain to apply (and with some frequency) during that period as long as Google does not warn users or consumers in its "general Privacy Policy" that it may engage in such sharing in the future.

Third, Part II applies not just to Google's social networking services or products, but to every single Google service or product that undergoes some "change, addition, or enhancement" (terms that are not defined in Part II) that results from the sharing of certain information. As a practical matter, this means that Google is at risk that Part II will apply across the board to every existing product or service that Google offers, including any product or service that involves the tracking and sharing of identified Google users' browsing behavior.

In short, on the face of it, Part II seems to be contrary to Google's self-interest. I therefore ask myself if Google willingly

agreed to it, and if so, why it did so. Surely it did not do so simply to save itself litigation expense. But did it do so because it was being challenged by other government agencies and it wanted to "get the Commission off its back"? Or did it do so in hopes that Part II would be used as leverage in future government challenges to the practices of its competitors? In my judgment, neither of the latter explanations is consistent with the public interest.

Nor am I comforted that the purpose and effect of Part II may be to "fence in" Google. I am aware of the teaching of *Jacob Siegel Co.* v. *FTC,* 327 U.S. 608 (1946) that a "fencing in" order may cover legal conduct as long as that conduct is "reasonably related" to the violation. Even if Part II may be considered to cover conduct that is "reasonably related" to the violation here, any consent order, whether litigated or negotiated, must be consistent with the public interest. I look forward to public comment about whether Part II of the proposed consent order meets that requirement.

[FR Doc. 2011–7963 Filed 4–4–11; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–New; 60-day Notice]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60 days.

Proposed Project: Effects of Insurance Market Reforms—OMB No. 0990–NEW–Office of the Assistant Secretary for Planning and Evaluation (ASPE).

Abstract: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is requesting Office of Management and Budget (OMB) approval on a new data collection, consisting of a survey of a national sample of health insurers to learn about the effects of various recent insurance market reforms from the Affordable Care Act (ACA) on premiums and coverage for certain benefits. ASPE will use the results of this survey in conjunction with other data sources to build a more complete picture of the effects of the insurance market reforms that went into effect in September of 2010. The survey instrument will be a one-time, self-administered web survey sent to eight of the 12 largest insurers in each state plus the District of Columbia based on total 2009 comprehensive major medical premiums, yielding a targeted sample of 408 health insurers. Each health insurer will be asked to provide self-reported data on the percentage of covered lives with coverage for various benefits before and after the insurance market reforms went into effect, any effect of these reforms on premiums, and coverage for select other benefits under consideration for the essential benefits package. The survey design and content have been reviewed by both the ASPE project officer and other ASPE personnel, and by several former and current chief actuaries at health insurers. Data collection activities will be completed within 60 days (two months) of OMB Clearance.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
Self-administered web survey	Chief Actuary at health insurance companies.	408	1	45/60	306

Mary Forbes,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2011–8034 Filed 4–4–11; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

National Advisory Council for Healthcare Research and Quality: Request for Nominations for Public Members

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of request for nominations for public members.

SUMMARY: 42 U.S.C. 299c establishes a National Advisory Council for Healthcare Research and Quality (the Council). The Council is to advise the Secretary of HHS (Secretary) and the Director of the Agency for Healthcare Research and Quality (AHRQ) on matters related to activities of the Agency to improve the quality, safety, efficiency, and effectiveness of health care for all Americans.

Seven current members' terms will expire in November 2011. To fill these positions, we are seeking individuals who are distinguished: (1) In the

conduct of research, demonstration projects, and evaluations with respect to health care; (2) in the fields of health care quality research or health care improvement; (3) in the practice of medicine; (4) in other health professions; (5) in representing the private health care sector (including health plans, providers, and purchasers) or administrators of health care delivery systems; (6) in the fields of health care economics, information systems, law, ethics, business, or public policy; and, (7) in representing the interests of patients and consumers of health care. 42 U.S.C. 299c(c)(2). Individuals are particularly sought with experience and success in activities specified in the summary above.

DATES: Nominations should be received on or before 60 days after date of publication.

ADDRESSES: Nominations should be sent to Ms. Karen Brooks, AHRQ, 540 Gaither Road, Room 3006, Rockville, Maryland 20850. Nominations may also be e-mailed to *Karen.Brooks@ahrq.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Karen Brooks, AHRQ, at (301) 427–1801.

SUPPLEMENTARY INFORMATION: 42 U.S.C. 299c provides that the Secretary shall appoint to the National Advisory Council for Healthcare Research and Quality twenty one appropriately qualified individuals. At least seventeen members shall be representatives of the public and at least one member shall be a specialist in the rural aspects of one or more of the professions or fields listed in the above summary. In addition, the Secretary designates, as ex officio members, representatives from other Federal agencies, principally agencies that conduct or support health care research, as well as Federal officials the Secretary may consider appropriate. 42 U.S.C. 299c(c)(3). The Council meets in the Washington, DC, metropolitan area, generally in Rockville, Maryland, approximately three times a year to provide broad guidance to the Secretary and AHRQ's Director on the direction of and programs undertaken by AHRQ.

Seven individuals will be selected presently by the Secretary to serve on the Council beginning with the meeting in the spring of 2012. Members generally serve 3-year terms. Appointments are staggered to permit an orderly rotation of membership.

Interested persons may nominate one or more qualified persons for membership on the Council. Self-nominations are accepted. Nominations shall include: (1) A copy of the nominee's resume or curriculum vitae; and (2) a statement that the nominee is willing to serve as a member of the Council. Selected candidates will be asked to provide detailed information concerning their financial interests, consultant positions and research grants and contracts, to permit evaluation of possible sources of conflict of interest. Please note that Federally registered lobbyists are not permitted to serve on this advisory board. Please note that once you are nominated, AHRQ may consider your nomination for future positions on the Council.

The Department seeks a broad geographic representation. In addition, AHRQ conducts and supports research concerning priority populations, which include: low-income groups; minority groups; women; children; the elderly; and individuals with special health care needs, including individuals with disabilities and individuals who need chronic care or end-of-life health care. See 42 U.S.C. 299(c). Nominations with expertise in health care for these priority populations are encouraged.

Dated: March 24, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–8023 Filed 4–4–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Epidemiologic Research and Surveillance in Epilepsy, Funding Opportunity Announcement (FOA) DP11–003, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 11 a.m.–5 p.m., May 11, 2011 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Epidemiologic Research and Surveillance in Epilepsy FOA DP11–003, initial review."

Contact Person for More Information: Brenda Colley Gilbert, PhD, M.P.H., Director, Extramural Research Program Office, National Center for Chronic Disease Prevention and Developmental Disabilities, CDC, 1600 Clifton Road, NE., Mailstop K92, Atlanta, Georgia 30333, *Telephone:* (770) 488–6295.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 29, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–8071 Filed 4–4–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9996–N]

Early Retiree Reinsurance Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces that CMS is exercising its authority under section 1102(f) of the Affordable Care Act to stop accepting applications for the Early Retiree Reinsurance Program, due to the availability of funds, as of May 5, 2011.

DATES: *Effective Date:* This notice is effective March 31, 2011.

FOR FURTHER INFORMATION CONTACT: David Mlawsky, (410) 786–6851.

SUPPLEMENTARY INFORMATION:

I. Background

The Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010) (the Affordable Care Act), included a provision that establishes the temporary Early Retiree Reinsurance Program (ERRP), which provides reimbursement to eligible sponsors of employment-based plans for a portion of the costs of providing health coverage to early retirees (and eligible spouses, surviving spouses, and dependents of such retirees). Section 1102(a)(1) of the Affordable Care Act, which is codified at 42 U.S.C. 18002(a)(1), requires the Secretary to establish the program within 90 days of enactment of the law (by June 21, 2010). On May 5, 2010, we published an

interim final regulation with comment period in the **Federal Register** (75 FR 24450), implementing the program as of June 1, 2010. Section 1102(e) of the Affordable Care Act appropriates funding of $5 billion for the temporary program, which ends no later than January 1, 2014. To participate in the program, an employment-based plan must submit an application to the Secretary. A copy of the application can be found at *http://www.errp.gov.* Section 1102(f) of the Affordable Care Act grants the Secretary the authority to stop taking applications for participation in the program based on the availability of funding under section 1102(e) of the Affordable Care Act. The ERRP interim final regulation also grants the Secretary such authority (75 FR 24456).

II. Provisions of the Notice

Based on the amount of the $5 billion in appropriated program funding that remains available and the rate at which it is being disbursed, we are announcing, under section 1102(f) of the Affordable Care Act, that we will no longer accept applications for the program after May 5, 2011. We have projected the availability of program funding based on the rate at which appropriated funds are currently being used to reimburse plan sponsors, and we have concluded that we have approved a sufficient number of applications to exhaust the program funding. Applications were first accepted by the ERRP on June 29, 2010, and therefore, plan sponsors have so far had 9 months to submit applications if desired. As a result of this agency action, any program applications that CMS receives after May 5, 2011 will not be accepted for processing. Applications must be received in the program's Intake Center on or before May 5, 2011, to be accepted for processing. A copy of the application, as well as information on how to complete and send it, and where to send it, can be found on *http://www.errp.gov.* Merely postmarking an application before this date will not be sufficient. We will post additional information about the mechanics of not accepting such applications for processing, such as how we will respond upon receiving such an application, on *http://www.errp.gov.*

We note that our decision to no longer accept applications after May 5, 2011, is based on the actual availability of remaining appropriated ERRP funds and the rate at which we have been disbursing reimbursement, as opposed to the projected amounts of ERRP reimbursements that applicants listed in their ERRP applications. Should circumstances related to the availability of ERRP funding change, we may decide it is appropriate to resume accepting ERRP applications. If this occurs, we will provide such notice in the **Federal Register**.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. So, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

Authority: 42 U.S.C. 18002(f).

Dated: March 29, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–7934 Filed 3–31–11; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Preparation for International Cooperation on Cosmetics Regulations; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled "International Cooperation on Cosmetics Regulations (ICCR)—Preparation for ICCR–5 Meeting in Paris, France" to provide information and receive comments on the International Cooperation on Cosmetics Regulations (ICCR) as well as the upcoming meetings in Paris, France. The topics to be discussed are the topics for discussion at the forthcoming ICCR Steering Committee meeting. The purpose of the meeting is to solicit public input prior to the next steering committee and expert working group meetings in Paris, France scheduled on June 28 through July 1, 2011.

DATES: *Date and Time:* The public meeting will be held on April 26, 2011, from 2 p.m. to 4 p.m.

Location: The public meeting will be held at the Washington Theater room at the Hilton Washington DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: All participants must register with Kimberly Franklin, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, *e-mail: Kimberly.Franklin@fda.hhs.gov*, or *Fax:* 301–595–7937.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number), written material, and requests to make oral presentations, to the contact person by April 22, 2011.

If you need special accommodations due to a disability, please contact Kimberly Franklin (*see Contact Person*) at least 7 days in advance.

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Time allotted for oral presentations may be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person by April 22, 2011, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses, telephone number, fax, and e-mail of proposed participants, and an indication of the approximate time requested to make their presentation.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information, 12420 Parklawn Dr., Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: The purpose of the multilateral framework on the ICCR is to pave the way for the removal of regulatory obstacles to international trade while maintaining global consumer protection.

ICCR is a voluntary international group of cosmetics regulatory authorities from the United States, Japan, the European Union, and Canada. These regulatory authority members will enter into constructive dialogue with their relevant cosmetics' industry trade associations. Currently, the ICCR members are Health Canada; the European Directorate General for Enterprise and Industry; the Ministry of Health, Labor and Welfare of Japan; and the U.S. Food and Drug Administration. All decisions made by the consensus will be compatible with the laws, policies, rules, regulations, and directives of the respective administrations and governments. Members will implement and/or

promote actions or documents within their own jurisdictions and seek convergence of regulatory policies and practices. Successful implementation will require input from stakeholders.

The agenda for the public meeting will be made available on the Internet at *http://www.fda.gov/Cosmetics/InternationalActivities/ConferencesMeetingsWorkshops/InternationalCooperationonCosmeticsRegulationsICCR/default.htm.*

Dated: March 30, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–7966 Filed 4–4–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Cellular, Tissue, and Gene Therapies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Cellular, Tissue, and Gene Therapies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 31, 2011, from 2:30 p.m. to 6:15 p.m.

Location: National Institutes of Health (NIH) Campus, 29 Lincoln Dr., Bldg. 29B, Conference Rooms A and B, Bethesda, MD 20892.

The public is welcome to attend the meeting at NIH, Building 29B, Conference Rooms A and B, where a speakerphone will be provided. Public participation in the meeting is limited to the use of the speakerphone in the conference room. Important information about transportation and directions to the NIH campus, parking, and security procedures is available on the Internet at *http://www.nih.gov/about/visitor/index.htm.* (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.) Visitors must show two forms of identification, one of which must be a government-issued photo identification such as a Federal employee badge, driver's license, passport, green card, etc. Detailed information about security procedures is located at *http://www.nih.gov/about/visitorsecurity.htm.* Due to the limited available parking, visitors are encouraged to use public transportation.

Contact Person: Gail Dapolito or Sheryl Clark (HFM–71), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On May 31, 2011, the committee will meet in open session to hear brief overviews of research programs in the Laboratory of Biochemistry, Division of Therapeutic Proteins, Center for Drug Evaluation and Research; and the Laboratory of Cell Biology, the Laboratory of Molecular and Developmental Immunology, the Laboratory of Molecular Oncology, Division of Monoclonal Antibodies, Center for Drug Evaluation and Research.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: On May 31, 2011, from 2:30 p.m. to approximately 5:15 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 24, 2011. Oral presentations from the public will be scheduled between approximately 4:15 p.m. and 5:15 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 16, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 17, 2011.

Closed Committee Deliberations: On May 31, 2011, from 5:15 p.m. to 6:15 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss a report of intramural research programs and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA 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 Gail Dapolito at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 30, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–7968 Filed 4–4–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Interagency Breast Cancer and Environmental Research Coordinating Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below at least 10 days in advance of the meeting.

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC).

Date: May 12–13, 2011.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: The purpose of the meeting is to continue the work of the Committee, which is to share and coordinate information on existing research activities, and to make recommendations to the National Institutes of Health and other Federal agencies regarding how to improve existing research programs related to breast cancer and the environment. In advance of the meeting, the agenda will be posted on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: National Institute of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709. (919) 541–4980. *collman@niehs.nih.gov.*

Any member of the public interested in presenting oral comments to the committee should submit their remarks in writing at least 10 days in advance of the meeting. Comments in document format (*i.e.* WORD, Rich Text, PDF) may be submitted via e-mail to *ibcercc@niehs.nih.gov* or mailed to the Contact Person listed on this notice. You do not need to attend the meeting in order to submit comments.

Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral comments you wish to present. Only one representative per organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person. Oral comments will begin at approximately 4 p.m. on Friday, May 13, 2011. Anyone who wishes to attend the meeting and/or submit comments to the committee is asked to RSVP via the following e-mail: *ibcercc@niehs.nih.gov.* All comments are delivered to the Contact Person listed on this notice.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: March 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8048 Filed 4–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Device and System for Two Dimensional Analysis of Biomolecules From Tissue and Other Samples

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in PCT Patent Application No. PCT/US03/37208 [HHS Ref. No. E–339–2002/0–PCT–02], filed November 20, 2003, which published as WO 2004/048928 on June 10, 2004, now expired, entitled "Method And Apparatus for Performing Multiple Simultaneous Manipulations of Biomolecules In a Two-Dimensional Array;" U.S. Patent Application No. 10/535,521 [HHS Ref. No. E–339–2002/0–US–03], filed May 18, 2005, now abandoned, which published as US–2006–0147926 A1 on July 6, 2006 entitled "Method And Apparatus for Performing Multiple Simultaneous Manipulations of Biomolecules In a Two-Dimensional Array;" U.S. Patent Application No. 12/587,976 [HHS Ref. No. E–339–2002/0–US–04], filed October 14, 2009, which published as US–2010–010506 on April 29, 2010 entitled "Device for External Movement Manipulation of Nucleic Acids and/or Proteins;" U.S. Provisional Patent Application No. 61/206,458 [HHS Ref. No. E–130–2006/0–US–01] filed January 30, 2009, entitled, "Amplification Platform and Methods of Use Thereof, now expired, and PCT Patent Application No. PCT/US10/022586 [HHS Ref. No. E–130–2006/0–PCT–02] filed January 29, 2010 and which published as WO 2010/088517 on August 5, 2010, entitled, "Methods and Systems for Purifying, Transferring and/or Manipulating Nucleic Acids;" and all continuing applications and foreign counterparts to 2–D Bio, LLC, having a place of business in Gaithersburg, Maryland. The patent rights in these inventions have been assigned to the United States of America. However, the patent rights for HHS Ref. No. E–130–2006/0–US–01 and HHS Ref. No. E–130–2006/0–PCT–02 are co-owned and co-assigned to the University of Maryland. The United States of America has obtained an exclusive license to the University of Maryland's rights in the invention.

The prospective exclusive license territory may be "worldwide", and the field of use may be limited to "development of devices for sale and services for high throughput parallel analysis and two dimensional analyses of molecules for all uses."

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before May 5, 2011 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Kevin W. Chang, PhD, Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; *Telephone:* (301) 435–5018; *Facsimile:* (301) 402–0220; *E-mail: changke@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The subject technologies are methods, systems, and devices for purifying, transferring, or manipulating biomolecules, including nucleic acids from a sample, or performing a combination thereof, that substantially preserve two-dimensional (2D) spatial information on the original locations of the biomolecules within the sample.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C.

209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within thirty (30) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 29, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–8090 Filed 4–4–11; 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.

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Dated: March 30, 2011.

Elaine Parry,

Director, Office of Management, Technology, and Operations, SAMHSA.

[FR Doc. 2011–8000 Filed 4–4–11; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0124]

Notification of the Removal of Conditions of Entry on Vessels Arriving From the Islamic Republic of Mauritania

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that it is removing the conditions of entry on vessels arriving from the country of Islamic Republic of Mauritania.

DATES: The policy announced in this notice is effective on April 5, 2011.

ADDRESSES: This notice is part of docket USCG–2011–0124 and is available online by going to *http://www.regulations.gov,* inserting USCG–2011–0124 in the "Keyword" box, and then clicking "Search." This material is also available for inspection and 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 notice, call Mr. Michael Brown, International Port Security Evaluation Division, United States Coast Guard, telephone 202—372–1081. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826 or (toll free) 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Section 70110 title 46, United States Code, enacted as part of section 102(a) of the Maritime Transportation Security Act of 2002 (Pub. L. 107–295, Nov. 25, 2002) authorizes the Secretary of Homeland Security to impose conditions of entry on vessels requesting entry into the United States arriving from ports that are not maintaining effective anti-terrorism measures. It also requires public notice

of the ineffective anti-terrorism measures. The Secretary has delegated to the Coast Guard authority to carry out the provisions of this section. Previous notices have imposed or removed conditions of entry on vessels arriving from certain countries, and those conditions of entry and the countries they pertain to remain in effect unless modified by this notice. On May 2, 2005, the Coast Guard published a Notice of Policy in the **Federal Register**, (70 FR 22668), announcing that it had determined that ports in the Islamic Republic of Mauritania, among other countries, were not maintaining effective anti-terrorism measures, and imposed conditions of entry.

Based on recent information, the Coast Guard has determined that the Islamic Republic of Mauritania is now maintaining effective anti-terrorism measures, and is accordingly removing the conditions of entry announced in previously published Notice of Policy. With this notice, the current list of countries not maintaining effective anti-terrorism measures is as follows: Cambodia, Cameroon, Republic of the Congo, Cuba, Equatorial Guinea, Guinea-Bissau, Indonesia, Iran, Liberia, Madagascar, Sao Tome and Principe, Syria, Timor-Leste, and Venezuela.

This notice is issued under authority of 46 U.S.C. 70110(a)(3).

Dated: March 10, 2011.

Rear Admiral Paul F. Zukunft,

USCG, Deputy Commandant for Operations, Acting.

[FR Doc. 2011–8006 Filed 4–4–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1957–DR; Docket ID FEMA–2011–0001]

New York; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–1957–DR), dated February 18, 2011, and related determinations.

DATES: *Effective Date:* March 22, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 18, 2011.

Columbia, Dutchess, Kings, and Rockland Counties for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–8043 Filed 4–4–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5487–N–04]

Notice of Extension of Proposed Information Collection for Public Comment; Public Housing Financial Management Template

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 6, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410–5000; telephone 202.402.3400 (this is not a toll-free number) or email Ms. Pollard at *Colette_Pollard@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the extension of the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting alternate electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Financial Management Template.

OMB Control Number: 2535–0107.

Description of the need for the information and proposed use: To meet the requirements of the Uniform Financial Standards Rule (24 CFR part 5, subpart H) and the continued implementation of asset management contained in 24 CFR part 990, the Department has developed the financial

management template that public housing agencies (PHAs) use to annually submit electronically financial information to HUD. HUD uses the financial information it collects from each PHA to assist in the evaluation and assessment of the PHAs' overall condition. Requiring PHAs to report electronically has enabled HUD to provide a comprehensive financial assessment of the PHAs receiving federal funds from HUD.

Agency form number, if applicable: N/A.

Members of affected public: Public housing agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated number of respondents is 4,106 PHAs that submit one unaudited financial management template annually and 3,657 PHAs that submit one audited financial management template annually; for a total of 7,763 respondents. The average number of hours for each PHA response is 5.5 hours, for a total reporting burden of 42,620 hours.

Status of the proposed information collection: Extension, without change, of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 24, 2011.

Merrie Nichols-Dixon,

Deputy Director for Office of Policy, Program and Legislative Initiatives.

[FR Doc. 2011–8036 Filed 4–4–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF COMMERCE

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2010–N009; 1265–000–10137–S3]

Marianas Trench Marine National Monument, Commonwealth of the Northern Mariana Islands, et al.; Monument Management Plan, Comprehensive Conservation Plans, and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior; National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of intent; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS) and the National Atmospheric and Oceanic Administration (NOAA), intend to prepare the monument management plan (MMP) for the Marianas Trench Marine National Monument (Monument) established by Presidential Proclamation 8335. The MMP will satisfy FWS comprehensive conservation plan (CCP) requirements for two units of the National Wildlife Refuge System (NWRS) contained therein. When the draft MMP is complete, we will advertise its availability and again seek public comment.

We furnish this notice to advise the public and other Federal and local agencies of our intentions, and to obtain suggestions and information on the scope of issues to consider during the planning process.

An environmental assessment (EA) to evaluate the potential effects of various management alternatives will also be prepared. The EA will provide resource managers with the information needed to determine if the potential effects may be significant and warrant preparation of an Environmental Impact Statement (EIS), or if the potential impacts lead to a Finding of No Significant Impact (FONSI).

DATES: To ensure consideration, we must receive your written comments by May 5, 2011.

ADDRESSES: Additional information about the Monument and its two refuge units is available at *http://www.fws.gov/marianastrenchmarinemonument/* and *http://www.fpir.noaa.gov/MNM/mnm_index.html.* Please send your written comments or requests for more information by any of the following methods.

E-mail: Heidi.Hirsh@noaa.gov.

Fax: (808) 973–2941.

U.S. Mail: Heidi Hirsh, Natural Resource Management Specialist, NOAA, National Marine Fisheries Service, 1601 Kapiolani Blvd #1110, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Heidi Hirsh, Natural Resource Management Specialist, (808) 944–2223.

SUPPLEMENTARY INFORMATION:

Background

Monument Establishment and Management Responsibilities

On January 6, 2009, President George W. Bush issued Proclamation No. 8335 (Proclamation), establishing the Monument under the authority of the Antiquities Act of 1906. The Monument consists of three units: The Islands Unit encompasses the waters and submerged lands of the three northernmost Mariana Islands from the mean low water line out approximately 50 nautical miles (nmi); the Volcanic Unit encompasses each designated volcanic feature and the surrounding submerged lands out to 1 nmi; and the Trench Unit encompasses the submerged lands within the Mariana Trench.

The Monument encompasses approximately 61 million acres of submerged lands and certain waters of the Mariana Archipelago. The Trench Unit contains approximately 50.5 million acres of submerged lands, the Volcanic Unit includes approximately 55,912 acres of submerged lands, and the Islands Unit encompasses approximately 10.5 million acres of submerged lands and waters.

The Secretary of the Interior, in consultation with the Secretary of Commerce, has responsibility for management of the Monument; except that the Secretary of Commerce, in consultation with the Secretary of the Interior, has primary responsibility for management with respect to fishery-related activities regulated pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*), the Proclamation, and other applicable legal authorities.

The Proclamation requires the Secretaries of the Interior and Commerce to prepare management plans within their respective authorities for the Monument, and promulgate implementing regulations that address specific actions necessary for the proper care and management of the Monument. With this notice, the Department of the Interior and the Department of Commerce (Departments) are commencing development of the MMP. The Departments will work cooperatively under Fish and Wildlife Service's lead in this process. The Commerce Department, in consultation with the Secretary of the Interior, is working with the Western Pacific Fishery Management Council pursuant to the Magnuson-Stevens Fishery Conservation and Management Act and the Proclamation to develop a fisheries ecosystem plan amendment and related regulations. To the extent they relate to waters within the Monument, the plan amendment and implementing regulations will be one component of the MMP. The Departments intend to cooperate and coordinate in the development and timing of these planning and management processes.

To carry out his responsibilities from the President under the Proclamation, by Secretary's Order 3284 (Order) dated January 16, 2009, the Secretary of the Interior delegated all of his management responsibility for the Monument to the

FWS Director. The Order directs the FWS to manage the Volcanic Unit and the Trench Unit as units of the NWRS. The Order also directs the FWS to exercise all management responsibility given to the Secretary for the Islands Unit, but specifies that no part of it is included as a unit of the NWRS. In carrying out this delegation with respect to the two units added to the NWRS, and to facilitate public awareness that their status is slightly different than that of the Islands Unit, the FWS named the Trench Unit the Mariana Trench National Wildlife Refuge, and the Volcanic Unit the Mariana Arc of Fire National Wildlife Refuge.

The Monument's Natural Resources

The Volcanic Unit contains unique geological features found nowhere else in the world, including the largest active mud volcanoes, vents expelling almost pure liquid carbon dioxide, a pool of liquid sulfur, and one of only a few places in the world where photosynthetic and chemosynthetic communities of life coexist. The Trench Unit, where the Pacific Plate plunges into the Earth's mantle, contains the deepest point on Earth. The Islands Unit encompasses the waters of the archipelago's three northern islands, which are among the most biologically diverse in the western Pacific Ocean, and includes the greatest diversity of seamount and hydrothermal vent life yet discovered.

The MMP Planning Process

The MMP's format will include elements similar to a NWRS CCP, and the planning process for those elements will be conducted in a manner similar to the CCP planning and public involvement process. The MMP will be updated every 15 years.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Refuge System Administration Act), requires FWS to develop a CCP for each national wildlife refuge or planning unit. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the NWRS, consistent with sound principles of fish and wildlife management and natural resource conservation, legal mandates, and applicable policies. In addition to outlining broad management direction for conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

We will conduct environmental reviews of various management alternatives and develop an EA in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

The Fish and Wildlife Service, as lead agency for NEPA purposes, will also designate and involve as cooperating agencies the Department of Commerce, through NOAA; the Department of Defense; the Department of State; and the Government of the Commonwealth of the Northern Mariana Islands (CNMI), in accordance with NEPA and Executive Order 13352 of August 26, 2004, titled Facilitation of Cooperative Conservation.

The MMP is to provide for the following activities, to the extent appropriate to Department of the Interior and Department of Commerce authorities and the Proclamation:

- Management of the Islands Unit, in consultation with the Government of the CNMI, including designating specific roles and responsibilities, and identifying the means of consultation on management decisions as appropriate and consistent with the respective authorities and jurisdictions of the CNMI and the Secretaries of the Interior and Commerce.
- Public education programs and public outreach regarding the Monument's coral reef ecosystem, related marine resources and species, and conservation efforts.
- Traditional access to the Monument by indigenous persons, as identified by the Secretaries of the Interior and Commerce in consultation with the Government of the CNMI, for culturally significant subsistence and other cultural and religious uses.
- A program to assess and promote Monument-related scientific exploration and research, tourism, and recreational and economic activities and opportunities in the CNMI.
- A process to consider requests for recreational fishing permits in certain areas of the Islands Unit.
- Programs for monitoring and enforcement necessary to ensure that scientific exploration and research, tourism, and recreational and commercial activities do not degrade the Monument's coral reef ecosystem or related marine resources or species, or diminish the Monument's natural character.

Public Involvement

The FWS and NOAA will conduct the planning process in a manner that will provide participation opportunities for the public, Federal and local government agencies, and other interested parties. At this time, we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of the Monument. Opportunities for additional public input will be announced throughout the planning process. We may hold public meetings to help share information and obtain comments.

Preliminary Issues, Concerns, and Opportunities

We identified the following preliminary issues and opportunities that we may address in the MMP. We expect to identify additional issues during public scoping.

- Climate change impacts and adaptation.
- Marine debris impacts and removal.
- Invasive species prevention and control.
- Other potential threats to the ecosystem (e.g., trespass; illegal fishing; and shipwrecks, groundings, and spills).
- Emergency response to natural and manmade disasters and natural resources damage assessments.
- Operational capabilities for effective ecosystem monitoring, surveillance, and enforcement.
- Habitat conservation and restoration.
- Biological and abiotic inventory and monitoring.
- Protected resources and their habitats, including coral reefs, marine clams, apex predators, marine mammals, sea turtles, seabirds, and fishes.
- Historic and cultural resources, including maritime heritage.
- Public education and outreach.
- International programs and collaboration.
- Scientific exploration and research opportunities.
- Developing an appropriate permitting regime for activities within the Monument.
- Determining if bioprospecting is appropriate and compatible.

Next Steps

The FWS and NOAA, in consultation with the Mariana Monument Advisory Council, and the Government of the CNMI, will be considering your comments during development of the Draft MMP/CCPs/EA.

Public Availability of Comments

Before including your address, phone number, 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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Robyn Thorson,

Regional Director, Region 1, Portland, Oregon.

Emily H. Menashes,

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

[FR Doc. 2011–7960 Filed 4–4–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2009–N265; 1265–0000–10137–S3]

Pacific Remote Islands Marine National Monument; Monument Management Plan, Comprehensive Conservation Plans, and Environmental Assessment

AGENCIES: Fish and Wildlife Service, Interior; National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of intent; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration (NOAA), intend to prepare the monument management plan (MMP) for the Pacific Remote Islands Marine National Monument (Monument), established by Presidential Proclamation 8336. Additionally, the FWS also intends to prepare new or revised comprehensive conservation plans (CCPs) for the following national wildlife refuges (Refuges) contained therein: Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Palmyra Atoll, and Wake Atoll. When the draft MMP is complete, we will advertise its availability and again seek public comment. We furnish this notice to advise the public and other Federal agencies of our intentions, and to obtain suggestions and information on the scope of issues to consider during the planning process.

An environmental assessment (EA) to evaluate the potential effects of various management alternatives will also be prepared. The EA will provide resource managers with the information needed to determine if the potential effects may be significant and warrant preparation of an Environmental Impact Statement (EIS), or if the potential impacts lead to a Finding of No Significant Impact (FONSI).

DATES: To ensure consideration, we must receive your comments by May 5, 2011.

ADDRESSES: Additional information about the Monument and its seven Refuge units is available at *http://www.fws.gov/pacificremoteislandsmarinemonument/* and *http://www.fpir.noaa.gov/MNM/mnm_index.html.* Please send your written comments or requests for more information by any of the following methods:

E-mail: Pacific_Reefs@fws.gov.

Fax: (808) 792–9586.

U.S. Mail: Susan White, Project Leader, Pacific Reefs National Wildlife Refuge Complex, 300 Ala Moana Blvd. Room 5–231, Honolulu, HI 96850.

FOR FURTHER INFORMATION CONTACT: Susan White, Project Leader, (808) 792–9550.

SUPPLEMENTARY INFORMATION:

Background

Monument Establishment and Management Responsibilities

On January 6, 2009, President George W. Bush issued Proclamation No. 8336 (Proclamation), establishing the Monument under the authority of the Antiquities Act of 1906. The Monument incorporates approximately 86,888 square miles within its boundaries, which extend 50 nautical miles (nmi) from the mean low water lines of Baker, Howland, and Jarvis Islands; Johnston, Palmyra, and Wake Atolls; and Kingman Reef. The Secretary of the Interior, in consultation with the Secretary of Commerce, has responsibility for management of the Monument, including out to 12 nmi from the mean low water lines of Baker, Howland, and Jarvis Islands; Johnston, Palmyra, and Wake Atolls; and Kingman Reef, pursuant to applicable legal authorities. The Secretary of Commerce, through NOAA, and in consultation with the Secretary of the Interior, has primary responsibility for management of the Monument seaward from 12 to 50 nmi with respect to fishery-related activities regulated pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*), the Proclamation, and other applicable legal authorities.

The Proclamation requires the Secretaries of the Interior and Commerce to prepare management plans within their respective authorities for the Monument, and promulgate implementing regulations that address specific actions necessary for the proper care and management of the Monument. With this notice, the Department of the Interior and Department of Commerce (Departments) are commencing development of the MMP. The Departments will work cooperatively under the Fish and Wildlife Service's lead in this process. The Commerce Department, in consultation with the Secretary of the Interior, is working with the Western Pacific Fishery Management Council pursuant to the Magnuson-Stevens Fishery Conservation and Management Act and Proclamation to develop a fisheries ecosystem plan amendment and related regulations. To the extent they relate to waters within the Monument, the plan amendment and implementing regulations will be one component of the MMP. The Departments intend to cooperate and coordinate in the development and timing of these planning and management processes.

To carry out his responsibilities from the President under the Proclamation, on January 16, 2009, the Secretary of the Interior delegated his authority for Monument management to the FWS Director, and extended the boundaries of the Baker Island, Howland Island, and Jarvis Island Refuges from 3 nmi to 12 nmi from the mean low water lines of the emergent land. The Secretary also extended the Johnston Atoll Refuge boundary to 12 nmi from the mean low water line of the emergent land, and added the emergent and submerged lands and waters of Wake Island out to 12 nmi as a unit of the National Wildlife Refuge System (NWRS). In accordance with the Proclamation, the Director will not commence management of emergent lands at Wake Island unless and until a use agreement between the Secretary of the Air Force and the Secretary of the Interior is terminated. The Secretary of Defense also continues to manage those portions of the emergent lands of Johnston Atoll under the administrative jurisdiction of the Defense Department until such administrative jurisdiction is terminated, at which time those emergent lands shall be administered as part of the Johnston Atoll Refuge.

Within the boundaries of the Monument, the FWS also continues to administer pre-existing refuges at Baker, Howland, and Jarvis Islands; Johnston and Palmyra Atolls; and Kingman Reef, in accordance with the National Wildlife Refuge System Administration

Act of 1966 (Refuge System Administration Act) (16 U.S.C. 668dd–668ee), as amended.

Refuges Overview and Previous Planning Efforts

Howland Island, Baker Island, and Jarvis Island are unique places for climate change research and other research conducted at the equator. These areas have deep-water corals, coral reefs, corals in near-pristine condition, and predator-dominated marine ecosystems with a biomass of top predators that exceeds the Great Barrier Reef's. At the conclusion of a 3-year planning process, CCPs were completed for the Baker Island, Howland Island, and Jarvis Island Refuges on September 24, 2008 (73 FR 76678; December 17, 2008). For the current MMP/CCP planning process, we will focus on appropriate conservation and management regimes for the three Refuges, based on their inclusion in the Monument and their expanded boundaries. The existing CCPs for the three Refuges will be revised as needed.

Kingman Reef and Palmyra Atoll have relatively undisturbed coral reefs, with the highest levels of coral diversity in the central Pacific Ocean. Kingman Reef has the greatest known fish biomass and proportion of apex predators of any coral reef ecosystem that has been scientifically studied in the world. We received public comments regarding management of the Kingman Reef and Palmyra Atoll Refuges during our CCP public scoping period held in June 2007. We will review those comments again as part of the current MMP/CCP planning and public involvement process.

Johnston Atoll's coral reefs help connect the Hawaiian archipelago reef communities to others in the Pacific. They are the originating source for much of the larvae for the Hawaiian Islands' corals, invertebrates, and other reef fauna. The Atoll's reefs have the deepest reef-building corals on record. Wake Atoll encompasses possibly the oldest living coral atoll in the world, and has healthy and abundant coral and fish populations. No previous CCP planning occurred for the Johnston Atoll and Wake Atoll Refuges.

The MMP and CCP Planning Process

The MMP's format will include elements similar to a NWRS CCP, and the planning process will be conducted in a manner similar to the CCP planning and public involvement process for those elements. The Refuge System Administration Act requires that a CCP be developed for each national wildlife refuge or planning unit. The purpose for developing a CCP is to provide refuge managers with a 15-year direction for achieving refuge purposes and contributing toward the mission of the NWRS, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and applicable policies. In addition to outlining broad management direction for conserving wildlife and habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the MMP and CCPs at least every 15 years consistent with the Refuge System Administration Act.

Each unit of the NWRS was established for specific purposes. We use a refuge's purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the mission of the NWRS, and to determine how the public can use each refuge. The CCP planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing recreational opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

We will conduct environmental reviews of various alternatives and develop an EA in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other Federal laws and regulations; and applicable policies and procedures for compliance with those laws and regulations.

The Fish and Wildlife Service, as lead agency for NEPA purposes, will also designate and involve as a cooperating agency the Department of Commerce, through NOAA, in accordance with NEPA and Executive Order 13352 of August 26, 2004, titled Facilitation of Cooperative Conservation.

Public Involvement

The FWS and NOAA will conduct the planning process in a manner that will provide participation opportunities for the public, Federal agencies, and other interested parties. At this time, we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of the Monument and the Refuges. Opportunities for additional public input will be announced throughout the planning process. We may hold public meetings to help share information and obtain comments.

Preliminary Issues, Concerns, and Opportunities

We have identified the following preliminary issues, concerns, and opportunities that we may address in the MMP/CCPs. We may identify additional issues during public scoping.

- Climate change impacts and adaptation.
- Marine debris impacts and removal.
- Invasive species prevention and control.
- Other potential threats to the ecosystem (*e.g.,* trespass; illegal fishing; and shipwrecks, groundings, and spills).
- Emergency response to natural and manmade disasters and natural resources damage assessments.
- Operational capabilities for effective ecosystem monitoring, surveillance, and enforcement.
- Habitat conservation and restoration.
- Biological and abiotic inventory and monitoring.
- Protected resources and their habitats, including coral reefs, marine clams, apex predators, marine mammals, sea turtles, seabirds, and fishes.
- Historic and cultural resources, including maritime heritage.
- Public education and outreach.
- International programs and collaboration.
- Scientific exploration and research opportunities.
- Past and current use of military sites.
- Methods for protecting the physical, biological, and cultural resources for the long term, while providing high-quality wildlife-dependent recreation opportunities.
- Marine and terrestrial wildlife and habitat management.
- Visitor services management.
- Facilities maintenance.
- Develop an appropriate permitting regime for activities in the Monument, where necessary.
- Determine if bioprospecting is appropriate and compatible.

Next Steps

The FWS and NOAA will be considering your comments during the development of the Draft MMP/CCPs/EA.

Public Availability of Comments

Before including your address, phone number, 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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Robyn Thorson,

Regional Director, Region 1, Portland, Oregon.

Margo Schultz-Haugen,

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

[FR Doc. 2011–7962 Filed 4–4–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ910000.L12100000. XP0000LXSS150A00006100.241A]

State of Arizona Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Resource Advisory Council (RAC) will meet in Phoenix, Arizona, as indicated below.

DATES: Meetings will be held on May 4–5, 2011, from 8 a.m. until 4:30 p.m. each day.

ADDRESSES: The meetings will be held at the BLM National Training Center located at 9828 North 31st Avenue, Phoenix, Arizona 85051.

FOR FURTHER INFORMATION CONTACT: Dorothea Boothe, Arizona RAC Coordinator at the Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427, 602–417–9504. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Arizona. Planned agenda items include: A welcome and introduction of new Council members; BLM State Director's update on BLM programs and issues; updates on the Arizona Water Strategy, Renewable Energy Projects, BLM Wild Lands Policy and the Northern Arizona Proposed Mineral Withdrawal Draft EIS; RAC questions on BLM District Managers' Reports; reports by the RAC working groups and other items of interest to the RAC. Members of the public are welcome to attend the RAC Working Group meetings on May 4, and the Business meeting on May 5. A half-hour public comment period, where the public may address the Council, is scheduled on May 5 from 11:30 a.m. to Noon for any interested members of the public who wish to address the Council on BLM programs and business. Depending on the number of persons wishing to speak and time available, the time for individual comments may be limited. Written comments may be sent to the Bureau of Land Management address listed above. Final meeting agendas will be available two weeks prior to the meeting dates and posted on the BLM Web site at: *http://www.blm.gov/az/st/en/res/rac.html.* Individuals who need special assistance such as sign language interpretation or other reasonable accommodations should contact the RAC Coordinator listed above no later than two weeks before the start of the meeting.

Under the Federal Lands Recreation Enhancement Act, the RAC has been designated as the Recreation Resource Advisory Council (RRAC), and has the authority to review all BLM and Forest Service (FS) recreation fee proposals in Arizona. The RRAC will not review any recreation fee proposals at this meeting.

James G. Kenna,

Arizona State Director.

[FR Doc. 2011–7993 Filed 4–4–11; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORP00000.L10200000.DD0000; HAG 11–0187]

Notice of Public Meeting, John Day-Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day-Snake Resource Advisory Council (RAC) will meet as indicated below:

DATES: The RAC meeting will take place on May 3 and May 4, 2011.

ADDRESSES: The meeting will be held at The Dalles Inn, 112 West 2nd Street, The Dalles, Oregon 97058.

FOR FURTHER INFORMATION CONTACT: Mark Wilkening, Public Affairs Specialist, BLM Vale District Office, 100 Oregon Street, Vale, Oregon 97918, (541) 473–6218 or e-mail *mark_wilkening@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The business meeting will take place from 8 a.m. to 5 p.m. on May 3, 2011, at The Dalles Inn, 112 West 2nd Street, The Dalles, Oregon 97058. The agenda may include such topics as: a presentation on the Environmental Impact Statement (EIS) being prepared for the Navy Bombing Range at Boardman Oregon; an update on the Baker Resource Management Plan; an update on The John Day Resource Management Plan; the Forest Service Blue Mountain Plan revision; John Day Environmental Assessment (EA) and Permit System; Status Report on the BLM Vegetation EIS step-down to the District Treatments; information on the effects of the Department of the Interior's Wild Lands policy, a report by the Federal Managers on litigation, energy projects and other issues affecting their Districts; an orientation for new members of the RAC; and other matters that may reasonably come before the council. The public is welcome to attend all portions of the meeting and may make oral comments to the Council at 1 p.m. on May 3, 2011. Those who verbally address the RAC are asked to provide a *written* statement of their comments or presentation. Unless otherwise approved by the RAC Chair, the public comment period will last no longer than 15 minutes, and each speaker may address the RAC for a maximum of five minutes. If reasonable accommodation is required, please contact the BLM Vale District Office at (541) 473–6218 as soon as possible. A field trip is scheduled for May 4, 2011; the RAC will view the proposed new State of Oregon Campground, Cottonwood Canyon. In addition, the RAC members will have an

opportunity to discuss issues concerning the John Day River and corridor.

Debbie Henderson-Norton,

Prineville District Manager.

[FR Doc. 2011–8079 Filed 4–4–11; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV9230000 L13100000.FI0000 241A; NVN–78597; NVN–85277; NVN–85278; 11–08807; MO#4500019638; TAS: 14x1109]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) received a petition for reinstatement from Makoil, Inc. and Piney Fork Production Co., for competitive oil and gas leases NVN–78597, NVN–85277, and NVN–85278 on land in Nye County, Nevada. The petition was timely filed and was accompanied by all the rentals due since the leases terminated under the law. No valid leases have been issued affecting the lands.

FOR FURTHER INFORMATION CONTACT: Atanda Clark, BLM Nevada State Office, 775–861–6632, or *e-mail: Atanda_Clark@blm.gov.*

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rental and royalties at rates of $10 per acre or fraction thereof per year and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee for each lease and have reimbursed the Department for the cost of this **Federal Register** notice. The lessees have met all of the requirements for reinstatement of the leases as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 [30 U.S.C. 188], and the BLM is proposing to reinstate the leases effective July 1, 2010 under the original terms and conditions of the leases and the increased rental and royalty rates cited above. The BLM has not issued a lease affecting the lands encumbered by these leases to any other interest in the interim.

Authority: 43 CFR 3108.2–3(a) and (b).

Gary Johnson,

Deputy State Director, Minerals Management.

[FR Doc. 2011–8073 Filed 4–4–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT922200–11–L13100000–FI0000–P; MTM 89460, MTM 89461, MTM 89467 and MTM 89468]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases MTM 89460, MTM 89461, MTM 89467, and MTM 89468, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per 30 U.S.C. 188(d), Sleepy Hollow Oil & Gas, LLC timely filed a petition for reinstatement of competitive oil and gas leases MTM 89460, MTM 89461, MTM 89467, and MTM 89468, Fergus County, Montana. The lessee paid the required rentals accruing from the date of termination.

No leases were issued that affect these lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre and 16⅔ percent. The lessee paid the $500 administration fee for the reinstatement of each lease and $163 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the leases per Sec. 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the leases, effective the date of termination subject to:

- The original terms and conditions of the leases;
- The increased rental of $10 per acre;
- The increased royalty of 16⅔ percent; and
- The $163 cost of publishing this Notice.

FOR FURTHER INFORMATION CONTACT: Teri Bakken, Chief, Fluids Adjudication Section, Bureau of Land Management Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5091.

Teri Bakken,

Chief, Fluids Adjudication Section.

[FR Doc. 2011–8072 Filed 4–4–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of May 7, 2011 Meeting.

SUMMARY: This notice sets forth the date of the May 7, 2011, meeting of the Flight 93 Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Saturday, May 7, 2011, from 10 a.m. to 1 p.m. (Eastern).

Location: The meeting will be held at the Flight 93 National Memorial Office, 109 West Main Street Suite 104, Somerset, PA 15501.

Agenda

The May 7, 2011, will consist of:

1. Opening of Meeting and Pledge of Allegiance
2. Review and Approval of Commission Minutes from February 5, 2011.
3. Reports from the Flight 93 Memorial Task Force and National Park Service.
4. Old Business
5. New Business
6. Public Comments
7. Closing Remarks

FOR FURTHER INFORMATION CONTACT: Keith E. Newlin, Superintendent, Flight 93 National Memorial, P. O. Box 911, Shanksville, PA 15560, 814–893–6322.

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. Address all statements to: Flight 93 Advisory Commission, P. O. Box 911, Shanksville, PA 15560. 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: March 9, 2011.

Keith E. Newlin,

Superintendent, Flight 93 National Memorial.

[FR Doc. 2011–8085 Filed 4–4–11; 8:45 am]

BILLING CODE 4312–25–P

DEPARTMENT OF THE INTERIOR

National Park Service

[1730–SZM]

Cape Cod National Seashore; South Wellfleet, MA; Cape Cod National Seashore Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Two Hundred Seventy-Ninth Notice of Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory

Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10) of a meeting of the Cape Cod National Seashore Advisory Commission.

DATES: The meeting of the Cape Cod National Seashore Advisory Commission will be held on May 23, 2011, at 1 p.m.

ADDRESSES: The Commission members will meet in the meeting room at Headquarters, 99 Marconi Station, Wellfleet, Massachusetts.

SUPPLEMENTARY INFORMATION: The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The regular business meeting is being held to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting
(March 14, 2011)
3. Reports of Officers
4. Reports of Subcommittees
   - Nickerson Fund discussion
5. Superintendent's Report
   Update on Dune Shacks
   Improved Properties/Town Bylaws
   Herring River Wetland Restoration
   Wind Turbines/Cell Towers
   Flexible Shorebird Management
   Highlands Center Update
   Alternate Transportation funding
   Ocean stewardship topics—shoreline change
   Climate Friendly Park program update
   50th Anniversary
6. Old Business
7. New Business
8. Date and agenda for next meeting
9. Public comment and
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent prior to the meeting. 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.

FOR FURTHER INFORMATION CONTACT: Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: March 29, 2011.

George E. Price, Jr.,

Superintendent.

[FR Doc. 2011–8087 Filed 4–4–11; 8:45 am]

BILLING CODE 4310–WV–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0311–7010; 2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 19, 2011. Pursuant to section 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 20, 2011. 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.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

CALIFORNIA

San Diego County

Peterson, Capt. & Mrs. A.J., House, 1010 Glorietta Blvd., Coronado, 11000217

COLORADO

Delta County

Paonia First Christian Church, 235 Box Elder Ave., Paonia, 11000218

Hinsdale County

Lost Trail Station, 81125 Forest Service Rd. 520, Creede, 11000219

INDIANA

Porter County

Solomon Enclave, 901, 903, 907 E. Lake Front Dr., Beverly Shores, 11000220

MICHIGAN

Kalamazoo County

Haymarket Historic District (Boundary Increase II), (Kalamazoo MRA) 105–141 E. Michigan Ave., Kalamazoo, 11000221

Wayne County

Prentis Building and DeRoy Auditorium Complex, 5203 Cass Ave., Detroit, 11000222

MISSOURI

St. Louis County

Medart's 7036 Clayton Ave., St. Louis, 09000410

MONTANA

Carbon County

Bluewater Creek Bridge, (Reinforced Concrete Bridges in Montana, 1900–1958 MPS) Milepost 8 on Bluewater Cr. Rd., Fromberg, 11000223

Dawson County

Bad Route Creek Bridge, (Reinforced Concrete Bridges in Montana, 1900–1958 MPS) Milepost 20 on Cnty. Rd. 261, Fallon, 11000224

Lewis and Clark County

Sheep Creek Bridge, (Reinforced Concrete Bridges in Montana, 1900–1958 MPS) Milepost 5 on Recreation Rd., Wolf Creek, 11000225

Park County

Carter Bridge, (Reinforced Concrete Bridges in Montana, 1900–1958 MPS) Milepost 31.6 on MT 540, Livingston, 11000226

Powell County

Conley Street Bridge, (Reinforced Concrete Bridges in Montana, 1900–1958 MPS) Clark Fork R. Crossing on Conley St., Deer Lodge, 11000227

NEW YORK

Bronx County

Dollar Savings Bank, 2792 3rd. Ave., Bronx, 11000228

Kings County

Wallabout Historic District, 73–83 & 123–141 Cleremont; 74–148 & 75–143 Clinton; 381–387, 403–421 & 455–461 Myrtle; 74–132 & 69–149 Vanderbilt Aves., Brooklyn, 11000229

Westchester County

Presbyterian Rest for Convalescents, 69 N. Broadway, White Plains, 11000230

OHIO

Cuyahoga County

Stanley Block 2115–2121 Ontario St., Cleveland, 94000591

PENNSYLVANIA

Pike County

Grey, Zane, House (Boundary Increase), 135 Lackawaxen Scenic Dr., Lackawaxen, 11000231

TEXAS

Palo Pinto County

Gallagher House, 2729 Union Hill Rd., Mineral Wells, 11000232

UTAH

Morgan County

South Round Valley School, 1925 E. Round Valley Rd., Morgan, 11000233

Salt Lake County

Westmoreland Place Historic District, Roughly bounded by 1300 South, 1500 East, Sherman Ave. & 1600 East Sts., Salt Lake City, 11000234

Sanpete County

Poulson—Hall House, 90 S. 100 East, Manti, 11000235

[FR Doc. 2011–7974 Filed 4–4–11; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Integrated Water Resource Management Plan, Yakima River Basin Water Enhancement Project, Benton, Kittitas, Klickitat, and Yakima Counties, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a combined planning report and programmatic environmental impact statement, and notice of scoping meetings.

SUMMARY: The Bureau of Reclamation (Reclamation) proposes to prepare a combined Planning Report and Programmatic Environmental Impact Statement (EIS) on the Integrated Water Resource Management Plan, Yakima River Basin Water Enhancement Project. The Washington State Department of Ecology (Ecology) will be a joint lead agency with Reclamation in the preparation of this Programmatic EIS, which will also be used to comply with requirements of the Washington State Environmental Policy Act (SEPA).

DATES: Written comments on the proposal, reasonable alternatives to the proposal, potential environmental impacts, and mitigation measures will be accepted through May 19, 2011 for inclusion in the scoping summary document.

Scoping meetings, preceded by open houses, will be held at the following communities, dates, and times:

- Ellensburg, Washington; May 3, 2011; open house and scoping meeting 1:30 to 3:30 pm and again from 5 to 7 pm.
- Yakima, Washington; May 5, 2011; open house and scoping meeting 1:30 to 3:30 pm and again from 5 to 7 pm.

Requests for sign language interpretation for the hearing impaired or other special assistance needs should be submitted by April 26, 2011.

ADDRESSES: Send written scoping comments, requests to be added to the mailing list, or requests for sign language interpretation for the hearing impaired or other special assistance needs, to Bureau of Reclamation, Columbia-Cascades Area Office, Attention: Candace McKinley, Environmental Program Manager, 1917 Marsh Road, Yakima, WA 98901; or by e-mail to *yrbwep@usbr.gov.*

The Ellensburg open house and scoping meetings will be held at the Hal Holmes Center, 209 N. Ruby Street, Ellensburg, Washington 98926. The Yakima open house and scoping meetings will be held at the Yakima Area Arboretum, 1401 Arboretum Way, Yakima, Washington 98901. The meeting facilities are physically accessible to people with disabilities.

Information on this project may also be found at *http://www.usbr.gov/pn/programs/yrbwep/index.html.*

FOR FURTHER INFORMATION CONTACT: Contact Candace McKinley, Environmental Program Manager, Telephone (509) 575–5848, ext. 237. TTY users may dial 711 to obtain a toll-free TTY relay.

SUPPLEMENTARY INFORMATION:

Background

In 1979, Congress initiated the Yakima River Basin Water Enhancement Project (YRBWEP) in response to long-standing water resource problems in the basin. The YRBWEP was charged with developing a plan to achieve four objectives: (1) Provide supplemental water for presently irrigated lands; (2) provide water for new lands within the Yakama Indian Reservation; (3) provide water for increased instream flows for aquatic life; and (4) identify a comprehensive approach for efficient management of basin water supplies.

Initial efforts in the mid-1980s (Phase 1) focused on improving fish passage by rebuilding fish ladders and constructing fish screens at existing diversions. Phase 2 in the 1990s focused on water conservation/water acquisition activities, tributary fish screens, and long-term management needs. Efforts under these initial phases were hindered by the ongoing uncertainties associated with adjudication of the basin surface waters that began in 1978. With the adjudication process now largely completed, most of these water right uncertainties have been addressed.

In 2003, Reclamation and Ecology initiated the Yakima River Basin Water Storage Feasibility Study to examine storage augmentation in the Yakima River basin. This study emphasized evaluation of a proposed Black Rock Reservoir, which was the focus of the Yakima River Basin Water Storage Feasibility Study Draft Planning Report/Environmental Impact Statement (PR/EIS) issued in January 2008.

The narrow focus of the legislative authorization in combination with comments on the Draft PR/EIS prompted Ecology to separate from the National Environmental Policy Act (NEPA) process. In mid-2008, Ecology initiated a separate evaluation of the Yakima basin's water supply problems, including consideration of habitat and fish passage needs. Reclamation continued the NEPA process consistent with its legislative authorization and issued the Yakima River Basin Water Storage Feasibility Study Final PR/EIS in December 2008. Following issuance of the Final PR/EIS, Reclamation selected the No Action Alternative. Ecology completed its study and issued a separate Final Environmental Impact Statement (FEIS) for the Yakima River Basin Integrated Water Resource Management Alternative in June 2009 under SEPA.

The Integrated Water Resource Management Alternative evaluated in the Ecology FEIS relies upon a range of water management and habitat improvement approaches comprised of seven major elements to resolve the long-standing water resource problems in the basin. Elements of the Integrated Water Resource Management Plan that will be analyzed in the Programmatic EIS include, but are not limited to:

1. Fish Passage (fish passage improvements at Cle Elum, Bumping, Clear Lake, Keechelus, Kachess, and Tieton Dams);

2. Structural/Operational Changes (subordination of power generation at Roza and Chandler Power Plants);

3. Surface Storage (new Wymer Dam and Reservoir, Bumping Reservoir enlargement, Kachess inactive storage);
4. Groundwater Storage (groundwater infiltration prior to storage control);
5. Fish Habitat (mainstem floodplain restoration program);
6. Enhanced Water Conservation (agricultural water and municipal/domestic conservation); and
7. Market-Based Reallocation of Water Resources (institutional improvements to facilitate market-based water transfers).

The proposed plan may affect Indian trust assets of the Yakama Nation and the Confederated Tribes of the Umatilla Indian Reservation. There are no known adverse or significant impacts to minority or low-income populations or communities associated with this proposal.

Reclamation is requesting early public comment and agency input to help identify significant issues and alternatives to be addressed in the Programmatic EIS. Information obtained during the scoping period will help in developing information to be included in the Programmatic EIS. A Draft Programmatic EIS is expected to be issued in winter of 2011, followed by an opportunity for public and agency review and comment. The Final Programmatic EIS is anticipated for completion in spring of 2012. A Record of Decision, describing which alternative is selected for implementation, and the rationale for its selection, would then be issued following a 30-day waiting period.

Public Involvement

Reclamation and Ecology will conduct public scoping meetings to solicit comments on the alternatives for the Integrated Water Resource Management Plan, and to identify potential issues and impacts associated with those alternatives. Reclamation and Ecology will summarize comments received during the scoping meetings and from letters of comment received during the scoping period, identified under the **DATES** section, into a scoping summary document that will be made available to those who have provided comments. It will also be available to others upon request. If you wish to comment, you may provide your comments as indicated under the **ADDRESSES** section.

Public Disclosure

Before including your name, 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 may 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: March 29, 2011.

Steven L. Brawley,

Acting Regional Director, Pacific Northwest Region.

[FR Doc. 2011–7969 Filed 4–4–11; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–478 and 731–TA–1182 (Preliminary)]

Certain Steel Wheels From China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701–TA–478 and 731–TA–1182 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of certain steel wheels, provided for in subheading 8708.70 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by May 16, 2011. The Commission's views are due at Commerce within five business days thereafter, or by May 23, 2011.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* March 30, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Douglas Corkran (202–205–3057), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on March 30, 2011, by Accuride Corp., Evansville, IN, and Hayes Lemmerz International, Inc., Northville, MI.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal**

Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 8:45 a.m. on April 20, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be filed in writing with the Secretary to the Commission on or before April 18, 2011. Parties in support of the imposition of antidumping and countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 25, 2011, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: March 31, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–7997 Filed 4–4–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1063, 1064, 1066–1068 (Review)]

Frozen Warmwater Shrimp From Brazil, China, India, Thailand, and Vietnam

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 orders on frozen warmwater shrimp from Brazil, China, India, Thailand, and Vietnam would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted these reviews on January 4, 2010 (75 FR 1078, January 8, 2010) and determined on April 9, 2010 that it would conduct full reviews (75 FR 22424, April 28, 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 11, 2010 (75 FR 48724). The hearing was held in Washington, DC, on February 1, 2011, 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 March 30, 2011. The views of the Commission are contained in USITC Publication 4221 (March 2011), entitled *Frozen Warmwater Shrimp From Brazil, China, India, Thailand, and Vietnam: Investigation Nos. 1063, 1064, 1066–1068 (Review).*

By order of the Commission.

Issued: March 30, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–7996 Filed 4–4–11; 8:45 am]

BILLING CODE P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Daniel R. Pearson determines that revocation of the antidumping duty orders covering frozen warmwater shrimp from Brazil, China, India, Thailand, and Vietnam 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.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on March 18, 2011, a proposed Consent Decree in *United States* v. *Exxon Mobil Corporation, et al.,* C.A. No. 4:11–cv–01037 (S.D. Tex.), was lodged with the United States District Court for the Southern District of Texas. The Consent Decree resolves the United States' claims for response costs against a number of defendants, pursuant to Section 107(a)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607(a)(3). The complaint filed simultaneously with the lodging of the Consent Decree names as defendants Exxon Mobil Corporation, Ashland, Inc., Eurecat U.S. Incorporated, Akzo Nobel, Inc., Flint Hills Resources, LP, Irving Oil Limited, ConocoPhillips Company, Texaco, Inc., and Chevron U.S.A., Inc. The claims against the defendants relate to response costs incurred by the United States in connection with response activities taken with respect to the Many Diversified Interests Site, at Operable Unit 1 ("OU–1"), located in Houston, Texas. Specifically, the United States' complaint alleges that the defendants sent spent catalyst that contained hazardous substances, including, but not limited to nickel and molybdenum, to OU–1 for disposal or treatment. Under the Consent Decree, the defendants will pay the United States $1,750,000 in reimbursement of a portion of the response costs incurred by the United States in connection with OU–1.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed 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. *Exxon Mobil Corporation, et al.,* DOJ Reference No. 90–11–3–09228.

The Consent Decree may be examined at the U.S. EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent 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 of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of $7.25 (25 cents per page production costs), payable to the U.S. Treasury or, if requesting by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–7977 Filed 4–4–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States *et al.* v. Dean Foods Company; Proposed Final Judgment, Stipulation and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Wisconsin in *United States of America, et al.* v. *Dean Foods Company,* Civil Action No. 2:10–cv–00059 (JPS). On January 22, 2010, the United States and its co-plaintiffs filed a Complaint alleging that Dean Foods Company's acquisition of the Consumer Products Division of Foremost Farms USA would likely violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment requires Dean Foods Company to divest its Waukesha, Wisconsin fluid milk plant, along with certain tangible and intangible assets.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (*telephone:* 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the Eastern District of Wisconsin. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Joshua H. Soven, Chief, Litigation I, Antitrust Division, Department of Justice, Washington DC, 20530.

Patricia A. Brink,

Director of Civil Enforcement.

In the United States District Court for the Eastern District of Wisconsin Milwaukee Division

United States of America, State of Wisconsin, State of Illinois, and State of Michigan,

Plaintiffs,

v.

Dean Foods Company,

Defendant.

10–C–0059 FILED: January 22, 2010; 1:40PM

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, and the States of Wisconsin, Illinois, and Michigan, by and through their respective Attorneys General ("Plaintiff States"), bring this civil action for equitable relief against Defendant Dean Foods Company ("Dean") for violating Section 7 of the Clayton Act, 15 U.S.C. 18. The United States and the Plaintiff States allege as follows:

I. Introduction

1. This lawsuit challenges Dean's acquisition of the Consumer Products Division of Foremost Farms USA, consummated April 1, 2009 (the "Acquisition"). Foremost Farms USA ("Foremost") is a dairy cooperative owned by approximately 2,300 dairy farms located in seven states, including Wisconsin. Through the Acquisition, Dean acquired two dairy processing plants owned by Foremost, located in Waukesha and DePere, Wisconsin. Dean's acquisition of these plants violates Section 7 of the Clayton Act because "the effect of such acquisition may be substantially to lessen competition." 15 U.S.C. 18.

2. The Acquisition adversely affects two types of markets. The first are the markets for the sale of school milk to individual school districts located throughout the State of Wisconsin and the Upper Peninsula of Michigan (the "UP"). The second is the market for the sale of fluid milk to purchasers located in Wisconsin, the UP, and northeastern Illinois.[1]

3. The Acquisition eliminates one of Dean's most aggressive competitors—a competitor that engaged in pricing that Dean considered "dangerous" and "irrational." In recent years, Dean and Foremost have been the first and fourth largest sellers of school milk and fluid milk in Wisconsin, the UP, and northeastern Illinois. With the Acquisition, Dean will account for more than 57 percent of fluid milk sales in the region. In the most recent school year, Dean and the two plants it acquired sold more than 50 percent of the school milk purchased in Wisconsin and the UP.

4. Numerous school districts have benefitted from vigorous competition between Dean and Foremost. Dean and Foremost have frequently been the two lowest bidders for school milk contracts at numerous school districts in Wisconsin and the UP and, in some school districts, have been the only two bidders for those contracts.

5. Grocery stores, convenience stores, and other purchasers have also benefitted from vigorous competition between Dean and Foremost for fluid milk contracts. Dean and Foremost have been the only two bidders for some contracts and two of only three bidders for other contracts. The aggressive competition between them has lowered purchasers' costs. For example, in 2006, a retailer with hundreds of stores in northeastern Illinois held an auction for its fluid milk business in which the competition between Dean and Foremost saved the retailer approximately $1.5 million.

6. The Acquisition's elimination of head-to-head competition between Dean and Foremost will hurt school milk and fluid milk purchasers. The loss of this head-to-head competition leads directly

[1] "Northeastern Illinois" is defined as the following counties in the State of Illinois: Cook County, DeKalb County, DuPage County, Grundy County, Kane County, Kendall County, Lake County, McHenry County, and Will County.

to what are referred to as anticompetitive "unilateral effects."

7. In the fluid milk market, the Acquisition is also likely to produce coordination among the remaining competitors. This coordination gives rise to what are referred to as anticompetitive "coordinated effects." The fluid milk business in this region is already conducive to coordination among competitors. Notably, when deciding whether and how much to bid for an account, Dean and other dairy processors often consider the reactions of their competitors. Eliminating Foremost, which Dean describes as an "irrational" pricing competitor, will leave only a few remaining competitors, whose competitive decision-making Dean has described as "more predictable" and "rational." Consequently, the Acquisition will make coordination easier and more durable.

8. As further described below, the Acquisition is likely to substantially lessen competition in the school milk and fluid milk markets at issue here in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. Entry is unlikely to restore competition in a timely or sufficient manner. To date, Dean has not integrated Foremost's plants into its operations in light of the pendency of the United States' investigation. The United States and Plaintiff States ask this Court to declare this Acquisition unlawful and require Dean to divest the acquired assets to restore competition in the markets at issue.

II. Jurisdiction & Venue

9. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. 4 and 25. The Plaintiff States bring this action under Section 16 of the Clayton Act, 15 U.S.C. 26. Plaintiff State of Wisconsin brings this action under its authority in Wis. Stat. § 165.065.

10. Dean and the assets it obtained through the Acquisition produce dairy products for sale in interstate commerce. Accordingly, Dean and the Acquisition assets are engaged in activities affecting interstate commerce under Section 7 of the Clayton Act. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a) and 1345.

11. Dean is present in the State of Wisconsin, and it transacts substantial business and commerce in the State. Accordingly, Dean is subject to personal jurisdiction. Venue is also proper in this District pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(b)(1), (b)(2) & (c). The acquired dairy processing plant in Waukesha is located within the territory of the Milwaukee Division of this Court.

III. Background

A. The Milk Business in Wisconsin, the UP, and Northeastern Illinois

12. Dairy processors purchase raw milk from dairy farms and agricultural cooperatives, pasteurize and package the milk, and distribute and sell the processed product. Fluid milk is raw milk that has been processed for human consumption. It does not include extended shelf life milk, ultra high temperature milk or aseptic milk, which are produced by different processes, generally cost significantly more than fluid milk, and have numerous significant physical differences that, compared with fluid milk, affect shelf stability and taste.

1. Fluid Milk

13. Dairy processors supply fluid milk directly to retailers, distributors, broad-line food service companies, and institutions such as hospitals and nursing homes. The vast majority of fluid milk is sold directly by processors to retailers. The balance of sales is made to distributors, food service companies, and institutions. Distributors and food service companies resell the milk that they purchase from processors to small retailers, restaurants, and institutions. Retailers in Wisconsin, the UP, and northeastern Illinois do not resell fluid milk to other retailers or institutions in any substantial quantity. Retail demand for fluid milk is based directly on consumer demand.

14. Milk processors charge different prices to different purchasers for the same product based on a variety of factors, including the number of competitive alternatives available to the purchaser. Large retailers typically request bids from milk processors. Distributors, institutions, and small retailers generally purchase their milk from price lists that dairy processors issue. However, these customers sometimes obtain rebates, discounts, or other forms of price relief, so that two customers covered by the same price list may pay different prices. Bid prices are based on the processor's product, transportation, and service costs, the processor's capacity utilization, and the number and strength of processors likely to offer competing bids, among other factors.

15. Distance between processors and purchasers is an important consideration in fluid milk pricing because fluid milk has a limited shelf life and is costly to transport. These costs result in most customers purchasing fluid milk from nearby processing plants. For example, more than 90 percent of the milk sold to customers in Wisconsin and the UP traveled less than 150 miles from the plant in which it was processed.

2. School Milk

16. School milk is fluid milk packaged and distributed for sale to school districts, typically in half-pint containers. Dean, Foremost, and other school milk suppliers often use distributors to supply and service school districts. Dairy processors generally use one distributor per service area. While school milk contracts occasionally include other products, school milk accounts for the vast majority of the dollar value of these contracts.

17. School milk delivery is not just a matter of dropping product off at the curb. Different school districts specify their individualized service requirements in contracts with processors. For example, some school districts require multiple deliveries per week because they have limited refrigerated storage space; some require guaranteed emergency deliveries. Most school districts require the capability to deliver to all of the schools in the district. Many require early morning or other specific delivery times to avoid conflicts with the arrival of schoolchildren and buses. Other services can include milk reordering, cooler supply, cooler restocking, cooler cleaning and maintenance, carton rotation, retrieval of spoiled and damaged product, and automatic allotment of credit for retrieved product.

18. The number of processors from which a school district can successfully solicit competitive bids is often very small. Given the limited volume of milk delivered to each school, the extensive and highly individualized service requirements, and the seasonal nature of school milk demand, among other considerations, it is almost always uneconomic for a dairy processor to supply a new contract unless the processor already has significant fluid milk distribution in or near the school district's area. Dairy processors that do not already distribute fluid milk locally can rarely bid competitively. This is particularly relevant in sparsely populated areas such as northern Wisconsin and the UP.

19. Individual school districts solicit bids for school milk, although groups of school districts will occasionally solicit bids collectively. However, even school districts involved in collective

solicitations typically award their contracts separately. Consequently, dairy processors tailor their bids to each school district or school district group that solicits collectively. Bid prices are based on the processor's product, transportation, and service costs, the processor's capacity utilization, and the number and competitiveness of processors likely to offer competing bids, among other factors.

B. The Acquisition

20. Dean is one of the largest food and beverage producers in this country, with revenues of $12.5 billion in 2008. Dean's Dairy Group is the country's largest processor and distributor of milk and other dairy products. Dean is a corporation organized under Delaware state law, with its principal place of business in Dallas, Texas.

21. The Acquisition is the latest in a series of acquisitions by Dean of smaller dairy processors across the United States. Since 1996, Dean has made more than 100 acquisitions, which have added to Dean's market share and increased its size substantially.

22. Foremost is a dairy cooperative headquartered in Baraboo, Wisconsin, and formed under Wisconsin state law. Like other agricultural cooperatives, Foremost is a member-owned business association. Foremost is governed by a 21-member Board of dairy farmers. Prior to the Acquisition, Foremost processed its members' raw milk at its DePere and Waukesha plants, as well as at other facilities. The DePere and Waukesha plants were owned and operated by Foremost's Consumer Products Division. On or about April 1, 2009, Dean bought substantially all of the Consumer Products Division's assets for $35 million. The Acquisition was not required to be reported beforehand to Federal antitrust authorities under the Federal antitrust notification statute.

C. Dean's Rationale for the Acquisition

23. While Dean's fortunes have been rising, the same has not been true for Foremost. In 2006 and 2007, Foremost lost some fluid milk customers that preferred a processor with a broader geographic reach. Consequently, Foremost's Waukesha and DePere plants were operating at less than two-thirds of their fluid milk capacity, giving Foremost the most excess capacity in Wisconsin, the UP, and northeastern Illinois.

24. Excess capacity creates an incentive to bid more aggressively for fluid and school milk contracts. Because of its substantial excess capacity, Foremost was pricing aggressively to secure new business. Unlike Foremost, Dean did not have substantial excess capacity and so did not have the same economic incentives as Foremost. As a result of Foremost's aggressive pricing, Dean faced the choice of losing business or cutting its margins. Neither approach was attractive to Dean.

25. The problem that Foremost posed was not unique. Dean saw competitors such as Foremost and other local competitors with excess capacity as posing a serious problem for Dean's profitability. Dean's Chief Executive Officer, Gregg Engles, articulated the competitive issue facing Dean in a September 2008 speech to Dean's top executives:

26.

> "Every one of you has an irrational local competitor story. * * * Why do we have irrational local competitors? Because we have too much capacity in this industry * * * these guys are losing share, * * * they have less volume in their plants, * * * so they default to the same game that gets played in industries that have little volume growth and too much capacity everywhere around the world. People play for share, and in this category, you play for share with price."

27. Dean's own internal documents confirm that Dean viewed Foremost as one of those "irrational" local competitors because of Foremost's excess capacity, among other reasons. In 2008, as part of an effort to develop a strategic growth plan for its fluid milk business, Dean's corporate headquarters asked the group vice presidents in each region to prioritize their key competitive issues. The Vice President for the North Central region (which includes Wisconsin) identified his key concern as "Midwest excess capacity lies with cooperatives with staying power." Cooperatives, such as Foremost, were competitive threats because their "earnings expectations [are] lower than Deans," because the "co-op goal is to move Member milk," and because "their plants are under utilized."

28. The problem this created for Dean was obvious. Competition with these cooperatives was predicted to "lower margins and condition clients [to] the benefits of shopping their business." Along with one other cooperative in the region, Foremost was identified as a particularly "dangerous" competitor because "they need to add volume to maintain their lo[w] cost strategy." In other words, according to Dean, Foremost was more willing to accept lower prices for processed fluid and school milk than Dean found acceptable.

29. In 2007, the general manager at Dean's Verifine plant in Sheboygan, Wisconsin, reported to his boss that he was "seeing alot [sic] of off the wall pricing coming from [Foremost]" and that he was "worried about them coming at us again at [WalMart] not to mention the rest of the market." In 2009, after receiving reports of very low Foremost prices in several grocery and convenience stores in the UP, the general manager of Dean's Marquette, Michigan, plant complained to his boss that "[t]his is the most aggressive pricing the UP has seen since probably the 60's. Our volume is off roughly 15 percent as the effects of this onslaught really kick in * * * I know you're with me on this, so how can we cease/desist and regain some sanity?"

30. As part of Dean's 2008 Strategic Growth Plan, Dean proposed future acquisitions, which included problematic local processors. Ed Fugger, Dean's acquisitions chief, highlighted that fragmentation "[d]rives margin compression," and that a significant part of the fluid milk market "remains highly fragmented." In handwritten notes he wrote in preparation for his speech to Dean's senior management, and later, Dean's Board of Directors, Fugger wrote that the "benefit of acquisition in these m[ar]k[e]ts is *margin expansion*" (emphasis added). In other words, by eliminating this fragmentation Dean could increase its profits.

31. The Strategic Growth Plan included "Potential Acquisition Targets" for each of Dean's regions. The targets for the North Central Region included Foremost, which Dean had identified as one of two "irrational competitors" that are "significantly short on volume."

32. Dean eliminated the competitive threat posed by Foremost by acquiring its two milk processing plants. Any efficiencies Dean may realize from acquiring the two plants are not likely to reverse the anticompetitive impact of eliminating a competitor responsible for the "most aggressive pricing" Dean had seen in 40 years. There was an alternative to this outcome. At the time Foremost accepted Dean's offer to acquire these plants, another potential buyer was pursuing Foremost's plants.

IV. The Competitive Harm in School Milk Markets

A. School Milk Is a Relevant Market

33. School milk is a relevant product market and line of commerce under Section 7 of the Clayton Act. School districts have no reasonable product alternatives to school milk.

34. The United States Department of Agriculture sponsors several programs to reimburse schools for meals served to students from lower-income families. To qualify, schools must offer milk to every student, regardless of family income.

Schools will not substitute other products for school milk even at substantially higher milk prices because they would lose their Federal meal reimbursement.

B. The Relevant Geographic Markets

35. Each school district in Wisconsin and the UP constitutes a relevant geographic market or section of the country within the meaning of Section 7 of the Clayton Act. As alleged in paragraph 19, individual school districts solicit school milk contract bids from processors. In response, processors engage in "price discrimination," *i.e.,* charging different prices to different customers. Processors develop individualized bids based on both cost and non-cost factors (*see e.g.,* paragraph 14). School districts are unlikely to engage in arbitrage, *i.e.,* reselling among customers, to offset the processors' ability to engage in price discrimination among school districts. Therefore, a hypothetical monopolist supplying school milk to any particular district would impose (at least) a small but significant non-transitory price increase (*e.g.,* five percent).

C. The Acquisition Will Result in Anticompetitive Unilateral Effects

36. School districts in Wisconsin and the UP have only a few choices for school milk suppliers. There are numerous school districts, particularly in northeastern Wisconsin and the western UP, for which the Acquisition merged the two processors that were best situated to serve the district. In many cases, the Acquisition created a "merger to monopoly," leaving Dean as the only likely bidder. These school districts include those where Dean and Foremost were the only two dairy processors to bid in recent years. The elimination of head-to-head competition between Dean and Foremost will likely substantially lessen competition in these school milk markets and enable Dean to raise prices and/or reduce services.

37. In addition, in a separate set of school districts, either Dean or Foremost was the only bidder and the other processor was the next-lowest-cost supplier because of factors such as distance from the processing plant or the presence of an established distribution network. It is likely that prices will rise and/or services will be reduced in these school milk markets, regardless of whether both Dean and Foremost submitted formal bids before the Acquisition. There is also a substantial number of school districts in Wisconsin and the UP for which Dean and Foremost were two of only three recent or likely future bidders. For these school districts, the Acquisition represents a "merger to duopoly."

38. In addition, Foremost was an especially aggressive bidder. This forced its rivals to keep their bid prices as low as possible or risk losing substantial amounts of school milk business.

V. The Competitive Harm in the Fluid Milk Market

A. Fluid Milk Is a Relevant Product Market

39. Fluid milk is a relevant product market and line of commerce under Section 7 of the Clayton Act. Fluid milk is a product with special nutritional characteristics and has no practical substitutes.

40. Consumer demand for fluid milk is relatively inelastic, *i.e.,* fluid milk consumption does not decrease significantly in response to a price increase. Demand by retailers, distributors, and other purchasers of fluid milk is also inelastic because it is based on consumer demand. As a result, a hypothetical monopolist over fluid milk would profitably impose at least a small but significant and non-transitory price increase (*e.g.,* five percent).

B. The Relevant Geographic Market

41. Fluid milk processors are able to charge different prices to buyers in different areas, *i.e.,* they can price discriminate. In the presence of price discrimination, relevant geographic markets may be defined by reference to the location of buyers. In particular, a relevant geographic market for fluid milk refers to a region within which purchasers can be targeted for a price increase. A portion of the fluid milk supplied to the relevant geographic market comes from plants located outside of Wisconsin, the UP, and northeastern Illinois.

42. Wisconsin, the UP, and northeastern Illinois constitute a relevant geographic market and section of the country under Section 7 of the Clayton Act. As discussed in paragraph 15, most customers purchase fluid milk from suppliers with processing plants located near them because of the costs associated with transportation and shelf life. Prior to the Acquisition, Foremost sold virtually all of its fluid milk to purchasers located in the relevant geographic market. Dean competed to supply fluid milk to purchasers throughout this same area.

C. Market Concentration

43. The Acquisition will result in a substantial increase in the concentration of processors that compete to supply fluid milk to purchasers located in the relevant geographic market. Some of these processors are located outside of Wisconsin, the UP, and northeastern Illinois. Prior to the Acquisition, Dean had the largest share of sales to purchasers within the relevant geographic market. Dean accounted for 44.6 percent of fluid milk sales; Foremost accounted for another 12.6 percent. As a result of the Acquisition, Dean now has more than 57 percent of all fluid milk sales in the relevant geographic market. There are only two other competitors with more than five percent of fluid milk sales in the relevant geographic market, Kemps LLC (a subsidiary of Hood LLC) ("Kemps") and Prairie Farms Dairy, Inc., which have 17 and 15 percent, respectively. Moreover, Dean's post-Acquisition shares are even higher in certain areas within the relevant geographic market: over 85 percent in the UP and over 60 percent in Green Bay, Wisconsin, and in northeastern Illinois (including Chicago).

44. As articulated in the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission, the Herfindahl-Hirschman Index ("HHI") is a measure of market concentration.[2] The Acquisition increases the HHI by 1,127 points to 3,830, indicating a substantial increase in concentration. The change in the HHI is even more pronounced in certain areas within the relevant geographic area. For example, in the UP, the HHI increased by 2,814 points to 7,510, and in Green Bay, the HHI increased by 1,728 to 4,777.

D. The Acquisition Will Result in Competitive Harm

45. The Acquisition will likely substantially lessen competition among fluid milk producers in the relevant geographic market, resulting in higher fluid milk prices to purchasers than would exist in the absence of the Acquisition. The Acquisition will eliminate head-to-head competition that has benefitted and would otherwise continue to benefit purchasers and final

[2] *See* U.S. Dep't of Justice, Horizontal Merger Guidelines § 1.51 (1997), *available at http://www.justice.gov/atr/public/guidelines/horiz_book/hmg1.html.* The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches a maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

consumers. The Acquisition will also result in easier and more durable coordinated interaction among Dean and its few remaining competitors.

1. The Anticompetitive Effects From the Loss of Head-to-Head Competition

46. Dean and Foremost often competed head-to-head to win fluid milk contracts because they were the nearest fluid milk processors to many of the purchasers in the relevant geographic market. As discussed in paragraph 15, proximity to the purchaser is an important factor in a processor's competitiveness. Prior to the Acquisition, Foremost competed with Dean throughout the relevant geographic market. The head-to-head competition between Dean and Foremost was most pronounced and pervasive in the UP and northeast and southeast Wisconsin, where the Dean and Foremost plants were the two closest plants to many fluid milk purchasers.

47. As discussed in paragraph 23, Foremost had substantial excess capacity, and as a result, was pricing aggressively to secure new business. The presence of Foremost as an aggressive pricing competitor to Dean and a constraining force on Dean's pricing is reflected in the internal Dean documents discussed in paragraphs 25 to 29. The elimination of this head-to-head competition likely will produce higher prices and/or reduced services for many purchasers in the relevant geographic market. These effects will vary among purchasers because, as discussed previously, different purchasers have different competitive options. Thus, the prices paid and services received will continue to differ among purchasers after the Acquisition, but for many purchasers the prices they pay and/or the services they receive will be adversely affected by the Acquisition.

2. The Acquisition Will Facilitate Anticompetitive Coordination

48. By eliminating Foremost, a significant, disruptive, and aggressive competitor, the Acquisition also will likely substantially lessen competition among the remaining competitors selling fluid milk in the relevant geographic market by facilitating coordination among them. Dean and its few remaining competitors will be more likely to decline to bid aggressively for one another's established customers out of concern for retaliation, thereby allocating customers among one another based on a mutual recognition of what supplier serves what customers. This form of coordination is easier when there are fewer competitors and they can identify one another's customers. With the elimination of Foremost, purchasers in many areas of the relevant geographic market will have only two or three significant suppliers of fluid milk. For example, in Wisconsin, Dean and Kemps, its next-largest competitor, now account for more than 80 percent of sales.

49. Even before the Acquisition, Dean and other dairy processors besides Foremost were at times content not to attack one another's large accounts. In a recent bidding event, Dean refused to bid aggressively for a major supermarket chain that was Kemps's largest account, despite the purchaser's complaint to Dean that Dean's bid was too high. A Dean executive testified that stealing the account from Kemps would have put a Kemps plant "out of business or to its knees" and that "we're not going to do that right now. You pick your fights." In contrast, Foremost was not content to pick its fights. When Foremost was bidding for the same large supermarket chain, it submitted a competitive bid, even though Foremost realized that the "cost" of winning that business could be high, due to the potential for retaliation. The general manager of Foremost's Morning Glory plant estimated that retaliation at five of his larger accounts could cost almost $500,000 per year.

50. Whereas Foremost was routinely labeled as an "irrational" competitor by Dean executives, the Group Vice President for Dean's North Central region labeled two other processors "good competitors" in his 2008 strategic growth planning document. By "good competitor," Dean's Vice President admitted he meant that, unlike Foremost, these competitors were "more predictable" in terms of "where they're going to poke you in the eye and where they're not, whereas the other * * * fellows [are] poking all the time." With this Acquisition, only the so-called "good competitors" will remain.

51. In at least one instance, Dean successfully sent price signals to its competitors. In 2008, Dean announced an upcoming fuel surcharge price increase, and one of its competitors followed suit. In reporting this to his boss, the Group Vice President for the region in which this occurred wrote, "[our competitor] followed us this week with a similar increase. The strategy paid off." His boss then declared that it is a good practice "to signal your intentions early and often." The Vice President for the North Central region, which includes Wisconsin, then instructed his staff to "get out early for July and signal the marketplace."

52. By reducing the number of competitors serving the relevant geographic market and eliminating an aggressive competitor with large amounts of excess capacity, the Acquisition makes coordination easier and more durable.

VI. Entry Is Unlikely

53. Entry is unlikely to be sufficient or timely enough to offset the anticompetitive effects of the Acquisition. Firms currently serving the fluid milk and school milk markets in Wisconsin, the UP, and northeastern Illinois are unlikely to expand their service area or presence sufficiently to substantially mitigate the loss of Foremost's head-to-head competition with Dean in the fluid milk and school milk markets, or to disrupt coordinated interaction by Dean and its remaining competitors in the fluid milk market. Firms not currently serving these markets are unlikely to enter in the foreseeable future.

VII. Violations Alleged

54. The United States and the Plaintiff States hereby incorporate the allegations of paragraphs 1 through 52 above.

A. Count 1

55. The Acquisition likely will substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, in that:

a. Actual and potential competition between Foremost and Dean in the State of Wisconsin and the UP in the sale of school milk will be eliminated; and

b. competition in the State of Wisconsin and the UP in the sale of school milk will be substantially lessened.

B. Count 2

56. The Acquisition likely will substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, in that:

a. Actual and potential competition between Foremost and Dean in the State of Wisconsin, the UP, and northeastern Illinois in the sale of fluid milk will be eliminated; and

b. competition in the State of Wisconsin, the UP, and northeastern Illinois in the sale of fluid milk will be substantially lessened.

VIII. Relief Requested

57. The United States and the Plaintiff States request that this Honorable Court:

a. Adjudge and decree that the Acquisition violates Section 7 of the Clayton Act, 15 U.S.C. 18;

b. compel Dean to divest all of the assets and interests it acquired as part of the Acquisition;

c. permanently enjoin Dean from further ownership and operation of the assets acquired as part of the Acquisition;

d. compel Dean, including any of its subsidiaries, joint ventures, successors or assigns, and all persons acting on behalf of any of the foregoing, to provide the United States (and any Plaintiff State(s) if commerce in that state(s) is potentially affected) with notification at least 30 calendar days prior to any acquisition, in whole or in part, of any school milk or fluid milk processing operation, notwithstanding the consideration Dean intends to pay for such acquisition; and

e. award to each plaintiff its costs for this action and such other and further relief as may be appropriate and as the Court may deem just and proper.

Dated: January 22, 2010.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA

/s/ _____

Christine A. Varney,
Assistant Attorney General, Antitrust Division.

/s/ _____

William F. Cavanaugh,
Deputy Assistant Attorney General, Antitrust Division.

/s/ _____

Joshua H. Soven, *Chief,*
Joseph M. Miller, *Assistant Chief, Litigation I Section, Antitrust Division.*

/s/ _____

Patricia A. Brink,
Deputy Director of Operations, Antitrust Division.

/s/ _____

Karl D. Knutsen,
Ryan M. Kantor,
Jon B. Jacobs.
Scott I. Fitzgerald,
Adam Gitlin,
Mitchell H. Glende,
Tiffany C. Joseph,
Barry J. Joyce,
David C. Kelly,
Richard S. Martin,
Richard D. Mosier,
Peter J. Mucchetti,
Julie A. Tenney,
Paul J. Torzilli,
Trial Attorneys, U.S. Department of Justice, Antitrust Division, Litigation I Section, 450 5th Street, Suite 4100, Washington, DC 20530.

Dated: January 21, 2010.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA

James L. Santelle,
United States Attorney.

By:

/s/ _____

Matthew V. Richmond,
Chief, Civil Division, United States Attorney's Office, Eastern District of Wisconsin, 517 East Wisconsin Ave., Room 530, Milwaukee, Wisconsin 53202, (414) 297–1747 (direct), (414) 297–1700 (office), (414) 297–4394 (fax), Matthew.Richmond@usdoj.gov.

Dated: January 22, 2010.

Respectfully submitted,

FOR PLAINTIFF STATE OF WISCONSIN

J.B. Van Hollen,
Attorney General.

By:

/s/ _____

Steven P. Means, Bar Number: 1011355,
Attorney for Plaintiff State of Wisconsin, Wisconsin Department of Justice, 17 West Main Street, Madison, WI 53703, Telephone: (608) 266–3860, Fax: (608) 266–1656, E-mail: meanssp@doj.state.wi.us.

By:

/s/ _____

Gwendolyn J. Cooley, Bar Number: 1053856
Attorney for Plaintiff State of Wisconsin, Wisconsin Department of Justice, 17 West Main Street, Madison, WI 53703, Telephone: (608) 261–5810, Fax: (608) 267–2778, E-mail: cooleygj@doj.state.wi.us.

Dated: January 22, 2010.

Respectfully submitted,

FOR PLAINTIFF STATE OF ILLINOIS

Lisa Madigan,
Attorney General

By:

/s/ _____

Robert W. Pratt,
Chief, Antitrust Bureau, Office of the Attorney General, State of Illinois 100 West Randolph Street, Chicago, Illinois 60601, (312) 814–3722.

Dated: January 22, 2010.

Respectfully submitted,

FOR PLAINTIFF STATE OF MICHIGAN

Michael A. Cox,
Attorney General.

By:

/s/ _____

D.J. Pascoe,
Assistant Attorney General, Corporate Oversight Division, Attorney for the State of Michigan, G. Mennen Williams Building, 6th Floor, 525 W. Ottawa Street, Lansing, Michigan 48933, Telephone: (517) 373–1160.

United States District Court for the Eastern District of Wisconsin Milwaukee Division

United States of America, State of Wisconsin, State of Illinois, and State of Michigan, Plaintiffs,

v.

Dean Foods Company, Defendant.

Civil Action No. 2:10–cv–00059 (JPS)

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint under Section 15 of the Clayton Act, 15 U.S.C. 25, on January 22, 2010, alleging that the acquisition by Dean Foods Company ("Dean") of two fluid milk processing plants in Wisconsin from Foremost Farms USA ("Foremost") violated Section 7 of the Clayton Act ("Section 7"), 15 U.S.C. 18. The Complaint alleges that Dean's acquisition of the Foremost plants (the "Acquisition") likely would substantially lessen competition in two types of markets: (1) The sale of fluid milk to customers (*e.g.,* retailers and distributors) located in Wisconsin, northeastern Illinois; [1] and the Upper Peninsula of Michigan (the "UP"); and (2) the sale of school milk to school districts located throughout Wisconsin and the UP. On March 29, 2011, the United States filed a proposed Final Judgment designed to remedy the competitive harm caused by the Acquisition. Under the proposed Final Judgment, which is explained more fully below, Dean is required to divest the Waukesha milk processing plant and related assets.

The United States and Dean have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Events Giving Rise to the Alleged Violation

A. Defendant and the Acquisition

Dean is one of the largest food and beverage producers in this country, with revenues of approximately $12 billion in 2010. Dean's Dairy Group is the country's largest processor and distributor of milk and other dairy products. Dean is a corporation organized under Delaware state law, with its principal place of business in Dallas, Texas.

Foremost is a dairy cooperative headquartered in Baraboo, Wisconsin, and formed under Wisconsin state law.

[1] "Northeastern Illinois" is defined as the following counties in the State of Illinois: Cook County, DeKalb County, DuPage County, Grundy County, Kane County, Kendall County, Lake County, McHenry County, and Will County.

Like other agricultural cooperatives, Foremost is a member-owned business association. Prior to Dean's acquisition of the Foremost plants, Foremost processed its members' raw milk at its De Pere and Waukesha plants, as well as at other facilities. On April 1, 2009, Dean acquired the De Pere and Waukesha plants, along with related assets, from Foremost for $35 million. This Acquisition was not required to be reported to Federal antitrust authorities under the Hart–Scott–Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act").

B. Competitive Effects of the Acquisition

1. Fluid Milk

a. Fluid Milk Is a Relevant Product Market

The Complaint alleges that fluid milk is a relevant product market. Fluid milk is a product with special nutritional characteristics and has no practical substitutes. Consumer demand for fluid milk is relatively inelastic, *i.e.,* fluid milk consumption does not decrease significantly in response to a price increase. Demand by retailers, distributors, and other customers of fluid milk is also inelastic because it is based on consumer demand.

b. Wisconsin, Northeastern Illinois, and the Upper Peninsula of Michigan Constitute a Relevant Geographic Market

The Complaint alleges that Wisconsin, northeastern Illinois, and the UP constitute a relevant geographic market for the sale of fluid milk. The Plaintiffs defined this geographic market with respect to the locations of the customers (*e.g.,* grocery stores), rather than the location of the competitors (*i.e.,* fluid milk processing plants) because, as the Complaint alleges, fluid milk processors can price discriminate, in other words, they can charge different fluid milk prices (net of transportation cost) to customers in different areas. This price discrimination is possible because processors individually negotiate prices with many customers, deliver the fluid milk to their customers' locations, and customers cannot eliminate price disparities through arbitrage, due in part to high transportation costs.[2]

The price discrimination analysis underlying the geographic market definition set forth in the Complaint is thus consistent with the 2010 Horizontal Merger Guidelines, which explain that "[f]or price discrimination to be feasible, two conditions typically must be met: differential pricing and limited arbitrage." U.S. Dept. of Justice & FTC, Horizontal Merger Guidelines § 3 (2010). More specifically, when suppliers can profitably charge different prices (net of costs) to different customers in different locations, competition does not occur at the point of production but *at the customers' locations.* Consequently, the relevant analysis focuses on how much a hypothetical monopolist would want to raise price at various points of consumption, and the relevant geographic market is defined around the location of those customers vulnerable to a price increase.[3] If a hypothetical monopolist can identify and price differently to buyers in certain areas ("targeted buyers"), and if arbitrage is unlikely, then a hypothetical monopolist would profitably impose a discriminatory price increase on buyers in that area.

Applying this analysis, the evidence in this case satisfies the conditions necessary to show price discrimination. The evidence shows that fluid milk processors negotiate prices for delivery of fluid milk to individual customers in Wisconsin, northeastern Illinois, and the UP and that prices vary among the customers. The evidence also shows that customers cannot arbitrage because of significant loading and shipping costs incurred in reselling. Moreover, the customers lack the coolers necessary to act as arbitrageurs on a significant scale and could not arbitrage fluid milk labeled with their own trademarks to other customers. Thus, fluid milk customers in Wisconsin, northeastern Illinois and the UP are vulnerable to anticompetitive effects flowing from Dean's acquisition of the Foremost plants. As the Complaint alleges, prior to the Acquisition, Foremost sold virtually all of its fluid milk to customers located in these locations, and Dean competed to supply fluid milk to customers throughout this same area. Fluid milk customers located in Wisconsin, northeastern Illinois, and the UP would not defeat a price increase by a hypothetical monopolist of fluid milk by substituting to other products or by taking advantage of arbitrage.

c. The Acquisition Will Likely Substantially Lessen Competition in the Sale of Fluid Milk to Customers Located in Wisconsin, Northeastern Illinois, and the Upper Peninsula of Michigan

The Complaint alleges that the Acquisition will likely substantially lessen competition in the sale of fluid milk in the relevant geographic market. Indicative of this are the effects of the Acquisition on market shares. In a geographic market defined on the basis of price discrimination, the participants in the relevant market are firms that currently supply customers in the market and firms that could economically begin doing so in the event of a small price increase. Market shares typically are assigned to these firms on the basis of their current (or projected) sales to customers within the geographic market, without regard to the location of the processing plant from which the product is supplied.[4]

Based on current sales, as a result of the Acquisition, Dean increased its share of fluid milk sold to customers in the relevant geographic market from approximately 45 percent to more than 57 percent. There are only two other competitors with more than five percent of fluid milk sales in the relevant geographic market—Kemps LLC (a subsidiary of Hood LLC) accounts for approximately 17 percent of sales and Prairie Farms Dairy, Inc. accounts for approximately 15 percent of sales. The Acquisition will eliminate head-to-head competition that has benefitted, and would otherwise continue to benefit, customers and final consumers. The Acquisition will also likely facilitate easier and more durable coordinated interaction among Dean and its few remaining competitors.

Dean and Foremost often competed head-to-head to serve fluid milk customers. Prior to the Acquisition, Foremost competed with Dean throughout the relevant geographic market. Foremost had substantial excess capacity, and as a result, competed aggressively to secure new business. The presence of Foremost as an aggressive pricing competitor to Dean served as a constraining force on Dean's pricing. The elimination of this head-to-head competition likely will produce higher prices for many customers of fluid milk in the relevant geographic market. By eliminating Foremost, a significant, disruptive, and aggressive competitor, the Acquisition also will likely substantially lessen competition among the remaining competitors selling fluid milk in the relevant

[2] Arbitrage occurs when purchasers protect themselves by buying the same product from favored purchasers in other areas.

[3] *See* U.S. Dept. of Justice & FTC, Horizontal Merger Guidelines § 4.2.2 (2010).

[4] U.S. Dept. of Justice & FTC, Horizontal Merger Guidelines §§ 5.1, 5.2.

geographic market by facilitating coordination among them. The Acquisition will result in a substantial increase in the concentration of processors that compete to supply fluid milk to customers located in the relevant geographic market. With the elimination of Foremost, fluid milk customers in many areas of the relevant geographic market will have only two or three significant suppliers of fluid milk. This increased market concentration and the elimination of Foremost as an aggressive competitor make it more likely that Dean and its remaining competitors will decline to bid aggressively for each other's existing customers to prevent retaliatory bidding. The practical effect of such a strategy likely will be to allocate customers based on existing supplier–customer relationships.

d. Neither Supply Responses Nor Entry Would Prevent the Likely Anticompetitive Effects of the Acquisition in the Fluid Milk Market

The Complaint alleges that neither supply responses from market participants nor entry would likely prevent the anticompetitive effects of the Acquisition in the fluid milk market. Firms not currently serving these markets are unlikely to enter in response to a small, durable price increase. Firms currently selling fluid milk into the relevant geographic market are unlikely to expand their sales sufficiently to substantially mitigate the loss of Foremost's head-to-head competition with Dean or to disrupt potential coordination by Dean and its remaining competitors in the fluid milk market.

2. School Milk

a. School Milk Is a Relevant Product Market

The Complaint alleges that school milk (*i.e.,* fluid milk packaged and distributed for sale to school districts, typically in half-pint containers) is a relevant product market. School districts must provide milk in order to receive substantial funds under Federal school meal subsidy programs. Schools will not substitute other products for school milk even at substantially higher school milk prices because they would lose their Federal meal reimbursement.

b. School Districts Constitute Relevant Geographic Markets

The Complaint alleges that each school district in Wisconsin and the UP constitutes a relevant geographic market. A hypothetical monopolist of school milk could identify and individually target vulnerable school districts in Wisconsin and the UP as school districts solicit school milk contract bids directly from processors. It would not be feasible for an individual school district to defeat a price increase by substituting to other products or by engaging in arbitrage (*i.e.,* by purchasing school milk from favored school districts). A hypothetical monopolist could easily detect and thwart such an attempt to arbitrage, and the attempt, in any event, would be greatly hindered by the significant loading and delivery costs incurred in reselling. Moreover, school districts lack the coolers necessary to act as arbitrageurs on a significant scale. Since the hypothetical monopolist could identify and individually target vulnerable school districts and arbitrage is infeasible, it is appropriate to define geographic markets around the locations of the school districts. Because sellers can price discriminate against individual school districts, it is appropriate to define the geographic markets as individual school districts.[5]

c. The Acquisition Will Likely Substantially Lessen Competition in the Sale of School Milk to Certain School Districts Located in Wisconsin and the Upper Peninsula of Michigan

The Complaint alleges that the Acquisition will likely substantially lessen competition in the sale of school milk to school districts located in Wisconsin and the UP. School districts in Wisconsin and the UP have only a few choices for school milk suppliers. Prior to the Acquisition, Dean and Foremost were the two processors best situated to serve certain districts in Wisconsin and the UP. In many districts, the Acquisition created a "merger to monopoly," leaving Dean as the only likely bidder. These school districts include those where Dean and Foremost were the only two dairy processors to bid in recent years. There are also a substantial number of school districts in Wisconsin and the UP for which Dean and Foremost were two of only three recent or likely future bidders. For these school districts, the Acquisition represents a "merger to duopoly." The elimination of head-to-head competition between Dean and Foremost will likely substantially lessen competition in these school milk markets and enable Dean to raise prices and/or reduce services.

[5] U.S. Dept. of Justice & FTC, Horizontal Merger Guidelines § 4.2.2 (2010).

d. Entry Would Not Prevent the Likely Anticompetitive Effects of the Acquisition in the School Milk Markets

The Complaint alleges that entry into school milk markets is not likely to prevent the anticompetitive effects of the Acquisition. Firms not currently serving school districts in Wisconsin and the UP are unlikely to begin to do so in the foreseeable future.

III. Explanation of the Proposed Final Judgment

A. Divestiture of the Waukesha Plant

The proposed Final Judgment requires Dean, within 90 days after the filing of the proposed Final Judgment, or 5 days after entry of the Final Judgment by the Court, whichever is later, to divest the Waukesha plant it acquired from Foremost. The divestiture required by the proposed Final Judgment will establish an independent and economically viable competitor to Dean.

The proposed Final Judgment is in the public interest because the divestiture of the Waukesha plant will enable the buyer to compete for business in an area that includes the vast majority of the population in the relevant geographic market. Of the De Pere and Waukesha plants acquired by Dean through the Acquisition, the Waukesha plant currently produces more milk, has a larger capacity to process milk, and is located closer to major population centers, including Chicago, Green Bay, and Milwaukee. Distance between processors and customers is an important consideration in fluid milk pricing because fluid milk has a limited shelf life and is costly to transport. These costs result in most customers purchasing fluid milk from nearby processing plants. For example, more than 90 percent of the milk sold to customers in Wisconsin and the UP travels less than 150 miles from the plant in which it was processed. Ninety-two percent of the population of the relevant fluid milk geographic market is located within 150 miles of the Waukesha plant, and 80% of public school children in Wisconsin and the UP are enrolled in school districts within 150 miles of the Waukesha plant.[6] The Waukesha plant currently serves some of the largest fluid milk customers in Chicago and other areas of the relevant geographic market.

In addition, the Waukesha plant has significant excess capacity. This excess

[6] The State of Michigan and Dean have entered into a separate settlement agreement with respect to school milk sales in the UP. That agreement includes a pricing mechanism that sets a maximum school milk bid price based on prices Dean charged for school milk during 2010.

capacity will allow it to serve additional customers of all sizes and will give the purchaser of the plant the incentive to compete aggressively for new business.

The proposed Final Judgment requires Dean to divest all tangible assets that comprise the Waukesha plant business and all intangible assets used in the development, production, servicing, and sale of fluid milk and other dairy products for the Waukesha plant. These assets will give the acquirer a distribution network, an established customer base, and a brand (Golden Guernsey) with strong brand equity. The assets must be divested in such a way as to satisfy the United States in its sole discretion that the divested assets can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Dean must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

In the event that Dean does not accomplish the divestiture within the period prescribed in the proposed Final Judgment, the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Dean will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

B. Notification of Future Acquisitions

In addition to the divestiture of the Waukesha plant, the proposed Final Judgment requires Dean to provide advance notification of certain future acquisitions of fluid milk processing plants to the Antitrust Division. The notification provision of the proposed Final Judgment is intended to avoid the difficulties associated with remedying the harms of a consummated anticompetitive acquisition by permitting the United States to assess the competitive effects of Dean's future acquisitions before the acquisitions are consummated, and if necessary, to seek to enjoin any transaction pursuant to Section 7.

The proposed Final Judgment provides that Dean shall not directly or indirectly acquire any assets of or interest in any fluid milk processing plant located in the United States, where the value of the acquisition is $3 million or greater, without prior notification to the United States. Transactions otherwise subject to the reporting and waiting period requirements of the HSR Act are excepted from the notification provision of the proposed Final Judgment. This provision will significantly broaden Dean's pre-merger reporting requirements because the $3 million amount is significantly less than the HSR Act's "size of the transaction" reporting threshold.

The proposed Final Judgment requires that such notification shall be provided to the Antitrust Division in the same format as, and in accordance with the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about fluid and school milk processing. Notification shall be provided at least 30 calendar days prior to acquiring any such interest. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, Dean shall not consummate the proposed transaction or agreement until 30 calendar days after responding consistent with 15 U.S.C. 18a(e)(2). Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Dean.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Dean have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to:

Joshua H. Soven, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 4100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered various proposals for settlement offered by Dean that would have provided less relief than is contained in the proposed Final Judgment. Those proposals involved the divestiture of a single dairy with less capacity and a smaller service area than the Waukesha dairy. The United States determined that the divestiture of the Waukesha dairy was far superior given its location, size, and excess capacity.

The United States also considered, as an alternative to the proposed Final Judgment, incurring the time, expense, and risk of a full trial on the merits in

order to attempt to force Dean to divest both of the plants that it acquired. The United States is concerned that the competitive harm from the Acquisition will be ongoing, and may become harder to remedy, as time passes.[7] The proposed Final Judgment will provide immediate relief and will avoid possible degradation of the Waukesha plant's business or the Golden Guernsey brand. The United States recognizes that the divestiture of the Waukesha plant, while addressing the vast majority of harm alleged in the Complaint, likely will have little effect on competition for fluid milk and school milk consumers in the northernmost section of the affected region. However, the proposed Final Judgment avoids the time, expense, and uncertainty of a full trial on the merits. Moreover, the United States is satisfied that the divestiture of the Waukesha plant described in the proposed Final Judgment is in the public interest because it will create an independent competitor able to compete for business in an area that includes the vast majority of the population in the relevant geographic market.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.DC 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3, (D.DC Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable").[8]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[9] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer–Daniels–Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be

[7] Plaintiffs have been concerned about the deterioration of the Foremost assets since filing the action. *See* Joint Rule 26(f) Conference Report (Docket No. 31, filed May 21, 2010). This settlement eliminates the risk of asset deterioration that would have occurred prior to the entry of a judgment after trial.

[8] The 2004 amendments substituted "shall" for "may" in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

[9] *Cf. BNS,* 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[10]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: March 29, 2011.

Respectfully submitted,

s/ Mitchell H. Glende,
Jon B. Jacobs,
Karl D. Knutsen,
Ryan M. Kantor,
Mitchell H. Glende,
Paul J. Torzilli,
United States Department of Justice, Antitrust Division, 450 Fifth St., NW., Suite 4100, Washington, DC 20530, Telephone: (202) 514–5012, E-mail: jon.jacobs @usdoj.gov.

s/ Gregory J. Haanstad,
for James L. Santelle,
James L. Santelle,
United States Attorney.

Susan M. Knepel,

Assistant United States Attorney, State Bar Number: 1016482, 530 Federal Courthouse, 517 E. Wisconsin Avenue, Milwaukee, WI 53202, Telephone: (414) 297–1700, E-mail: susan.knepel@usdoj.gov.

[10] See *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

United States District Court for the Eastern District of Wisconsin Milwaukee Division
United States of America, State of Wisconsin, State of Illinois, and) State of Michigan, Civil Action No. 2:10-cv-00059 (JPS) Plaintiffs,
v.
Dean Foods Company, Defendant.

[Proposed] Final Judgment

Whereas, Plaintiffs filed their Complaint on January 22, 2010, and Plaintiffs and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And Whereas, Defendant agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendant to assure that competition is not substantially lessened;

And Whereas, Plaintiffs require Defendant to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, Defendant has represented to Plaintiffs that the divestitures required below can and will be made and that Defendant will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now Therefore, before any testimony is taken, without trial of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged and Decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states claims upon which relief may be granted against Defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

(A) "Acquirer" means the person or entity to whom Defendant divests the Divestiture Assets.

(B) "Dean Foods" means Defendant Dean Foods Company, a Delaware corporation with its headquarters in Dallas, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

(C) "Divestiture Assets" means the Waukesha Plant, as defined below, and all related assets for the Waukesha Plant (except for those specified in Section II(C)(3) below), including:

(1) All tangible assets that comprise the Waukesha Plant business, including all property and contract rights, research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, vehicles and other rolling stock, and other tangible property and all assets used in connection with the plant; all licenses, permits and authorizations issued by any governmental organization relating to the plant; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating to the plant, including agreements with suppliers and with distributors; all customer lists and related customer information, contracts, accounts (including accounts receivable), and credit records; and all repair and performance records and all other records relating to the plant; and

(2) All intangible assets used in the development, production, servicing, and sale of Fluid Milk and other dairy products for the Waukesha Plant, including, but not limited to, all patents, licenses and sublicenses, copyrights, trademarks, trade names (including the Golden Guernsey and La Vaca Bonita brands and all related materials), service marks, service names, and other intellectual property; technical information, computer software and related documentation; know-how and recipes; trade secrets; drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances; quality assurance and control procedures; design tools and simulation capability; all manuals and technical information Defendant provides to its own employees, customers, suppliers, agents, or licensees; and all research data concerning historic and current research and development efforts relating to the Divestiture Assets, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

(3) The term "Divestiture Assets" does not include: (a) The right to purchase raw milk from Foremost Farms USA Cooperative for processing at the Waukesha Plant obtained under the Milk Supply Agreement entered into on April 1, 2009 between Foremost Farms

USA Cooperative and GG Acquisition, LLC; (b) any ice cream mix filler equipment used at the Waukesha Plant or any other equipment at that Plant dedicated solely to the manufacturing of ice cream mix; or (c) the Dean and Farm Fresh brands and all related materials.

(D) "Fluid Milk" means raw milk that has been processed for human consumption as a beverage, but does not include organic milk, soy milk, extended shelf life milk, ultra-high temperature milk, or aseptic milk.

(E) "Plaintiff States" means the States of Wisconsin, Illinois, and Michigan.

(F) "School Milk" means Fluid Milk produced, marketed, distributed, or sold for use by schools.

(G) "Waukesha Plant" means Defendant's dairy processing plant located at 2101 Delafield Street, Waukesha, Wisconsin 53188–2299.

III. Applicability

(A) This Final Judgment applies to Dean Foods, as defined above, and all other persons in active concert or participation with Dean Foods who receive actual notice of this Final Judgment by personal service or otherwise.

(B) If, prior to complying with Section IV or V of this Final Judgment, Defendant sells or otherwise disposes of all or substantially all of its assets or of lesser business units that include the Divestiture Assets, it shall require the purchaser to be bound by the provisions of this Final Judgment. Defendant does not need to obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestitures

(A) Defendant is ordered and directed, within ninety (90) calendar days after the filing of the Proposed Final Judgment or five (5) calendar days after entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion, after consultation with the Plaintiff States. The United States in its sole discretion, after consultation with the Plaintiff States, may agree to one or more extensions of this time period not to exceed thirty (30) calendar days in total, and shall notify the Court in such circumstances. Defendant agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible.

(B) In accomplishing the divestiture ordered by this Final Judgment, Defendant promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendant shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendant shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendant shall make available such information to Plaintiffs at the same time that such information is made available to any other person.

(C) Defendant shall provide the Acquirer and Plaintiffs with information relating to the personnel involved in the operation and sale of the Divestiture Assets to enable the Acquirer to make offers of employment. Defendant will not interfere with any negotiations by the Acquirer to employ any Defendant employee whose primary responsibility relates to the Divestiture Assets.

(D) Defendant shall permit prospective Acquirers of the Divestiture Assets to have reasonable (1) access to personnel and to make inspections of the physical facilities of the Waukesha Plant; (2) access to any and all environmental, zoning, and other permit documents and information; and (3) access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

(E) Defendant shall warrant to the Acquirer that the Divestiture Assets will be operational on the date of sale.

(F) Defendant shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

(G) Defendant shall warrant to the Acquirer that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, Defendant will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

(H) Unless the United States in its sole discretion, after consultation with the Plaintiff States, otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States in its sole discretion, after consultation with the Plaintiff States, that the Divestiture Assets can and will be used by the Acquirer as part of viable, ongoing Fluid Milk and School Milk processing businesses. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

(1) Shall be made to an Acquirer that, in the sole judgment of the United States, after consultation with the Plaintiff States, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the sale of Fluid Milk and School Milk; and

(2) shall be accomplished so as to satisfy the United States in its sole discretion, after consultation with the Plaintiff States, that none of the terms of any agreement between an Acquirer and Defendant give Defendant the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

(A) If Defendant has not divested the Divestiture Assets within the time period specified in Section IV(A), Defendant shall notify Plaintiffs of that fact in writing. Upon application of the United States in its sole discretion, after consultation with the Plaintiff States, the Court shall appoint a trustee selected by the United States, after consultation with the Plaintiff States, and approved by the Court to effect the divestiture of the Divestiture Assets.

(B) After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States in its sole discretion, after consultation with the Plaintiff States, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of Defendant any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

(C) Defendant shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendant must be conveyed in writing to Plaintiffs and the trustee within ten (10) calendar days

after the trustee has provided the notice required under Section VI.

(D) The trustee shall serve at the cost and expense of Defendant, on such terms and conditions as the United States in its sole discretion, after consultation with the Plaintiff States, approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendant and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

(E) Defendant shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendant shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendant shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

(F) After its appointment, the trustee shall file monthly reports with Plaintiffs and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

(G) If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent the report contains information that the trustee deems confidential, the report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to Plaintiffs, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States in its sole discretion, after consultation with the Plaintiff States.

VI. Notice of Proposed Divestiture

(A) Within two (2) business days following execution of a definitive divestiture agreement, Defendant or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify Plaintiffs of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendant. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

(B) Within fifteen (15) calendar days of receipt by Plaintiffs of such notice, the United States, after consultation with the Plaintiff States, may request from Defendant, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendant and the trustee shall furnish to the United States, which will share that information with the Plaintiff States upon any Plaintiff State's request, any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

(C) Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendant, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States in its sole discretion, after consultation with the Plaintiff States, shall provide written notice to Defendant and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendant's limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendant under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendant shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Asset Preservation

Until the divestiture required by this Final Judgment has been accomplished, Defendant shall take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by this Court. Defendant shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

(A) Within twenty (20) calendar days of the filing of the Proposed Final Judgment in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Defendant shall deliver to Plaintiffs an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendant has taken to solicit buyers for the Divestiture Assets and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Provided that

the information set forth in the affidavit is true and complete, any objection by the United States in its sole discretion, after consultation with the Plaintiff States, to information provided by Defendant, including any limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

(B) Defendant shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

(A) For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant, be permitted:

(1) Access during Defendant's office hours to inspect and copy, or at the option of the United States, to require Defendant to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendant, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendant's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendant.

(B) Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendant shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

(C) If at the time information or documents are furnished by Defendant to the United States, Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendant ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

(D) The United States may share information or documents obtained under Section X with the Plaintiff States.

XI. Treatment of Confidential Information

No information or documents obtained by the means provided in this Final Judgment shall be divulged by the United States or the Attorney General of Wisconsin, Illinois, or Michigan to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States or the Attorney General of Wisconsin, Illinois, or Michigan is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XII. Notification of Future Transactions

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), Defendant, without providing advance notification to the Antitrust Division and to any Plaintiff State in which any of the assets or interests are located or whose border is less than 150 miles from any such assets or interests, shall not directly or indirectly acquire any assets of or interest, including any financial, security, loan, equity or management interest, in any Fluid Milk processing plant located in the United States, where the value of the acquisition is $3 million or greater.

Such notification shall be provided to the Antitrust Division in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about Fluid Milk and School Milk processing. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest. Within the 30-day period after notification, representatives of the Antitrust Division may make a written request for additional information or documentary material relevant to the proposed acquisition as though 15 U.S.C. 18a(e) were applicable ("Second Request"). In the event of a Second Request, Defendant shall not consummate the proposed transaction or agreement until thirty (30) calendar days after responding consistent with 15 U.S.C. 18a(e)(2). Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder.

All references to the HSR Act in the proposed Final Judgment refer to the HSR Act as it exists at the time of the transaction or agreement and incorporate any subsequent amendments to the Act.

XIII. No Reacquisition

Defendant shall not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XIV. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XVI. Public Interest Determination

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to those comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

Dated at Milwaukee, Wisconsin, this ____th day of ____, 2011.

By the Court:

J.P. Stadtmueller,

U.S. District Judge.

[FR Doc. 2011–7938 Filed 4–04–11; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on March 3, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Norwegian Centre for ICT in Education, Hamar, NORWAY, has been added as a party to this venture. Also, Horizon Wimba, New York, NY; and University of Koblenz-Landau, Mainz, GERMANY, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on December 16, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act January 10, 2011 (76 FR 1460).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–7936 Filed 4–4–11; 8:45 am]

BILLING CODE M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; National Longitudinal Survey of Youth 1997

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the revised Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, "National Longitudinal Survey of Youth 1997," (NLSY97) to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before May 5, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The NLSY97 includes respondents born in the years 1980 through 1984 and lived in the United States when the survey began in 1997. The primary objective of the survey is to study the transition from full-time schooling to the establishment of careers and families. The longitudinal focus of the survey requires information to be collected about the same individuals over many years in order to trace their education, training, work experience, fertility, income, and program participation. Research based on the NLSY97 contributes to the formation of national policy in the areas of education, training, employment programs, and school-to-work transitions.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1220–0157. The current OMB approval is scheduled to expire on October 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on December 22, 2010 (75 FR 80540).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1220–0157. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics (BLS).

Title of Collection: National Longitudinal Survey of Youth 1997.

OMB Control Number: 1220–0157.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 7680.

Total Estimated Number of Responses: 10,462.

Total Estimated Annual Burden Hours: 8,278.

Total Estimated Annual Costs Burden: $0.

Dated: March 30, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–8095 Filed 4–4–11; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for The National Agricultural Workers Survey: Revision to an Approved Collection (OMB 1205–0453)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employment and Training Administration is soliciting comments concerning the addition of seven new questions to the National Agricultural Workers Survey (NAWS) regarding: (1) The amount of time per day farm workers are engaged working in specific crops and tasks, and (2) farm workers' clothes laundering and hygiene practices. The information obtained from these questions will improve the Environmental Protection Agency, Office of Pesticide Programs' (EPA/OPP) ability to assess farm workers' risk to pesticide exposure. There are no known national-level studies that assess the length of the work day for specific crop-task combinations. The Office of Management and Budget (OMB) authorization for the current NAWS questionnaire will expire on October 31, 2013.

A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 6, 2011.

ADDRESSES: Submit written comments to Mr. Daniel Carroll, Division of Research and Evaluations, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210. *Telephone number:* 202–693–2795 (this is not a toll-free number). *Fax:* 202–693–2766. *E-mail: carroll.daniel.j@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The NAWS is an employment-based, annual survey of the demographic, employment, and health characteristics of hired crop farm workers, including workers brought to farms by labor intermediaries. Each year, approximately 1,500 workers are randomly chosen for an interview. Interviews are conducted three times per year to account for the seasonality of agricultural production and employment. Several Federal agencies utilize the NAWS to collect information on the population of hired crop farm workers. EPA, which has responsibility for assessing exposure to pesticides, is one such agency. These added questions will provide information that will improve EPA's ability to assess farm workers' risk of pesticide exposure.

The questions would be piloted in one interview cycle in Fiscal Year 2011 and, depending on the quality of information obtained, would be administered in all three interview cycles of Fiscal Years 2012 and 2013. The questions would be administered to each farm worker who is randomly selected for an interview.

II. Review Focus

DOL is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: Revision to an Approved Collection.

Agency: Employment and Training Administration.

Title: National Agricultural Workers Survey.

OMB Number: 1205–0453.

Affected Public: Individuals, Farms.

Form(s): Primary Questionnaire.

Total Annual Respondents: 2,064.

Frequency: annual.

Total Annual Responses: 2,064.

Average Time per Response: 49.2 minutes.

Estimated Total Annual Burden Hours: 1,693.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: March 29, 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–7972 Filed 4–4–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No OSHA–2011–0007]

Maritime Advisory Committee for Occupational Safety and Health (MACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of MACOSH Membership and Meeting Announcement

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C., App. 2), and after consultation with the General Services Administration, the Secretary of Labor announced on January 10, 2011, her intention to reestablish the Maritime Advisory Committee for Occupational Safety and Health (MACOSH) as being in the public interest (76 FR 1460). She signed the MACOSH charter on January 25, 2011, which, pursuant to FACA, will expire after two years on January 25,

2013. On March 29, 2011, the Secretary of Labor selected and approved 15 members to serve on the Committee. MACOSH will contribute to OSHA's performance of the duties imposed by the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*).

The first meeting of the reestablished MACOSH Committee will be held on April 19 and 20, 2011, in Washington, DC.

DATES: *MACOSH meeting:* MACOSH will meet from 8:30 a.m. to 5 p.m. on April 19 and 20, 2011.

Submission of written statements, requests to speak, and requests for special accommodation: Written statements, requests to speak at the MACOSH meeting, and requests for special accommodations for the MACOSH meeting must be submitted (postmarked, sent, transmitted) by April 11, 2011.

ADDRESSES: *MACOSH meeting:* MACOSH will meet in room N–3437 A/B/C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Submission of written statements and requests to speak: You may submit written statements and requests to speak at the MACOSH meeting, identified by docket number for this **Federal Register** notice (Docket No. OSHA–2011–0007), by one of the following methods:

- *Electronically:* You may submit materials, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for entering submissions.
- *Facsimile:* If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.
- *Mail, express delivery, messenger, or courier service:* Submit three copies of your submissions to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–2350 (TTY (877) 899–5627). Deliveries (hand, express mail, messenger, or courier service) are accepted during the Department of Labor's and the OSHA Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m. E.T.

Requests for special accommodation: Submit requests for special accommodations for the MACOSH meeting by hard copy, telephone, or e-mail to Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20110; *telephone:* (202) 693–1999; e-mail *chatmon.veneta@dol.gov.*

Instructions: All submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2011–0007). Because of security-related procedures, submissions by regular mail may result in a significant delay in receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, messenger, or courier service.

Written statements and requests to speak, including personal information provided, will be placed in the public docket and may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

Docket: To read or download documents in the public docket for this MACOSH meeting, go to *http://www.regulations.gov.* All documents in the public docket are listed in the index; however, some documents (e.g., copyrighted material) are not publicly available to read or download through *http://www.regulations.gov.* All submissions are available for inspection and, where permitted, copying at the OSHA Docket Office at the address above. For information on using *http://www.regulations.gov* to make submissions or to access the docket, click on the "Help" tab at the top of the Home page. Contact the OSHA Docket Office for information about materials not available through that Web site and for assistance in using the Internet to locate submissions and other documents in the docket. Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, is also available on the OSHA webpage at *http://www.osha.gov.*

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Camilla F. McArthur, OSHA's Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–1999.

For general information about MACOSH and this meeting: Mr. Joseph V. Daddura, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–2080; e-mail *Daddura.Joseph@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The maritime industry has historically experienced a high incidence of work-related fatalities, injuries, and illnesses. OSHA has targeted this industry for special attention due to that experience. This targeting has included development of guidance or outreach materials specific to the industry, rulemakings to update requirements, and other activities. MACOSH will advise the Secretary through the Assistant Secretary of Labor for Occupational Safety and Health on matters relevant to the safety and health of employees in the maritime industry. The Committee's advice will result in more effective enforcement, training and outreach programs, and streamlined regulatory efforts. The Committee will function solely as an advisory body, in compliance with the provisions of FACA and OSHA's regulations covering advisory committees (29 CFR Part 1912).

II. Appointment of Committee Members

OSHA received nominations of highly qualified individuals in response to the Agency's request for nominations (75 FR 13785, March 23, 2010). The Secretary has selected to serve on the Committee the following individuals who have broad experience relevant to the issues to be examined by the Committee. The MACOSH members are:

Karen Conrad, North Pacific Fishing Vessel Owners' Association
Phillip Dovinh, Sound Testing, Inc.
Captain Cheryl Fairfield Estill, P.E., National Institute for Occupational Safety and Health (NIOSH)
Michael J. Flynn, International Association of Machinists and Aerospace Workers
Kelly Garber, APL Limited
Robert Godinez, International Brotherhood of Boilermakers—Iron Ship Builders
Lesley E. Johnson, International Brotherhood of Electrical Workers
Charles R. Lemon, Washington State Department of Labor and Industries
George S. Lynch, Jr., International Longshoremen's Association
Christopher John McMahon, United States Maritime Administration (DOT)
Tim Podue, International Longshore and Warehouse Union
Donald Raffo, General Dynamics
Arthur T. Ross, Texas Terminals L.P.
Kenneth A. Smith, United States Coast Guard
James R. Thornton, American Industrial Hygiene Association

III. Meeting

All MACOSH meetings and workgroup meetings are open to the public. All interested persons are invited to attend the MACOSH full-committee and workgroup meetings at the times and places listed above. The

tentative agenda of the April 19, 2011 MACOSH meeting will include: OSHA activities updates from the Directorate of Standards and Guidance, the Directorate of Enforcement Programs, the Directorate of Technical Support and Emergency Management, and the Directorate of Cooperative and State Programs; and presentations on ethics; the Federal Advisory Committee Act; and administrative functions. The workgroups will meet from 8:30 a.m. until 12:30 p.m. on April 20, 2011 in Room N–3437 A/B/C, and report back to the full committee at 1:30 p.m. The workgroups will discuss topics on which they may focus for the duration of this charter of the Committee.

Public Participation: Interested parties may submit a request to make an oral presentation to MACOSH by any one of the methods listed in the **ADDRESSES** section above. The request must state the amount of time requested to speak, the interest represented (e.g., organization name), if any, and a brief outline of the presentation. Requests to address MACOSH may be granted as time permits and at the discretion of the MACOSH chair.

Interested parties may also submit written statements, including data and other information, using any one of the methods listed in the **ADDRESSES** section above. OSHA will provide all submissions to MACOSH members prior to the meeting. Individuals who need special accommodations to attend the MACOSH meeting should contact Ms. Chatmon by one of the methods listed in the **ADDRESSES** section.

Authority: David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by Sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), Secretary of Labor's Order 4–2010 (75 FR 55355), and 29 CFR part 1912.

Signed at Washington, DC, on March 30, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–7920 Filed 4–4–11; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–028)]

NASA Advisory Council; Exploration Committee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Exploration Committee of the NASA Advisory Council.

DATES: Tuesday, April 26, 2011, 1 p.m.–6 p.m., Local Time

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 7S40, Washington, DC 20546

FOR FURTHER INFORMATION CONTACT: Dr. Bette Siegel, Exploration Systems Mission Directorate, National Aeronautics and Space Administration Headquarters, 300 E Street SW., Washington, DC 20546, 202/358–2245; *bette.siegel@nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda topics for the meeting will include:

- Update on the Exploration Program
- Recapturing a Future for Space Exploration: Life and Physical Sciences Research for a New Era
- Commercial Program Status
- Global Exploration

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will need to show a picture identification such as driver's license to enter the NASA Headquarters building (West Lobby—Visitor Control Center), and must state they are attending the NASA Advisory Council Exploration Committee meeting in Room 7S40. Further, *no later than April 15, 2011,* all non-U.S. citizens must submit the following information to Ms. Shawanda Robinson, Room 7N25, NASA Headquarters, 300 E Street, SW., Washington, DC 20546; Fax (202) 358–2886: Name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. Social Security Number (if applicable), Permanent Resident Alien card number and expiration date (if applicable), place and date of entry into the U.S., and passport information to include country of issue, number, and expiration date. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance of the meeting day.

For questions, please call Shawanda Robinson at (202) 358–1566.

Dated: March 29, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–7951 Filed 4–4–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–029)]

NASA Advisory Council; Information Technology Infrastructure Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting for the Information Technology Infrastructure Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Tuesday, April 26, 2011, 8:30 a.m.–5:30 p.m., Local Time. Meet-Me-Number: 1–877–613–3958; #2939943.

ADDRESSES: NASA Goddard Space Flight Center, 8800 Greenbelt Road, Building 12, Room C100D, Greenbelt, MD 20771.

FOR FURTHER INFORMATION CONTACT: Ms. Tereda J. Frazier, Executive Secretary for the Information Technology Infrastructure Committee, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, (202) 358–2595.

SUPPLEMENTARY INFORMATION: The topics of discussion for the meeting are the following:

- Computing Environment—Diverse Needs and Solutions
- Network Environment and Mission Network Support
- IT Security Risk Management
- Ethics Briefing
- IT Committee Work Plan Actions/Assignments/Logistics

The meeting will be open to the public up to the seating capacity of the room. It is imperative that these meetings be held on this date to accommodate the scheduling priorities of the key participants. Visitors will need to show a valid picture identification such as a driver's license to enter the NASA Goddard Space Flight Center and must state that they are attending the NASA Advisory Council Information Technology Infrastructure Committee meeting in

Building 12, Room C100D. All non-U.S. citizens must fax a copy of their passport, and print or type their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number and expiration date, U.S. Social Security Number (if applicable), and place and date of entry into the U.S., to Ms. Tereda J. Frazier, Executive Secretary, Information Technology Infrastructure Committee, NASA Advisory Council, at e-mail *tereda.j.frazier@nasa.gov* or by telephone at (202) 358–2595 by no later than April 19, 2011. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Ms. Tereda J. Frazier via e-mail at *tereda.j.frazier@nasa.gov* or by telephone at 202–358–2595. Persons with disabilities who require assistance should indicate this.

Dated: March 29, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–7952 Filed 4–4–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings: April 2011

TIME AND DATES: All meetings are held at 2:30 p.m.

Tuesday, April 5;
Wednesday, April 6;
Thursday, April 7;
Tuesday, April 12;
Wednesday, April 13;
Thursday, April 14;
Tuesday, April 19;
Wednesday, April 20;
Thursday, April 21;
Tuesday, April 26;
Wednesday, April 27;
Thursday, April 28;

PLACE: Board Agenda Room, No. 11820, 1099 14th St., NW., Washington DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider "the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto." *See* also 5 U.S.C. 552b(c)(10).

DATED: April 1, 2011.

CONTACT PERSON FOR MORE INFORMATION: Lester A. Heltzer, Executive Secretary, (202) 273–1067.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 2011–8221 Filed 4–1–11; 4:15 pm]

BILLING CODE 7545–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0071]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 10, 2011, to March 23, 2011. The last biweekly notice was published on March 22, 2011 (76 FR 16004).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part

2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate. Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the

General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: November 22, 2010.

Description of amendment request: The proposed change would revise the application of Risk-Managed Technical Specifications (RMTS) to Technical Specification (TS) 3.7.7, "Control Room Makeup and Cleanup Filtration System." This change will correct a misapplication of the Configuration Risk Management Program (CRMP) that is currently allowed by the Specification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change allows the Configuration Risk Management Program (CRMP) to be applied to Technical Specification (TS) 3.7.7, "Control Room Makeup and Cleanup Filtration Systems" for the condition where one train of CRHVAC [Control Room Makeup and Cleanup Filtration System] is inoperable only due to the unavailability of cooling. The proposed change extends the AOT [allowed outage time] from 72 hours to 7 days for the condition where two trains of CRHVAC are inoperable only due to the unavailability of cooling. The CRMP cannot be applied to the loss of two trains of cooling.

The change does not involve a significant increase in the probability of an accident previously evaluated because the change does not involve a change to the plant or its modes of operation. In addition, the risk-informed configuration management program will be applied to effectively manage the availability of required structures, systems, and components to assure there is no significant increase in the probability of an accident.

This proposed change does not increase the consequences of an accident because the design-basis mitigation function of the affected systems is not changed and the risk-informed configuration management program will be applied to effectively manage the availability of structures, systems, and components required to mitigate the consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change allows the Configuration Risk Management Program (CRMP) to be applied to Technical Specification (TS) 3.7.7, "Control Room Makeup and Cleanup Filtration Systems" for the condition where one train of CRHVAC is inoperable only due to the unavailability of cooling. The proposed change extends the AOT from 72 hours to 7 days for the condition where two trains of CRHVAC are inoperable only due to the unavailability of cooling. The CRMP cannot be applied to the loss of two trains of cooling.

The proposed change will not alter the plant configuration (no new or different type of equipment will be installed) or require any unusual operator actions. The proposed change will not alter the way any structure, system, or component functions, and will not significantly alter the manner in which the plant is operated. The response of the plant and the operators following an accident will not be different. In addition, the proposed change does not introduce any new failure modes.

Therefore, the proposed change does not create the possibility of a new or different

kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction to a margin of safety?

Response: No.

The proposed change allows the Configuration Risk Management Program (CRMP) to be applied to Technical Specification (TS) 3.7.7, "Control Room Makeup and Cleanup Filtration Systems" for the condition where one train of CRHVAC is inoperable only due to the unavailability of cooling. The proposed change extends the AOT from 72 hours to 7 days for the condition where two trains of CRHVAC are inoperable only due to the unavailability of cooling. The CRMP cannot be applied to the loss of two trains of cooling.

The CRMP implements a risk-informed configuration risk management program in a manner to assure that adequate margins of safety are maintained. Application of the configuration risk management program to TS 3.7.7 complements the risk assessment required by the Maintenance Rule and effectively manages the risk for limiting condition for operation when the Control Room Makeup and Cleanup Filtration Systems are inoperable.

The condition where two trains of CRHVAC are inoperable only due to unavailability of cooling is analogous to the condition where one train of CRHVAC is inoperable due to an adverse impact on the dose mitigation capability. The condition does not make the design basis accident any more probable. The safety function can still be achieved assuming no single failure during the AOT should a low probability DBA [design-basis accident] occur. Therefore, the extension of the AOT for the loss of two cooling trains to the same AOT as that for the loss of one train impacting the dose mitigation function does not significantly reduce the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Branch Chief: Michael T. Markley.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: December 21, 2010.

Description of amendment request: The proposed change would revise Technical Specification (TS) 5.3.1, "Fuel Assemblies," to add Optimized ZIRLO™ as an approved fuel rod cladding material, and TS 6.9.1.6, "Core Operating Limits Report (COLR)," to add a Westinghouse topical report to the analytical methods used to determine the core operating limits. This change is consistent with use of Optimized ZIRLO™ for fuel rod cladding material as described in Addendum 1–A to Westinghouse topical report WCAP–12610–P–A & CENPD–404–P–A, "Optimized ZIRLO™."

STP Nuclear Operating Company has also requested an exemption from the provisions of 10 CFR 50.46, "Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors," and Appendix K to 10 CFR Part 50, "ECCS Evaluation Models," to allow fuel rods with Optimized ZIRLO™ cladding to be used in core reloads.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed Technical Specification change is to add Optimized ZIRLO™ to the allowable or approved cladding materials to be used at the South Texas Project. Adding Optimized ZIRLO™ cladding material does not increase the probability or consequences of an accident previously evaluated.

Westinghouse topical report WCAP–12610–P–A & CENPD–404–P–A, Addendum 1–A "Optimized ZIRLO™," July 2006, provides the details and results of material testing of Optimized ZIRLO™ compared to standard ZIRLO™ as well as the material properties to be used in various models and methodologies when analyzing Optimized ZIRLO™. As the nuclear industry pursues longer operating cycles with increased fuel discharge burnup and fuel duty, the corrosion performance requirements for the nuclear fuel cladding become more demanding. Optimized ZIRLO™ was developed to meet these needs and provides a reduced corrosion rate while maintaining the benefits of mechanical strength and resistance to accelerated corrosion from abnormal chemistry conditions. In addition, fuel rod internal pressures (resulting from the increased fuel duty, use of integral fuel burnable absorbers, and corrosion/temperature feedback effects) have become more limiting with respect to fuel rod design criteria. Reducing the associated corrosion buildup and thus minimizing temperature feedback effects, provides additional margin to the fuel rod internal pressure design criterion. Therefore, adding Optimized ZIRLO™ to the approved fuel rod cladding materials does not significantly increase the probability or consequences of an accident previously evaluated.

The NRC allows Optimized ZIRLO™ to be used as fuel cladding material in Westinghouse-fueled reactors provided that licensees ensure compliance with the conditions and limitations set forth within NRC Safety Evaluation for the topical report. The conditions and limitations are the current requirements and confirmation of these conditions is required as part of the core reload process.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Optimized ZIRLO™ provides a reduced fuel cladding corrosion rate while maintaining the benefits of mechanical strength and resistance to accelerated corrosion from abnormal chemistry conditions. The fuel rod design bases are established to satisfy the general and specific safety criteria addressed in UFSAR [Updated Final Safety Analysis Report] Chapter 15, Accident Analyses and in Technical Specifications. Fuel rods are designed to prevent excessive fuel temperatures, excessive internal rod gas pressures due to fission gas releases, and excessive cladding stresses and strains. WCAP–12610–P–A & CENPD–404–P–A, Addendum 1–A "Optimized ZIRLO™," July 2006, provides the details and results of material testing of Optimized ZIRLO™ compared to standard ZIRLO™ as well as the material properties to be used in various models and methodologies when analyzing Optimized ZIRLO™. The original design-basis requirements are maintained. Therefore, the change in material does not create the possibility of an accident or malfunction not previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The cladding material used in the fuel rods is designed and tested to prevent excessive fuel temperatures, excessive internal rod gas pressure due to fission gas releases, and excessive cladding stresses and strains. Optimized ZIRLO™ was developed to meet these needs and provides a reduced corrosion rate while maintaining the benefits of mechanical strength and resistance to accelerated corrosion from abnormal chemistry conditions. Westinghouse topical report WCAP–12610–P–A & CENPD–404–P–A, "Optimized ZIRLO™," July 2006, provides the details and results of material testing of Optimized ZIRLO™ compared to standard ZIRLO™ as well as the material properties to be used in various models and methodologies when analyzing Optimized ZIRLO™. The NRC approved use of Optimized ZIRLO™ fuel cladding material as detailed in the Safety Evaluation. The original design-basis requirements are maintained.

The change in material does not significantly reduce margin required to preclude or reduce the effects of an accident or malfunction previously evaluated in the UFSAR.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of

10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Branch Chief: Michael T. Markley.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action *see* (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible from 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.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Calvert Cliffs Nuclear Power Plant, LLC, Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit 2, Calvert County, Maryland

Date of application for amendment: October 4, 2010, as supplemented by letter dated December 9, 2010.

Brief description of amendment: The amendment will revise Technical Specification 5.5.16, "Containment Leakage Rate Testing Program," to allow a one-time 5-year extension of the containment Integrated leak rate test (CILRT) interval from 10 to 15 years. This will require the licensee to perform its next CILRT no later than May 1, 2016.

Date of issuance: March 22, 2011.

Effective date: As of the date of issuance to be implemented within 45 days.

Amendment No.: 274.

Renewed License No. DPR–69: Amendment revised the License and Technical Specifications.

Date of initial notice in **Federal Register:** January 11, 2011 (76 FR 1646). The letter dated December 9, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 22, 2011.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: March 17, 2010, as supplemented January 14, 2011.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) to adopt Technical Specification Task Force (TSTF)—425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—Risk Informed TSTF Initiative 5b". When implemented, TSTF–425 Revision 3 relocates specific periodic frequencies of TSs surveillances to a licensee-controlled program, the Surveillance Frequency Control Program, and will provide requirements for the new program in the Administrative Controls section of TSs.

Date of Issuance: March 21, 2011.

Effective date: As of the date of issuance and shall be implemented within 180 days from the date of issuance.

Amendment Nos.: Unit 1–372, Unit 2–374, and Unit 3–373.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the licenses and the technical specifications.

Date of initial notice in **Federal Register:** September 7, 2010 (75 FR 54393). The supplement dated January 14, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 21, 2011.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: March 29, 2010, as supplemented by letter dated January 14, 2011.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.3.6.1, "Primary Containment Isolation Instrumentation," by deleting channel check Surveillance Requirement 3.3.6.1.1 from TS Table 3.3.6.1–1, "Primary Containment Isolation Instrumentation," for the traversing in-core probe (TIP) isolation instrumentation.

Date of issuance: March 18, 2011.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 220.

Facility Operating License No. NPF–21: Amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in **Federal Register:** June 1, 2010 (75 FR 30444). The supplemental letter dated January 14, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 18, 2011.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: February 22, 2010, as supplemented by letters dated June 8 and August 12, 2010, and January 4 and March 7, 2011.

Brief description of amendment: The amendment added valve SI–4052A (Reactor Coolant Loop (RCL) 2 Shutdown Cooling (SDC) suction inside containment bypass isolation) and valve SI–4052B (RCL 1 SDC suction inside containment bypass isolation) to Technical Specification Table 3.4–1, "Reactor Coolant System Pressure Isolation Valves." This bypass line equalizes the SDC system pressure downstream of valve SI–405A (RCL 2 SDC suction inside containment isolation) and valve SI–405B (RCL 1 SDC suction inside containment isolation) in order to minimize the pressure transient in the system when valves SI–405A(B) are opened.

Date of issuance: March 23, 2011.

Effective date: As of the date of issuance and shall be implemented prior to Mode 4 following refueling outage 17.

Amendment No.: 233.

Facility Operating License No. NPF–38: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in **Federal Register:** April 20, 2010 (75 FR 20633). The supplemental letters dated June 8 and August 12, 2010, and January 4 and March 7, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 23, 2011.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit 1 (NMP1), Oswego County, New York

Date of application for amendment: March 18, 2010.

Brief description of amendment: The amendment revises the NMP1 Technical Specifications (TSs) for snubbers by removing TS ¾.6.4, "Shock Suppressors (Snubbers)," relocating these requirements to a licensee-controlled document, and adding a new limiting condition for operation, LCO 3.0.8, related to snubbers. In addition, the TS Table of Contents is revised to reflect these changes. The addition of LCO 3.0.8 is consistent with the industry Technical Specification Task Force (TSTF) Traveler TSTF 372–A, Revision 4, "Addition of LCO 3.0.8, Inoperability of Snubbers." A notice of the TSTF–372–A, Revision 4 TS improvement was published in the **Federal Register** on May 4, 2005 (70 FR 23252) as part of the Consolidated Line Item Improvement Process.

Date of issuance: March 10, 2011.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 207.

Renewed Facility Operating License No. DPR–63: The amendment revises the License and TSs.

Date of initial notice in **Federal Register:** July 13, 2010 (75 FR 39979).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 10, 2011.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1 (NMP1), Oswego County, New York

Date of application for amendment: March 22, 2010.

Brief description of amendment: The amendment revises the NMP1 Technical Specifications (TSs) Surveillance Requirement (SR) 4.3.7.b. by modifying the frequency of this SR from "at least once per operating cycle" to "following maintenance that could result in nozzle blockage." Additionally, the SR is revised to be more reflective of the Standard TS SR by deleting references to the type of test (e.g., air) performed and deleting references to the spray headers.

Date of issuance: March 16, 2011.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 208.

Renewed Facility Operating License No. DPR–63: The amendment revises the License and TSs.

Date of initial notice in **Federal Register:** July 13, 2010 (75 FR 39980).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 16, 2011.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit 1 and 2, Salem County, New Jersey

Date of application for amendments: March 23, 2010, as supplemented on November 19, 2010, January 31, 2011, and February 23, 2011.

Brief description of amendments: The amendments modify the Technical Specifications (TSs) by relocating specific surveillance frequencies to a licensee-controlled program. The changes are based on Nuclear Regulatory Commission-approved TS Task Force (TSTF) change TSTF–425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—RITSTF [Risk-Informed TSTF] Initiative 5b."

Date of issuance: March 21, 2011.

Effective date: As of the date of issuance, to be implemented within 120 days.

Amendment Nos.: 299 and 282.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the TSs and the Facility Operating Licenses.

Date of initial notice in **Federal Register:** June 15, 2010 (75 FR 33843). The letters dated November 19, 2010, January 31, 2011, and February 23, 2011, provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 21, 2011.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: November 23, 2010.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) 5.5.9, "Steam Generator (SG) Program," to exclude portions of the tube below the top of the SG tubesheet from periodic SG tube inspection for Unit 1 during Refueling Outage 16 and the subsequent operating cycle and for Unit 2 during Refueling Outage 15 and the subsequent operating cycle. In addition, this amendment revised TS 5.6.10, "Steam Generator Tube Inspection Report," to remove the reference to previous interim alternate repair criteria and provide reporting requirements specific to the temporary alternate repair criteria.

Date of issuance: March 14, 2011.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–160 and Unit 2–142.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the licenses and the technical specifications.

Date of initial notice in **Federal Register:** January 4, 2011 (76 FR 388).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 14, 2011.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 18, 2010, as supplemented by letter dated October 5, 2010.

Brief description of amendments: The amendments eliminated the Residual Heat Removal (RHR) system design criterion for diversity among the three Reactor Coolant System pressure transmitters that generate interlocks for three series-pairs of RHR suction isolation valves. The change allows similarly qualified pressure transmitters to be used in more than one RHR train as necessary regardless of manufacturer of the transmitters. The revision is incorporated in the Updated Final Safety Analysis Report for South Texas Project, Units 1 and 2.

Date of issuance: March 22, 2011.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 1–194; Unit 2–182.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Facility Operating Licenses and Updated Final Safety Analysis Report.

Date of initial notice in **Federal Register:** September 21, 2010 (75 FR 57528). The supplemental letter dated October 5, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 2011.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 23rd day of March 2011.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–7740 Filed 4–4–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0073]

Proposed Generic Communication; Licensee Justification of Long-Term Surveillance Charge

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to issue a regulatory issue summary (RIS) to re-affirm its existing interpretation of the regulatory policy regarding the scope and corresponding dollar amount of the long-term surveillance charge (LTSC) to be paid to the general treasury of the United States, or to an appropriate State agency. This LTSC is paid prior to the transfer of title to a uranium mill, covered by Title II of the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978 (UMTRCA Title II site), to the long-term custodian for long-term care and license termination. This **Federal Register** notice is available through the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML102080569.

DATES: Comment period expires May 5, 2011. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2011–0073 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC website and on the Federal rulemaking website Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0073. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at 301–492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2011–0073.

FOR FURTHER INFORMATION CONTACT: Mr. Roman A. Przygodzki at 301–415–5143 or by e-mail at *roman.przygodzki@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Draft Regulatory Issue Summary 2010–XX, "Licensee Justification of Long-Term Surveillance Charge"

Addressees

All holders of operating licenses for conventional or heap leach uranium recovery facilities, all holders of licenses for conventional or heap leach uranium recovery facilities in

decommissioning, and all companies that have submitted applications to construct new conventional or heap leach uranium recovery facilities or letters of intent to submit such applications, and all UMTRCA Title II sites.

Intent

NRC is issuing this RIS to reiterate its policy regarding the Long-Term Surveillance Charge (LTSC) for the applicable uranium recovery facilities. This RIS, among other things, discusses NRC's existing policy regarding the scope and corresponding dollar amount of the LTSC to be paid to the General Treasury of the United States, or to an appropriate State agency, prior to the transfer of title to the long-term custodian for long-term care and license termination. No specific action or written response is required.

Background

Both conventional and heap leach uranium milling processes generate mill tailings, which are primarily a sandy waste material containing the radioactive decay products from the uranium chains (mainly the Uranium-238 chain) and heavy metals. During operations, the tailings are deposited in a tailings impoundment or disposal cell. The goal of the tailings impoundment or disposal cell is to provide long-term protection of human health and safety, to protect the environment, and to isolate the tailings without ongoing maintenance. Specifically, Criterion 1 to Appendix A of Title 10 of the *Code of Federal Regulations* (CFR), Part 40 (10 CFR 40) states that:

> The general goal or broad objective in siting and design decisions is permanent isolation of tailings and associated contaminants by minimizing disturbance and dispersion by natural forces, and to do so without ongoing maintenance.

Criterion 6 to Appendix A of 10 CFR Part 40 states that licensees are required to place a cover over the tailings or wastes "…which provides reasonable assurance of control of radiological hazards…for 1,000 years, to the extent reasonably achievable, and, in any case, for at least 200 years."

Prior to license termination, a Long-Term Surveillance Plan (LTSP) is submitted to NRC for review. According to 10 CFR 40.28(b)(2) and 10 CFR 40.28(b)(3), cited below, groundwater monitoring must be considered in the LTSP, if required:

> (b)(2) A detailed description, which can be in the form of a reference of the final disposal site conditions, including existing ground water characterization. This description must be detailed enough so that future inspectors will have a baseline to determine changes to the site and when these changes are serious enough to require maintenance or repairs.
>
> (b)(3) A description of the long-term surveillance program, including proposed inspection frequency and reporting to the Commission (as specified in appendix A, Criterion 12 of this part), *frequency and extent of ground water monitoring if required,* appropriate constituent concentration limits for ground water, inspection personnel qualifications, inspection procedures, recordkeeping and quality assurance procedures. (emphasis added)

Additionally, prior to license termination, all operators of uranium mills are required to pay an appropriate LTSC to the General Treasury of the United States, or the appropriate State agency, as stated in the following excerpt from Criterion 10 to Appendix A of 10 CFR Part 40:

> A minimum charge of $250,000 (1978 dollars) to cover the costs of long-term surveillance must be paid by each mill operator to the general treasury of the United States or to an appropriate State agency prior to the termination of a uranium or thorium mill license.

The LTSC is a one-time charge, in an amount such that an assumed 1 percent annual real interest rate would provide interest income sufficient to cover the annual costs of site surveillance incurred by the long-term custodian. Specifically, the intent of the minimum LTSC is to cover costs of a "passive monitoring" approach to site surveillance, whose assumptions are described in NUREG–0706, Vol. I, "Final Generic Environmental Impact Statement of Uranium Milling Project M–25," dated September 1980 (Agencywide Documents Access and Management System [ADAMS] accession number ML032751663); Appendix R, "Costs of Post-Operational Site Surveillance" of NUREG–0706, Vol. III, "Final Generic Environmental Impact Statement of Uranium Milling Project M–25—Appendices G–V," dated September 1980 (ADAMS accession number ML032751669); and "[NRC] Staff Guidance on the License Termination Process for Conventional Uranium Mill Licensees," dated November 27, 1996 (ADAMS accession number ML100840671).

Recently, the U.S. Department of Energy (DOE) raised an issue to the NRC regarding the minimum LTSC amount paid. Specifically, DOE inquired as to what long-term care activities would merit an increase in the LTSC above the minimum amount. DOE stated that, based on actual costs of site surveillance and control activities, the minimum amount paid as the LTSC may not be sufficient to cover the costs for the needed site surveillance and control activities, in certain cases. For instance, sites with alternate concentration limits (ACLs) may require increased groundwater monitoring not covered by the "passive monitoring" approach assumed in the development of the minimum LTSC.

In a letter dated June 17, 2010, NRC responded to DOE's query with regard to what long-term care activities would merit an increase in the LTSC (ADAMS accession number ML100670337). It is the intent of this RIS to further clarify the matters discussed in that letter, as well as state NRC's intent with regard to the review of proposed LTSCs and financial assurance.

Summary of Issue

Pursuant to Criterion 10 to Appendix A of 10 CFR 40, an escalation in the LTSC from the minimum charge amount is within NRC's regulatory authority:

> If site surveillance or control requirements at a particular site are determined, on the basis of a site-specific evaluation, to be significantly greater than those specified in Criterion 12…*variance in funding requirements may be specified by the Commission.* (emphasis added)

The NRC's position on the LTSC—described in "[NRC] Staff Guidance on the License Termination Process for Conventional Uranium Mill Licensees," (ADAMS accession number ML100840671)—is well established and goes back over 13 years. Escalation of the LTSC is consistent with NRC's historical practice. The LTSC of the Atlantic Richfield Company's (ARCO's) Bluewater Uranium Mill and Tailings site was escalated for sampling of groundwater (ML103410026). At the Sohio Western Mining Company's L–Bar uranium mill tailings site, the LTSC was escalated for the maintenance required to address of future accumulation of sedimentation in the diversion channels (ADAMS accession numbers ML042580467 and ML042580457).

Provided that there is a nexus to radiological health and safety, the NRC may consider escalating the LTSC above the minimum amount, adjusted to current year dollars. The increased LTSC would address long-term maintenance and control activities if site surveillance or control requirements are expected to be greater than those specified in Criterion 12 to Appendix A of 10 CFR 40 to cover such measures relied on for the performance of the tailings impoundment. The NRC may consider escalating the LTSC for long-term maintenance and control activities undertaken to ensure maintenance of radiological health and safety such as,

but not limited to: (1) Groundwater monitoring; (2), rip-rap, erosion or other cover repair; (3) fencing; and (4) vegetation control.

Consistent with past practice, on a site-specific basis, NRC staff will continue to work with the custodial agency and the licensee to address the LTSC, with any final variances in the funding requirements to be determined solely by the NRC. If the custodial agency desires to have commitments in the LTSP that exceed the requirements set forth in Appendix A of 10 CFR 40 and do not have a nexus to radiological health and safety (*e.g.,* fencing that is not necessary to ensure maintenance of radiological health and safety), the custodial agency would need to identify a funding mechanism to meet these desired commitments.

Annual updates to financial assurance for decommissioning submitted to NRC should contain a detailed basis (*e.g.,* unit cost and units) and justification for the LTSC calculated by the licensee or license applicant. The licensee should consider all activities for site surveillance and control as specified in Criterion 12 to Appendix A of 10 CFR 40, including groundwater monitoring. For groundwater monitoring, the licensee or applicant should specify, with a sufficient basis, the number of wells to be sampled; the frequency of sampling; the duration of sampling; and the constituents analyzed during long-term site surveillance and control. If site surveillance or control requirements, including groundwater monitoring, are expected to be greater than those specified in Criterion 12 to Appendix A of 10 CFR 40, the licensee should fully describe the activities needed with a basis for their costs, propose an escalation in the LTSC, and provide an overall bottom-line amount, corresponding to the proposed, escalated LTSC.

Federal Register Notification

To be done after the public comment period.

Congressional Review Act

This RIS is not a rule as designated in the Congressional Review Act (5 U.S.C. 801–886) and, therefore, is not subject to the Act.

Paperwork Reduction Act Statement

This RIS contains and references information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing information collection requirements were approved by the Office of Management and Budget, approval number 3150–0020.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Contact

This RIS requires no specific action or written response. If you have any questions about this summary, please contact the technical contact listed below.

Technical Contact: Roman A. Przygodzki, DWMEP/SPB, (301) 415–5143, *E-mail: roman.przygodzki@nrc.gov.*

Note: The NRC's generic communications may be found on the NRC public Web site, *http://www.nrc.gov,* under Electronic Reading Room/Document Collections.

End of Draft Regulatory Issue Summary

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 28th day of March 2011.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–8009 Filed 4–4–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of April 4, 11, 18, 25, May 2, 9, 16, 23, 30, June 6, 13, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of April 4, 2011

There are no meetings scheduled for the week of April 4, 2011.

Week of April 11, 2011—Tentative

There are no meetings scheduled for the week of April 11, 2011.

Week of April 18, 2011—Tentative

Tuesday, April 19, 2011

9 a.m.

Briefing on Source Security—Part 37 Rulemaking—Physical Protection of Byproduct Material (Public Meeting). (Contact: Merri Horn, 301–415–8126.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of April 25, 2011—Tentative

Thursday, April 28, 2011

9:30 a.m.

Briefing on the Status of NRC Response to Events in Japan and Briefing on Station Blackout (Public Meeting). (Contact: George Wilson, 301–415–1711.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of May 2, 2011—Tentative

Tuesday, May 3, 2011

9 a.m.

Information Briefing on Emergency Preparedness (Public Meeting). (Contact: Robert Kahler, 301–415–7528.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of May 9, 2011—Tentative

Thursday, May 12, 2011

9:30 a.m.

Briefing on the Progress of the Task Force Review of NRC Processes and Regulations Following the Events in Japan (Public Meeting). (Contact: Nathan Sanfilippo, 301–415–3951.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of May 16, 2011—Tentative

There are no meetings scheduled for the week of May 16, 2011.

Week of May 23, 2011—Tentative

Friday, May 27, 2011

9 a.m.

Briefing on Results of the Agency Action Review Meeting (AARM) (Public Meeting). (Contact: Rani

Franovich, 301–415–1868.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of May 30, 2011—Tentative

Thursday, June 2, 2011

9:30 a.m.

Briefing on Human Capital and Equal Employment Opportunity (EEO) (Public Meeting). (Contact: Susan Salter, 301–492–2206.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 6, 2011—Tentative

Monday, June 6, 2011

10 a.m.

Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting). (Contact: Tanny Santos, 301–415–7270.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 13, 2011—Tentative

Thursday, June 16, 2011

9:30 a.m.

Briefing on the Progress of the Task Force Review of NRC Processes and Regulations Following Events in Japan (Public Meeting). (Contact: Nathan Sanfilippo, 301–415–3951.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Additional Information

The April 14, 2011, Briefing on Status of NRC Response to Events in Japan and Briefing on Radiological Consequences and Potential Health Effects scheduled on April 14, 2011, has been cancelled. The Information Briefing on Emergency Preparedness previously scheduled on May 12, 2011, has been rescheduled on May 3, 2011. The Briefing on the Progress of the Task Force Review of NRC Processes and Regulations Following the Events in Japan previously scheduled on May 3, 2011, has been rescheduled on May 12, 2011.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by e-mail at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: March 31, 2011.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–8160 Filed 4–1–11; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Revision of a Currently Approved Information Collection: (OMB Control No. 3206–0230; Standard Form [SF] 2817)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. This information collection, "Life Insurance Election" (OMB Control No. 3206–0230; SF 2817), is used by Federal employees and assignees (those who have acquired control of an employee/annuitant's coverage through an assignment or "transfer" of the ownership of the life insurance). Clearance of this form for use by active Federal employees is not required according to the Paperwork Reduction Act (Pub. L. 98–615). The Public Burden Statement meets the requirements of 5 CFR 1320.8(b)(3). Therefore, only the use of this form by assignees, i.e. members of the public, is subject to the Paperwork Reduction Act.

Comments are particularly invited on whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 150 SF 2817 forms are completed annually by assignees. This form takes approximately 15 minutes to complete. The annual estimated burden is 37.5 hours.

For copies of this proposal, contact Cyrus S. Benson by telephone at (202) 606–4808, by FAX (202) 606–0910, or by e-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days of the date of this publication.

ADDRESSES: Send or deliver comments to Christopher N. Meuchner, FSA, Life, & Long Term Care Insurances, Federal Employee Insurance Operations, Healthcare & Insurance, U.S. Office of Personnel Management, 1900 E Street, NW.—Room 2H22, Washington, DC 20415–3661.

For Information Regarding Administrative Coordination Contact: Cyrus S. Benson, Team Leader, Publications Team, RS/RM/Administrative Services, 1900 E Street, NW.—Room 4332, Washington, DC 20415, (202) 606–0623.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–8050 Filed 4–4–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Request To Change Federal Employees Health Benefits (FEHB) Enrollment for Spouse Equity/Temporary Continuation of Coverage (TCC) Enrollees/Direct Pay Annuitants (DPRS 2809)

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0202, Request to Change Federal Employees Health Benefits (FEHB) Enrollment for Spouse Equity/Temporary Continuation

of Coverage (TCC) Enrollees/Direct Pay Annuitants. As required by the Paperwork Reduction Act of 1995 (Pub. Law 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until June 6, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to U.S. Office of Personnel Management, Ronald W. Melton, Program Manager, Program Planning and Evaluation, Federal Employee Insurance Operations, Healthcare & Insurance, 1900 E Street, NW., Room 3425, Washington, DC 20415–3650 or send via electronic mail to *Barbara.Myers@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street, NW., Room 4332, Washington, DC 20415, *Attention:* Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: The Request to Change Federal Employees Health Benefits (FEHB) Enrollment for Spouse Equity/Temporary Continuation of Coverage (TCC) Enrollees/Direct Pay Annuitants is used by former spouses, Temporary Continuation of Coverage recipients, and Direct Pay Annuitants who are eligible to elect, cancel, or change health benefits enrollment during open season.

Analysis:

Agency: Insurance Operations, Retirement Services, Office of Personnel Management.

Title: Request to Change Federal Employees Health Benefits (FEHB) Enrollment for Spouse Equity/ Temporary Continuation of Coverage (TCC) Enrollees/Direct Pay Annuitants.

OMB Number: 3206–0202.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 27,000.

Estimated Time Per Respondent: 45 minutes.

Total Burden Hours: 20,250.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–8051 Filed 4–4–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Letter Reply To Request for Information (RI 20–64), Former Spouse Survivor Annuity Election (RI 20–64A), Information on Electing a Survivor Annuity for Your Former Spouse (RI 20–64B)

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0235, Letter Reply to Request for Information, RI 20–64, and Former Spouse Survivor Annuity Election, RI 20–64A. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on November 18, 2010 at Volume 75 FR 70710 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until May 5, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: RI 20–64, Letter Reply to Request for Information, is used by the Civil Service Retirement System (CSRS) to provide information about the amount of annuity payable after a survivor reduction, to explain the annuity reductions required to pay for the survivor benefit, and to give the beginning rate of survivor annuity. RI 20–64A, Former Spouse Survivor Annuity Election, is used by the CSRS to obtain a survivor benefits election from annuitants who are eligible to elect to provide survivor benefits for a former spouse. RI 20–64B, Information on Electing a Survivor Annuity for Your Former Spouse, is a pamphlet that provides important information to retirees under the CSRS who want to provide a survivor annuity for a former spouse.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Letter Reply to Request for Information; Former Spouse Survivor Annuity Election.

OMB Number: 3206–0235.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 30.

Estimated Time Per Respondent: 45 minutes for RI 20–64A and 8 minutes for RI 20–64.

Total Burden Hours: 24.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–8063 Filed 4–4–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: We Need the Social Security Number of the Person Named Below, RI 38–45

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0144, We Need the Social Security Number of the Person Named Below, RI 38–45. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on October 6, 2010 at Volume 75 FR 61783 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until May 5, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: We Need the Social Security Number of the Person Named Below, RI 38–45, is used by the Civil Service Retirement System and the Federal Employees Retirement System to identify the records of individuals with similar or the same names. It is also needed to report payments to the Internal Revenue Service.

Analysis:

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: We Need the Social Security Number of the Person Named Below.

OMB Number: 3206–0144.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 3,000.

Estimated Time Per Respondent: 5 minutes.

Total Burden Hours: 250.

U.S. Office of Personnel Management

John Berry,

Director.

[FR Doc. 2011–8049 Filed 4–4–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: RI 30–10, Disabled Dependent Questionnaire

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an existing information collection request (ICR) 3206–0179, Disabled Dependent Questionnaire. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until June 6, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to U.S. Office of Personnel Management, Linda Bradford (Acting), Deputy Associate Director, Retirement Operations, Retirement Services, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500 or send via electronic mail to *Martha.Moore@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Publications Team, Office of Personnel Management, 1900 E Street, NW., Room 4332, Washington, DC 20415, *Attention:* Cyrus

S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION:

The RI 30–10, Disabled Dependent Questionnaire, is used to collect sufficient information about the medical condition and earning capacity for the Office of Personnel Management to be able to determine whether a disabled adult child is eligible for health benefits coverage and/or survivor annuity payments under the Civil Service Retirement System or the Federal Employees Retirement System.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Disabled Dependent Questionnaire.

OMB Number: 3206–0179.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 2,500.

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 2,500.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–8055 Filed 4–4–11; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

China Changjiang Mining & New Energy Co., Ltd.; Order of Suspension of Trading

April 1, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Changjiang Mining & New Energy Co., Ltd. ("CHJI"), a Nevada corporation previously known as North American Gaming and Entertainment Corporation. CHJI has headquarters and operations in the People's Republic of China and trades in the over-the-counter market under the symbol "CHJI."

Questions have arisen regarding the accuracy and completeness of information contained in CHJI's public filings with the Commission concerning, among other things, the company's financial statements for 2009 and 2010. CHJI has failed to disclose that (a) the company filed its last periodic report on Form 10–Q for the quarter ended September 30, 2010 without the required review of the interim financial statements by an independent public accountant; and (b) the company's independent auditor has resigned, withdrawn its audit opinion issued April 16, 2010 relating to the audit of the company's consolidated financial statements as of December 31, 2009, and informed the company that the financial statements for the quarters ended March 31, June 30, and September 30, 2010 could no longer be relied upon.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, on April 1, 2011 through 11:59 p.m. EDT, on April 14, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–8135 Filed 4–1–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64150; File No. SR–Phlx–2011–38]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to ETNs

March 30, 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 March 22, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Fee Schedule to codify the Exchange's existing practice of assessing fees for transactions in exchange-traded note ("ETN")[3] options at the same rates for exchange-traded fund ("ETF") options.[4]

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 1, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to codify the Exchange's existing practice of assessing fees for transactions in ETN options at the same rates for ETF options. Specifically, the Exchange is proposing to amend Section II of the Exchange's Fee Schedule, titled Equity Options Fees, and Section III, titled Singly Listed Options, by including references to ETNs in those

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ETNs are also known as "Index-Linked Securities," which are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing. Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options apply to Index-Linked Securities.

[4] An ETF is an open-ended registered investment company under the Investment Company Act of 1940 that has received certain exemptive relief from the Commission to allow secondary market trading in the ETF shares. ETFs are generally index-based products, in that each ETF holds a portfolio of securities that is intended to provide investment results that, before fees and expenses, generally correspond to the price and yield performance of the underlying benchmark index.

sections. Section II of the Exchange's Fee Schedule currently states that it includes options overlying equities, ETFs, HOLDRS,[5] BKX,[6] RUT,[7] RMN,[8] MNX [9] and NDX.[10] Section III of the Exchange's Fee Schedule currently states that it includes options overlying currencies, equities, ETFs, indexes and HOLDRS not listed on another exchange. The Exchange is proposing to add ETNS to both Sections II and III and assess the same rates that are currently assessed ETFs and other equity options today.

The Exchange is not proposing to amend any fees.[11] The Exchange would apply the same rates that apply to ETFs today to ETNs. A similar proposal was filed by the Chicago Board Options Exchange, Incorporated ("CBOE") to apply the ETF rates to ETNs and include references to ETNs in the fee schedule.[12]

The Exchange is also proposing to make conforming amendments to the Table of Contents and Section IV, titled PIXL Pricing, of the Fee Schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Section 6(b)(4) of the Act [14] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable to add ETNs specifically to Sections II and III because it would codify the Exchange's existing practice of assessing fees for ETN options in a manner similar to ETF options. This proposal would add clarity to the Exchange's Fee Schedule.

The Exchange believes that it is equitable because the fees in Sections II and III would be uniformly applied to all market participants transacting equity options in symbols other than those listed in Section I of the Fee Schedule.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[15] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx-2011–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx-2011–38. 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–Phlx-2011–38 and should be submitted on or before April 26, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–7978 Filed 4–4–11; 8:45 am]

BILLING CODE 8011–01–P

[5] HOLDRS are Holding Company Depository Receipts.

[6] BKX represents the KBW Bank Index.

[7] RUT represents the options on the Russell 2000® Index (the "Full Value Russell Index" or "RUT").

[8] RMN represents options on the one-tenth value Russell 2000® Index [8] (the "Reduced Value Russell Index" or "RMN").

[9] MNX represents options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX").

[10] NDX represents options on the Nasdaq 100 Index [10] traded under the symbol NDX ("NDX").

[11] This fee proposal would not impact any equity options transacted in any of the symbols which are listed in Section I of the Exchange's Fee Schedule titled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols."

[12] *See* Securities Exchange Act Release No. 62579 (July 28, 2010), 75 FR 47329 (August 5, 2010) (SR–CBOE–2010–068).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64151; File No. SR–Phlx-2011–40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Rebates and Fees for Adding and Removing Liquidity in Select Symbols

March 30, 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 March 24, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section I of the Exchange's Fee Schedule titled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols," specifically to amend the Select Symbols.[3]

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 1, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the list of Select Symbols in Section I of the Exchange's Fee Schedule, titled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols" in order to attract additional order flow to the Exchange.

The Exchange displays a list of Select Symbols in its Fee Schedule at Section I, "Rebates and Fees for Adding and Removing Liquidity in Select Symbols," that are subject to the rebates and fees in that section. Among those symbols is ON Semiconductor Corp ("ONNN"), which the Exchange is proposing to remove from the list of Select Symbols. The Exchange is also proposing to add Silver Wheaton Corp. ("SLW") to the list of Select Symbols in Section I.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 1, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(4) of the Act[5] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable to remove ONNN from its list of Select Symbols and add SLW to its list of Select Symbols to attract additional order flow to the Exchange. The Exchange anticipates that the addition of SLW to Section I of the Fee Schedule would attract market participants to transact equity options at the Exchange because of the available rebates. In addition, the Exchange believes that applying the fees in Section II to ONNN, including the opportunity to receive payment for order flow, would also attract order flow to the Exchange.

The Exchange believes that it is equitable to amend the list of Select Symbols by removing ONNN and adding SLW because the list of Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols would be subject to the rebates and fees in Section I of the Fee Schedule. Also, all market participants would be uniformly subject to the fees in Section II.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx-2011–40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, 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

[3] The term "Select Symbols" refers to the symbols which are subject to the Rebates and Fees for Adding and Removing Liquidity in Section I of the Exchange's Fee Schedule.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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–Phlx–2011–40 and should be submitted on or before April 26, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–7979 Filed 4–4–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64152; File No. SR–CFE–2011–001]

Self-Regulatory Organizations; CBOE Futures Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Certain Rules Relating to Listing and Trading Security Futures

March 30, 2011.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 18, 2011, CBOE Futures Exchange, LLC. ("CFE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by CFE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CFE also filed this proposed rule change concurrently with the Commodity Futures Trading Commission ("CFTC"). CFE filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act ("CEA")[2] on March 18, 2011.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

The Exchange proposes to amend certain rules relating to the listing and trading of security futures on the Exchange. The changes are being proposed to conform certain CFE rules to current parallel rules of OneChicago, LLC ("OCX"). The text of the proposed rule change is available on the Exchange's Web site at *http://www.cfe.cboe.com,* on the Commission's Web site at *http://www.sec.gov,* 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, CFE 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. CFE 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 purpose of this proposed rule is to amend certain rules governing the listing and trading of security futures on the Exchange. The changes are being made to conform certain CFE rules to current parallel rules of OCX.

Regulatory Halt Amendments

CFE is proposing to amend Rule 417 by adding provisions for regulatory halts. OCX made a similar rule change to make clear that a "regulatory halt" applies not only to the suspending of all trading in equity securities on the underlying national securities exchange but also to a trading pause on an individual underlying equity security that has been imposed by the rules of the national securities exchange.[3] CFE is also proposing to amend CFE Policy and Procedure III by adding a cross-reference to Rule 417 and setting forth the ability of the help desk to bust any trade in a Single Stock Future or in a Narrow-Based Index Future that occurs after the time a regulatory halt is instituted and before trading has been resumed in the affected Single Stock Future or Narrow-Based Index Future.

Change Quoting Requirements for Market Makers

CFE is proposing to amend Rule 517 and CFE Policy and Procedure VII to change the quoting requirements for Market Makers. Presently, a market maker, when providing quotations, quotes with a maximum bid/ask spread of no more than the greater of $0.20 (the "20 Cent Spread") of 150 percent of the bid/ask spread in the primary market for the security underlying the Security Future. The proposed rule change will raise the 20 Cent Spread to $5. This change will be affected by amending subparagraph (n) to Rule 517 and subparagraph C to CFE Policy and Procedure VII. OCX made a similar rule change raising its 20 Cent Spread to $5, which was nearly identical to one approved by the SEC for security options.[4]

Maintenance Standard Amendments

First, CFE is proposing to amend CFE Policy and Procedure VIII by eliminating the $3 market price maintenance standard. This change will be affected by deleting subparagraph B.1.(v) to CFE Policy and Procedure VIII. OCX made a similar rule change eliminating the $3 market price per share requirement, which was nearly identical to one approved by the SEC for security options.[5]

Second, CFE is proposing to eliminate the prohibition against opening trading in a Single Stock Future with a new delivery month unless the issuer of the underlying satisfies applicable Exchange Act reporting requirements, or corrects any failure within 30 days after the date the report was due to be filed. This change will be affected by deleting subparagraph B.2.(i) to CFE Policy and Procedure VIII. OCX made a similar rule change eliminating this maintenance requirement, which was nearly identical to one approved by the SEC for security options.[6]

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(7).

[2] 7 U.S.C. 7a–2(c).

[3] *See* Securities Exchange Act Release No. 62582 (July 28, 2010), 75 FR 47039 (August 4, 2010) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by OneChicago, Amending Rule 419(a), Regulatory Halts) (SR–OC–2010–03).

[4] *See* Securities Exchange Act Release No. 60143 (June 19, 2009), 74 FR 30345 (June 25, 2009) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Widening the Bid/Ask Spread for Quoting Market-Makers) (SR–OC–2009–02).

[5] *See* Securities Exchange Act Release No. 59744 (April 9, 2009), 74 FR 17706 (April 16, 2009) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Eliminating the $3 Market Price Maintenance Standard) (SR–OC–2009–01).

[6] *See* Securities Exchange Act Release No. 54454 (September 15, 2006), 71 FR 5539 (September 22, 2006) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Listing

New Listing Standard Conforming With Joint Order

CFE is proposing to conform its listing standards to those approved by the SEC and the Commodity Futures Trading Commission in their Joint Order dated November 19, 2009.[7] To affect this change, CFE is proposing to add new paragraph E to CFE Policy and Procedure VIII that references the Joint Order and provides that, "the Exchange may list security futures on any security that is eligible to underlie options on a national securities exchange." CFE notes that OCX made a similar change conforming its listing standards to those set forth in the Joint Order.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[9] of the Securities Exchange Act (the "Act"), in general, and furthers the objectives of Section 6(b)(5)[10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change updates certain CFE listing and trading rules for security futures and conforms them to ones previously changed by OCX for security futures.

B. Self-Regulatory Organization's Statement on Burden on Competition

CFE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on March 22, 2011.

At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CFE–2011–001 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–CFE–2011–001. 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–CFE–2011–001 and should be submitted on or before April 26, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–7980 Filed 4–4–11; 8:45 am]

BILLING CODE 8011–01–P

Standards of Security Futures Products) (SR–OC–2006–02).

[7] 74 FR 61380 (November 24, 2009).

[8] *See* Securities Exchange Act Release No. 61346 (January 13, 2010), 75 FR 3515 (January 21, 2010) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1, Changing Its Listing Standards in Conformance with the November 9, 2009 Joint Order Modifying the Listing Standards Requirements under Section 6(h) of the Securities Exchange Act of 1934 and the Criteria under Section 2(a)(1) of the Commodity Exchange Act) (SR–OC–2009–04).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64157; File No. SR–Phlx–2011–15]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change To Expand the $2.50 Strike Price Program

March 31, 2011.

I. Introduction

On February 2, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand the $2.50 Strike Price Program. The proposed rule change was published for comment in the **Federal Register** on February 22, 2011.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Phlx has proposed to modify Exchange Rule 1012, Series of Options Open for Trading, to expand the range of option strike prices for which $2.50 strike price intervals may be listed under the $2.50 Strike Price Program

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 63914 (February 15, 2011), 76 FR 9846 ("Notice").

("Program") from between $50 and $75 to between $50 and $100, provided the $2.50 strike price intervals are no more than $10 from the closing price of the underlying stock in the primary market. The Exchange also proposed to increase the number of option classes on individual stocks, from 46 to 60, that it may select for the Program.[4]

In support of its proposal, Phlx stated that $2.50 strike intervals above $75 would afford investors the ability to more closely tailor investment strategies to the precise movement of the underlying security. The Exchange also stated that the number of option classes in the Program has not expanded since 1998, although increasingly more companies have completed initial public offerings since 1998 and significantly more options classes are trading now as compared to 1998. The Exchange stated that the increase would allow it to accommodate investor requests for $2.50 strikes in additional options classes.

Finally, Phlx stated that it analyzed its capacity, and represented that the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic that would result from expanding the Program.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal strikes a reasonable balance between the Exchange's desire to offer a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series and the corresponding increase in quotes and market fragmentation. The Commission expects the Exchange to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

In addition, the Commission notes that Phlx has represented that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the newly permitted listings.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Phlx–2011–15) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8054 Filed 4–4–11; 8:45 am]

BILLING CODE 8011–01–P

[4] In addition, the $2.50 Strike Price Program also permits the Exchange to list any option class with $2.50 strike intervals that is included in the $2.50 Strike Price Program of another exchange. *See* Phlx Rule 1012, Commentary .05(b).

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64153; File No. SR–CFE–2011–002]

Self-Regulatory Organizations; CBOE Futures Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Listing and Trading CBOE Gold ETF Volatility Index Security Futures

March 30, 2011.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 18, 2011, CBOE Futures Exchange, LLC. ("CFE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by CFE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CFE also filed this proposed rule change concurrently with the Commodity Futures Trading Commission ("CFTC"). CFE filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act ("CEA")[2] on March 18, 2011.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

The Exchange proposes to amend its rules to permit the Exchange to list and trade the Gold ETF Volatility Index ("GVZ") security futures contract. The text of the proposed rule change is available on the Exchange's Web site at *http://www.cfe.cboe.com,* on the Commission's Web site at *http://www.sec.gov,* 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, CFE 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. CFE 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 purpose of this proposed rule change is to permit the Exchange to list and trade security futures on the CBOE Gold ETF Volatility Index ("GVZ" or "GVZ Index"). Chicago Board Options Exchange, Incorporated ("CBOE") received approval from the SEC to list and trade GVZ options.[3] Consistent with the Joint Order issued by the SEC and the CFTC dated November 19, 2009 (Securities Exchange Act Release No. 61027) ("Joint Order"),[4] the GVZ Index may underlie a security futures contract since the GVZ Index is eligible to underlie options traded on a national securities exchange.

Index Design and Calculation

The calculation of GVZ is based on the VIX methodology applied to options on the SPDR Gold Trust ("GLD"). The

[1] 15 U.S.C. 78s(b)(7).

[2] 7 U.S.C. 7a–2(c).

[3] *See* Securities Exchange Act Release No. 62139 (May 19, 2010) 75 FR 29597 (May 26, 2010) (order approving proposal to list and trade GVZ options on CBOE).

[4] 74 FR 61380 (November 24, 2009). *See also* CFE Policy and Procedure VIII E. (Eligibility for Listing Security Futures on Securities Approved for Options Trading).

index was introduced by CBOE on August 1, 2008 and has been disseminated in real-time on every trading day since that time.[5] GVZ is an up-to-the-minute market estimate of the expected volatility of GLD calculated by using real-time bid/ask quotes of GLD options listed on Chicago Board Options Exchange, Incorporated. GVZ uses nearby and second nearby options with at least 8 days left to expiration and then weights them to yield a constant, 30-day measure of the expected (implied) volatility.

For each contract month, CBOE will determine the at-the-money strike price. The Exchange will then select the at-the-money and out-of-the money series with non-zero bid prices and determine the midpoint of the bid-ask quote for each of these series. The midpoint quote of each series is then weighted so that the further away that series is from the at-the-money strike, the less weight that is accorded to the quote. Then, to compute the index level, CBOE will calculate a volatility measure for the nearby options and then for the second nearby options. This is done using the weighted mid-point of the prevailing bid-ask quotes for all included option series with the same expiration date. These volatility measures are then interpolated to arrive at a single, constant 30-day measure of volatility.

CBOE will compute values for the GVZ Index underlying security futures on a real-time basis throughout each trading day, from 8:30 a.m. until 3 p.m. (CT). GVZ Index levels will be calculated by CBOE and disseminated at 15-second intervals to major market data vendors.

Security Futures Trading

The contract multiplier for each GVZ futures contract will be $1,000.00. For example, a contract size of one GVZ futures contract would be $18,950 if the GVZ Index level were 18.95 (18.95 x $1,000.00). The Exchange may list for trading up to nine near-term serial months and up to five additional months on the February quarterly cycle for the GVZ futures contract. The minimum fluctuation of the GVZ futures contract will be 0.05 index points, which has a value of $50.00, except that the individual legs and net prices of spread trades in the GVZ futures contract may be in increments of 0.01 index points, which has a value of $10.00. The trading days for GVZ futures contracts shall be the same trading days of GLD options, as those days are determined by CBOE. The trading hours for GVZ contracts will be from 8:30 a.m. Chicago time to 3 p.m.

Exhibit 3 presents contract specifications for GVZ futures.

Position Limits

The generic formula that is used to calculate position limit levels for cash settled Narrow-Based Stock Index Futures set forth in CFE Rule 1901(e) shall not apply to GVZ futures because that formula is premised upon an index that is comprised of stocks. As discussed above, the index components of GVZ are GLD options listed on CBOE. Accordingly, the Exchange is proposing to establish position limit levels for GVZ security futures at levels comparable to those previously established and approved for GVZ options trading by the SEC. Because GVZ futures will have different position limits than under the generic formula for cash settled Narrow-Based Stock Index Futures and for ease of reference of the provisions applicable to GVZ futures by CFE market participants, CFE proposes to have a separate contract specification rule chapter for GVZ futures in CFE Rule Chapter 16.

Specifically, GVZ futures will be subject to position limits under CFE Rule 412 (Position Limits). A person may not own or control: (1) More than 5,000 contracts net long or net short in all GVZ futures contracts combined; (2) more than 3,000 contracts net long or net short in the expiring GVZ futures contract month; and (3) more than 1,350 contracts net long or net short in the expiring GVZ futures contract held during the last five (5) trading days for the expiring GVZ futures contract month.[6] For the purposes of this rule, the positions of all accounts directly or indirectly owned or controlled by a person or persons, and the positions of all accounts of a person or persons acting pursuant to an expressed or implied agreement or understanding shall be cumulated. The proposed GVZ position limits shall not apply to positions that are subject to a position limit exemption meeting the requirements of CFTC Regulations and CFE Rules. The minimum reportable level for GVZ futures will be 200 contracts.

Exercise and Settlement

The final settlement date for a GVZ futures contract shall be on the third Friday of the expiring futures contract month. If the third Friday of the expiring month is a CBOE holiday, the final settlement date for the expiring contract shall be the CBOE business day immediately preceding the third Friday. Trading on the GVZ futures contract will terminate on the business day immediately preceding the final settlement date of the GVZ futures contract for the relevant spot month. When the last trading day is moved because of a CFE holiday, the last trading day for an expiring GVZ futures contract will be the day immediately preceding the last regularly-scheduled trading day.

The final-settlement value for GVZ futures shall be a Special Opening Quotation ("SOQ") of the GVZ Index calculated from the sequence of opening prices of a single strip of GLD options expiring 30 days after the settlement date. The opening price for any series in which there is no trade shall be the average of that option's bid price and ask price as determined at the opening of trading. Exercise will result in delivery of cash on the business day following expiration. The final settlement value will be rounded to the nearest $0.01.

Settlement of GVZ futures contracts will result in the delivery of a cash settlement amount on the business day immediately following the final settlement date. The cash settlement amount on the final settlement date shall be the final mark to market amount against the final settlement price of the GVZ futures contract multiplied by $1,000.00.

If the final settlement value is not available or the normal settlement procedure cannot be utilized due to a trading disruption or other unusual circumstance, the final settlement value will be determined in accordance with the rules and bylaws of The Options Clearing Corporation ("OCC'").

Eligibility and Maintenance Criteria for GVZ Futures

Pursuant to Exchange Policy and Procedure VIII E. (Eligibility for Listing Security Futures on Securities Approved for Options Trading), the Exchange may list securities futures on GVZ because GVZ is eligible to underlie

[5] CBOE maintains a micro-site for GVZ options at: *http://www.cboe.com/gvz.*

[6] CFE notes that the proposed 5,000/3,000 position limit levels are equivalent to those established for security options trading on the GVZ Index (50,000/30,000) when scaled to reflect the larger size of the futures contract in relation to the options contract. *See* Securities Exchange Release No. 62139 (May 19, 2010), 75 FR 29597 (May 26, 2010) (SEC order approving listing and trading of GVZ options, including GVZ option position limits). *See also* chart to CBOE Rule 24.4(a). Similarly, the proposed 1,350 position limit level complies with the provisions of § 41.25(a)(i) of the regulations promulgated by the CFTC under the CEA. This provision requires the Exchange to adopt a net position limit of no greater than 13,500 (100-share) contracts applicable to positions held during the last five days of trading of an expiring contract month, and the proposed 1,350 position limit is equivalent to this level when scaled to reflect the $1,000 contract multiplier for GVZ futures.

options traded on a national securities exchange. GVZ security futures shall remain eligible for listing and trading on the Exchange so long as GVZ remains eligible to underlie options traded on a national securities exchange. If at any time GVZ no longer remains eligible to underlie options traded on a national securities exchange, GVZ shall be ineligible to underlie security futures and the Exchange will not open any additional GVZ futures contracts for trading until GVZ becomes eligible again to underlie options traded on a national securities exchange.

Block Trades

Block trades in the GVZ futures contract will be permitted. Pursuant to CFE Rule 415(a)(i), the minimum Block Trade quantity for the GVZ futures contract will be 200 contracts if there is only one leg involved in the trade.[7] If the Block Trade is executed as a spread order, one leg must meet the minimum Block Trade quantity for the GVZ futures contract and the other leg(s) must have a contract size that is reasonably related to the leg meeting the minimum Block Trade quantity. If the Block Trade is executed as a transaction with legs in multiple contract months and all legs of the Block Trade are exclusively for the purchase or exclusively for the sale of GVZ futures contracts (a "strip"), the minimum Block Trade quantity for the strip will be 300 contracts and each leg of the strip will be required to have a minimum size of 100 contracts. The minimum price increment for a Block Trade in the GVZ futures contract will be 0.01 index points.

No natural person associated with a Trading Privilege Holder or Authorized Trader that has knowledge of a pending Block Trade of such Trading Privilege Holder or Authorized Trader, or a Customer thereof in the GVZ future on the Exchange, may enter an Order or execute a transaction, whether for his or her own account or, if applicable, for the account of a Customer over which he or she has control, for or in the GVZ Future to which such Block Trade relates until after (i) such Block Trade has been reported to and published by the Exchange and (ii) any additional time period from time to time prescribed by the Exchange in its block trading procedures or contract specifications has expired.

[7] CFE Rule 415 sets forth the conditions that must be met if Block Trades are permitted by the rules governing a contract.

Exchange of Contract for Related Position Transactions

Exchange of Contract for Related Position ("ECRP") transactions, as set forth in CFE Rule 414, in the GVZ futures contract will be permitted. Any Exchange of Contract for Related Position transaction must satisfy the requirements of Rule 414.[8] The minimum price increment for an ECRP involving the GVZ futures contract will be 0.01 index points.

Margin

The customer margin requirements for GVZ futures will be governed by CFE Rule 517 (Customer Margin Requirements for Contracts That Are Security Futures).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) [9] of the Securities Exchange Act (the "Act"), in general, and furthers the objectives of Section 6(b)(5) [10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and thereby will provide investors with the ability to use security futures to gain exposure to or hedge risk associated with GLD volatility.

B. Self-Regulatory Organization's Statement on Burden on Competition

CFE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on March 25, 2011.

At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.

[8] CFE Rule 414 sets forth the conditions that must be met if ECRP transactions are permitted by the rules governing a contract.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

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–CFE–2011–002 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–CFE–2011–002. 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–CFE–

2011–002 and should be submitted on or before April 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–7981 Filed 4–4–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before May 5, 2011. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Guaranteed Disaster Assistance Program Payment Reporting.

Frequency: On Occasion.

SBA Form Number: N/A.

Description of Respondents: Small Businesses that have experienced a physical or economic disaster in a federally declared disaster.

Responses: 5,580.

Annual Burden: 467.

Title: Immediate Disaster Assistance Loan Program Application and Eligibility Data.

Frequency: On Occasion.

SBA Form Numbers: 2410, 2411, 2412.

Description of Respondents: Small Businesses that have experienced a physical or economic disaster in a federally declared disaster.

Responses: 984.

Annual Burden: 543.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2011–8092 Filed 4–4–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0293]

Convergent Capital Partners II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Convergent Capital Partners II, L.P., 505 North Highway 169, Suite 245, Minneapolis, MN 55441, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107). Convergent Capital Partners II, L.P., proposes to provide debt financing to Key Health Group, Inc., 30699 Russell Ranch Road #170, Westlake Village, CA 91362–7315. The financing is contemplated to provide capital that contributes to the growth and overall sound financing of the Key Health Group, Inc.

The financing is brought within the purview of § 107.730(a)(1) and § 107.730(a)(4) of the Regulations because Convergent Capital Partners II, L.P.'s financing will discharge an obligation owed to Convergent Capital Partners I, L.P., which is considered an Associate and because Convergent Capital Partners I, L.P., has a potential equity interest in Key Health Group, Inc. of greater than ten percent.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment and Innovation, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2011–8091 Filed 4–4–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 3.750 (3¾) percent for the April–June quarter of FY 2011.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

Walter C. Intlekofer,

Acting Director, Office of Financial Assistance.

[FR Doc. 2011–8093 Filed 4–4–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 7408]

Persons and Entities on Whom Sanctions Have Been Imposed Under the Iran Sanctions Act of 1996

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Secretary of State has determined that Belarusneft has engaged in a sanctionable investment described in section 5(a)(1) of the Iran Sanctions Act of 1996 (ISA) (50 U.S.C. 1701 note) and that certain sanctions should be imposed as a result.

DATES: Effective April 5, 2011.

FOR FURTHER INFORMATION CONTACT: On general issues: Brian Breuhaus, Office of Terrorism Finance and Economic Sanctions Policy, Department of State, *Telephone:* (202) 647–5763. For U.S. Government procurement ban issues: Kimberly Triplett, Office of the Procurement Executive, Department of State, *Telephone:* (703) 875–4079.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated to the Secretary of State in the Presidential Memorandum of November 21, 1996, 61 FR 64249 (the "Delegation Memorandum"), the Secretary has determined that Belarusneft has engaged

in a sanctionable investment described in section 5(a) of the ISA, as in effect on the day before the date of enactment of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA"). Pursuant to section 5(a) of the ISA and the Delegation Memorandum, and consistent with section 102(h)(2) of CISADA, the Secretary has determined to impose on Belarusneft the following sanctions described in section 6 of the ISA:

1. Export-Import Bank assistance for exports to sanctioned persons. The Export-Import Bank of the United States shall not give approval to the issuance of any guarantee, insurance, extension of credit, or participation in the extension of credit in connection with the export of any goods or services to Belarusneft.

2. Export sanction. The United States Government shall not issue any specific license and shall not grant any other specific permission or authority to export any goods or technology to Belarusneft under—

a. The Export Administration Act of 1979 (50 U.S.C. Appx. §§ 2401 *et seq.*);

b. The Arms Export Control Act (22 U.S.C. 2751 *et seq.*);

c. The Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*); or

d. Any other statute that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or services.

3. Loans from United States financial institutions. United States financial institutions shall be prohibited from making loans or providing credits to Belarusneft totaling more than $10,000,000 in any 12-month period unless Belarusneft is engaged in activities to relieve human suffering and the loans or credits are provided for such activities.

4. Procurement sanction. The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from Belarusneft.

These sanctions shall remain in effect until otherwise directed pursuant to the provisions of the ISA or other applicable authority. Pursuant to the authority delegated to the Secretary of State in the Delegation Memorandum, relevant agencies and instrumentalities of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this notice.

The following constitutes a current, as of this date, list of persons on whom sanctions are imposed under the ISA. The particular sanctions imposed on an individual company are identified in the relevant **Federal Register** Notice.

—Belarusneft;

—Naftiran Intertrade Company (see Public Notice 7197, 75 Fed. Reg. 62916, Oct. 13, 2010).

Dated: March 29, 2011.

Jose Fernandez,

Assistant Secretary of State for Economic, Energy and Business Affairs, Department of State.

[FR Doc. 2011–8096 Filed 4–4–11; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0089]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption, request for comments.

SUMMARY: FMCSA announces receipt of applications from 8 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition which is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce. If granted, the exemptions would enable these individuals with seizure disorders to operate CMVs in interstate commerce.

DATES: Comments must be received on or before May 5, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2011–0089 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78; Apr. 11, 2000). This information is also available at *http://Docketinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsa medical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 8 individuals listed in this notice have recently requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a commercial motor vehicle.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate commercial motor vehicles in intrastate commerce. The advisory criteria indicates that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause which did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a commercial motor vehicle should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition, has no existing residual complications, and is not taking anti-seizure medication. Drivers with a history of epilepsy/seizures off anti-seizure medication and seizure-free for 10 years may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

Summary of Applications

Brian Sessions

Mr. Sessions is a CMV driver in the state of Maine. He was diagnosed with seizure disorder in 1985 and placed on medication with good control until 1989 when his doctor recommended stopping the medicine. Mr. Sessions suffered a relapse seizure due to improper withdrawal advice in 1989 and resumed his medication. He was withdrawn successfully from his anti-seizure medication in 2007 and has remained medication free since that time. Mr. Sessions believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free for 22 years and off anti-seizure medication for 4 years.

Donald Schutz

Mr. Schutz is a CMV driver in the state of Ohio. He states that he was diagnosed with a brain tumor in 2002 and that he suffered a seizure due to the tumor in July of that year. He had brain surgery in November 2002 and the tumor was successfully removed. Mr. Schutz has been taking the anti-seizure medication Dilantin since that time and has no further seizures. He has his medication levels checked often by blood tests and remains compliant with his regimen. Mr. Schutz believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free for 9 years and has been on anti-seizure medication since 2002.

Robin L. Sherwood

Mr. Sherwood is a CMV driver in the state of Idaho. He states that he had a seizure caused by a brain tumor in 1997 and that the tumor was successfully removed during the same year. Mr. Sherwood has taken anti-seizure medication (Carbotrol) since 1997 with no further seizure activity. His doctor supports Mr. Sherwood's application for exemption because of his successful surgery and medication compliance. Mr. Sherwood believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free since 1997, has an excellent driving record, and is compliant with his medication regimen for seizures.

Frank Eveland

Mr. Eveland is a CMV driver in the state of Wisconsin. He was diagnosed with one unprovoked seizure in 2003 and placed on the anti-seizure medication Keppra at that time. His physician states that Mr. Eveland has had no further seizures and that his medication level is checked regularly by blood tests. The doctor states that Mr. Eveland is safe to operate a motor vehicle and that he is compliant with his medication. Mr. Eveland believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has maintained good medication control and has remained seizure-free for 8 years.

Frank Cekovic

Mr. Cekovic is a CMV driver in the state of Pennsylvania. He was diagnosed with a seizure disorder in January 2009 and placed on the anti-seizure medication Keppra at that time. His treating physician states that he is compliant with his medication regimen and that his risk of a recurrent seizure is very low. The CMV that he operates is a "bucket truck" for a power and light company and Mr. Cekovic states that the maximum distance he drives between job sites is no more than 20 miles per day.

Paul G. Kane

Mr. Kane is a CMV operator in the state of Massachusetts and he had a seizure in 2006. He had one other seizure in December 2009 and was placed on Keppra by his treating physician. Both seizures were listed as being from "unknown causes". His diagnosis is seizure disorder and he has done well on his medication with no further seizures according to his treating physician. Mr. Kane states that his maximum daily average CMV mileage would be between 5–20 miles per day.

Darren Keith

Mr. Keith is a CMV driver from Missouri and suffered a seizure in October 2009. He was placed on the anti-seizure medication Dilantin at that time. Mr. Keith also reported that he had two childhood episodes of febrile seizures. Mr. Keith was able to discontinue his medication with no ill effects in March 2010 and diagnostic testing revealed that he does not exhibit epilepsy symptoms.

Richard Laqua

Mr. Laqua is a CMV driver from Minnesota and was diagnosed with a partial seizure in March 2009. He was placed on the anti-seizure medication Trileptal at that time and has had no further seizure episodes. Mr. Laqua operates a milk truck.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption applications described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: March 29, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–7955 Filed 4–4–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0057]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 16 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before May 5, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0057 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. *Please see* the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." FMCSA can renew exemptions at the end of each 2-year period. The 16 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Melvin T. Ayer

Mr. Ayer, age 57, has had an inferior temporal visual field defect in his left eye since 2007. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "Based on Mr. Ayer's report of no history of problems with his commercial driving and his stable ocular findings, he appears to have sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Ayer reported that he has driven tractor-trailer combinations for 16 years, accumulating 1.1 million miles. He holds a Class A CDL from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Luis A. Bejarono

Mr. Bejarono, 41, has a large corneal scar and retinal detachment in his left eye due to an accident that occurred 5 years ago. The visual acuity in his right eye is 20/20 and in his left eye, light perception. Following an examination in 2010, his ophthalmologist noted, "In my medical opinion, Mr. Bejarono has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Bejarono reported that he has driven tractor-trailer combinations for 8 years, accumulating 400,000 miles. He holds a Class A CDL from Arizona. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard T. Berendt

Mr. Berendt, 60, has had a macular hole in his left eye since 1997. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/70. Following an examination in 2010, his optometrist noted, "It is my medical opinion that Mr. Berendt has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Berendt reported that he has driven straight trucks for 20 years, accumulating 312,000 miles and tractor-trailer combinations for 14 years accumulating 2 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows one crash for which he was not cited and two convictions for speeding in a CMV. In the first incident, he exceeded the speed limit by 4 miles per hour (MPH), in the second incident, he exceeded the speed limit by 10 mph.

James O. Cook

Mr. Cook, 62, has a central scar in his left eye due to a traumatic injury that occurred in 1967. The visual acuity in his right eye is 20/20 and in his left eye 20/400. Following an examination in 2010, his ophthalmologist noted, "In my opinion, Mr. Cook meets all applicable requirements to drive a commercial vehicle. Therefore there should be no issue in Mr. Cook retaining commercial driving privileges." Mr. Cook reported that he has driven straight trucks for 5 years, accumulating 350,000 miles and tractor-trailer combinations for 28 years accumulating 3.4 million miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Timothy J. Curran

Mr. Curran, 42, has refractive Amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/60 and in his left eye, 20/20. Following an examination in 2010, his ophthalmologist noted, "In my opinion, Mr. Curran has adequate visual function to operate a commercial vehicle." Mr. Curran reported that he has driven straight trucks for 8 years, accumulating 83,200 miles and tractor-trailer combinations for 10 years accumulating 156,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Alfred D. Hewitt

Mr. Hewitt, 57, has had a prosthetic right eye since 2004. The best corrected visual acuity in his left eye is 20/15. Following an examination in 2010, his ophthalmologist noted, "In my medical opinion he has sufficient vision to operate a commercial vehicle." Mr. Hewitt reported that he has driven tractor-trailer combinations for 38 years, accumulating 1.9 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mark A. Kleinow

Mr. Kleinow, 54, has central scarring due to central serious retinopathy. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/50. Following an examination in 2010, his optometrist noted, "Patient/applicant has sufficient vision to perform the driving task required to operate a commercial vehicle." Mr. Kleinow reported that he has driven straight trucks for 30 years, accumulating 5.6 million miles. He holds a Class B CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Luke R. Lafley

Mr. Lafley, 42, has complete loss of vision in his left eye due to a traumatic injury that occurred in 1978. The visual acuity in his right eye is 20/15. Following an examination in 2010, his optometrist noted, "I feel the vision deficiency of having one eye does not prohibit operation of a motor vehicle and Mr. Lafley's vision is adequate to drive commercial motor vehicles." Mr. Lafley reported that he has driven straight trucks for 26 years, accumulating 780,000 miles and tractor-trailer combinations for 8 years accumulating 560,000 miles. He holds a Class C operator's license from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kevin R. Lambert

Mr. Lambert, 47, has had complete loss of vision in his right eye due to a traumatic injury that occurred in 1999. The best corrected visual acuity in his left eye is 20/25. Following an examination in 2010, his ophthalmologist noted, "In my professional opinion, with the aid of the correction lenses that are prescribed, Mr. Lambert will have sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Lambert reported that he has driven tractor-trailer combinations for 18 years, accumulating 2.5 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James P. Lanigan

Mr. Lanigan, 56, has had histoplasmosis in his left eye since 6 years ago. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2011, his optometrist noted, "He has a successful 20-year history of commercial driving and his visual status has not affected his ability to perform his job." Mr. Lanigan reported that he has driven straight trucks for 17 years, accumulating 544,000 miles and tractor-trailer combinations for 1 year accumulating 5,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Nusret Odzakovic

Mr. Odzakovic, 37, has had concussive optic nerve atrophy in his right eye since 1994. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "It is our medical opinion that Mr. Odzakovic continues to have sufficient visual capabilities to perform the driving tasks associated with operating a commercial vehicle." Mr. Odzakovic reported that he has driven straight trucks for 3 years, accumulating 180,000 miles and tractor-trailer combinations for 8 years accumulating 120,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Scott W. Schilling

Mr. Schilling, 38, has had a prosthetic left eye due to a traumatic incident that occurred in 1983. The visual acuity in his right eye is 20/20. Following an examination in 2011, his optometrist noted, "I certify in my medical opinion that Scott has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Schilling reported that he has driven tractor-trailer combinations for 3 years, accumulating 195,000 miles. He holds a Class A CDL from North Dakota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Randy E. Sims

Mr. Sims, 58, has a choroidal rupture in his left eye due to a retinal injury sustained in 1962. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/70. Following an examination in 2011, his ophthalmologist noted, "I believe his vision is sufficient to operate a commercial vehicle." Mr. Sims reported that he has driven straight trucks for 5 years, accumulating 260,000 miles and tractor-trailer combinations for 26 years accumulating 2 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Halman Smith

Mr. Smith, 53, has complete loss of vision in his left eye due to traumatic optic neuropathy since age 27. The visual acuity in his right eye is 20/20. Following an examination in 2010, his optometrist noted, "Based on my exam findings and current laws regulating driver's licensure, Mr. Smith has sufficient vision to perform the driving tasks needed to operate a commercial vehicle." Mr. Smith reported that he has driven straight trucks for 14 years, 700,000 miles. He holds a Class B CDL from Delaware. His driving record for the last 3 years shows no crashes but three convictions for moving violations in a CMV; one conviction was for an improper lane change and the other two convictions were for speeding in a CMV, in both speeding incidents, he exceeded the speed limit by 5 mph.

Robert D. Smith

Mr. Smith, 52, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his

optometrist noted, "Robert has been driving commercially for a number of years, has been a patient here for over a decade, and I see no reason why he should not be able to continue to drive." Mr. Smith reported that he has driven straight trucks for 17 years, accumulating 1.3 million miles and tractor-trailer combinations for 17 years accumulating 10,200 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard D. Williams

Mr. Williams, 55, has had loss of vision in his right eye since 2006. The best corrected visual acuity in his right eye is 20/60 and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, "In light of the fact that his left eye has perfect 20/20 vision and that he does have a history of decreased vision in the right eye for the past several years, I do feel that he has adapted well to the situation and I have no concerns in his ability to drive a commercial vehicle." Mr. Williams reported that he has driven straight trucks for 35 years, accumulating 2.6 million miles, tractor-trailer combinations for 20 years accumulating 1.5 million miles and buses for 5 years, accumulating 62,500 miles. He holds a Class D operator's license from Oklahoma. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business May 5, 2011. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: March 29, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–7959 Filed 4–4–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0091]

Unified Carrier Registration Plan Board of Directors; Request for Nominations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice Requesting Nominations from among Chief Administrative Officers of State Agencies to the Board of Directors.

SUMMARY: The FMCSA solicits nominations and applications for appointment to the Board of Directors of the Unified Carrier Registration Plan (UCR Plan) of interested persons to serve as representatives of chief administrative officers of State agencies responsible for overseeing the Unified Carrier Registration Agreement (UCR Agreement). The Agency will appoint four members from such State agencies, one from each of FMCSA's four service areas. As authorized by 49 U.S.C. 14504a, the UCR Plan is responsible for the administration of the UCR Agreement. The UCR Agreement governs the registration and the collection and distribution of fees paid by for-hire and private motor carriers, brokers, freight forwarders, and leasing companies. The UCR Plan and Agreement replaced the Single State Registration System (SSRS), which was repealed as of January 1, 2008.

DATES: Nominations or expressions of interest for appointment to the Board of Directors must be received on or before April 20, 2011.

ADDRESSES: You may submit comments to this notice, identified by docket number FMCSA–2011–0091, by any of the following methods—Internet, facsimile, regular mail, or hand-delivery.

Federal eRulemaking Portal: Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov*. The FDMS is the preferred method for submitting comments, and we urge you to use it. In the "Comment" or "Submission" section, type Docket ID Number "FMCSA—2011–0091", select "Go", and then click on "Send a Comment or Submission." You will receive a tracking number when you submit a comment.

Fax: 1–202–493–2251.

Mail, Courier, or Hand-Deliver: U.S. Department of Transportation, Docket Operations (M–30), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Docket: Comments and material received from the public, as well as background information and documents mentioned in this preamble, are part of docket FMCSA—2011–0091, and are available for inspection and copying on the Internet at *http://www.regulations.gov*. You may also view and copy documents at the U.S. Department of Transportation's Docket Operations Unit, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

Privacy Act: All comments will be posted without change including any personal information provided to the FDMS at *http://www.regulations.gov*. Anyone can search the electronic form of all our dockets in FDMS, by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The Department of Transportation's (DOT) complete Privacy Act Systems of Records notice was published in the **Federal Register** on April 11, 2000 (65 FR 19476), and can be viewed at *http://docketsinfo.dot.gov*. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Jose M. Rodriguez, Office of Research and Information Technology, (202) 366–3517, FMCSA, Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590 or by e-mail at: *jose.rodriguez@dot.gov@dot.gov*.

Background

Section 4305(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59, 119 Stat. 1144, August 10, 2005] enacted 49 U.S.C. 14504a entitled "Unified carrier registration system plan and agreement." Under the UCR Agreement, motor carriers, motor private carriers, brokers, freight forwarders, and leasing companies that are involved in interstate transportation register and pay certain fees. The UCR Plan's Board of Directors must issue rules and regulations to govern the UCR Agreement. Section 14504a(a)(9) defines the Unified Carrier Registration Plan as the organization of State, Federal, and industry representatives responsible for developing, implementing, and administering the UCRA. Section 14504a(d)(1)(B) directed the Secretary to establish a Unified Carrier Registration Plan Board of Directors made up of 15

members from FMCSA, State governments, and the motor carrier industry. The Board also must recommend initial annual fees to be assessed against carriers, leasing companies, brokers, and freight forwarders under the UCRA, as well as any annual adjustments to those fees. Section 14504a(d)(1)(B) provides that the UCR Plan's Board of Directors must consist of directors from the following groups:

Federal Motor Carrier Safety Administration: One director must be selected from each of the FMCSA service areas (as defined by FMCSA on January 1, 2005) from among the chief administrative officers of the State agencies responsible for administering the UCRA.

State Agencies: The five directors selected to represent State agencies must be from among the professional staffs of State agencies responsible for overseeing the administration of the UCR Agreement.

Motor Carrier Industry: Five directors must be from the motor carrier industry. At least one of the five motor carrier industry directors must be from "a national trade association representing the general motor carrier of property industry" and one of them must be from "a motor carrier that falls within the smallest fleet fee bracket."

U.S. Department of Transportation (the Department): One individual, either the FMCSA Deputy Administrator or such other Presidential appointee from the Department appointed by the Secretary, represents the Department.

The establishment of the Board was announced in the **Federal Register** on May 12, 2006 (71 FR 27777). In that notice, the Agency recognized the American Trucking Associations, Inc. (ATA) as the national trade association representing the general motor carrier of property industry. ATA is a national affiliation of State trucking organizations representing the national, State and local interests of the 50 affiliated State trucking associations; and the interests of specialized areas of the trucking industry through conferences and councils. The Agency selected the Owner-Operator Independent Drivers Association (OOIDA) as the organization from which to appoint an individual to represent motor carriers comprising the smallest fleet fee bracket. OOIDA is a national trade association representing the interests of small trucking companies and drivers.

Each of the four current directors from the chief administrative officers of the State agencies responsible for overseeing the administration of the UCR Agreement are serving terms that expire on May 31, 2011. These directors may continue to serve until their replacements are appointed; each of them may be reappointed (49 U.S.C. 14504a(d)(1)(D)(iii) and (iv)). Today's publication serves as a notice requesting nominations for and public comment on possible appointment of the four members of the UCR Plan's Board of Directors to be appointed from the chief administrative officers of the responsible State agencies in accordance with 49 U.S.C. 14504a(d).

Board Member Nominations

FMCSA seeks either nominations of, or expressions of interest from, individuals to serve as members of the board of directors for the UCR Plan from the responsible State agencies. Nominations or expressions of interest should indicate that the person nominated or recommended meets the statutory requirements specified in 49 U.S.C. 14504a(d)(1)(B)(i). Nominations or expressions of interest must be transmitted by means of the procedures for comments specified earlier in this notice. FMCSA and the Department will make the appointments for the four members from the responsible State agencies for three-year terms, expiring on May 31, 2014.

Issued on: March 25, 2011.

Kelly Leone,

Associate Administrator, Research and Information Technology.

[FR Doc. 2011–7957 Filed 4–4–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35466 (Sub-No. 1)]

BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Partial revocation of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board revokes the class exemption as it pertains to the trackage rights described in Docket No. FD 35466 [1] to permit the trackage rights to expire at midnight on December 10, 2011, in accordance with the agreement of the parties, subject to the employee protective conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

DATES: This exemption will be effective on May 5, 2011. Petitions to stay must be filed by April 15, 2011. Petitions for reconsideration must be filed by April 25, 2011.

ADDRESSES: An original and 10 copies of all pleadings, referring to Docket No. FD 35466 (Sub-No. 1), must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on BNSF's representative: Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245–0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 30, 2011.

By the Board, Chairman Elliott and Commissioner Mulvey.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–7998 Filed 4–4–11; 8:45 am]

BILLING CODE 4915–01–P

[1] On February 8, 2011, the BNSF Railway Company (BNSF) filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by Union Pacific Railroad Company (UP) to grant local trackage rights to BNSF over UP's lines extending between: (1) UP milepost 93.2 at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, Cal., on UP's Canyon Subdivision, a distance of approximately 126.2 miles; and (2) UP milepost 219.4 at Elsey, Cal., and UP milepost 280.7 at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles. BNSF states that the trackage rights are only temporary rights, but, because they are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). *See BNSF Ry.—Temporary Trackage Rights Exemption—Union Pac. R.R.,* FD 35466 (STB served Feb. 24, 2011).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

The Department of Treasury, on behalf of itself and the Consumer Financial Protection Bureau (CFPB), will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submission may be obtained by

calling the agency contact listed below. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before May 5, 2011 to be assured of consideration.

OMB Number: 1505–XXXX.

Type of Review: Emergency Clearance Request.

Title: Qualitative Testing of Integrated Mortgage Loan Disclosure Forms.

Description: The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, Title X, requires CFPB to develop model forms that will integrate separate disclosures concerning residential mortgage loans that are required under the Truth in Lending Act and Real Estate Settlement Procedures Act. The CFPB implementation team will collect data, including through interviews and the internet, to inform its design and development of the mandated integrated disclosure and its implementation. The information collected through the one-on-one cognitive interviews and the internet will inform the disclosure form's design and content, using an iterative process to improve the draft form to make it easier for consumers to use the document to identify the terms of the loan being offered to them and use that information to compare among different loan products.

The data collection will include:

- Consent forms that will be used to obtain the consent of participants in the cognitive interviewing;
- Participant Questionnaires to obtain demographic information about the participants;
- Interview protocols for both consumers and lenders/brokers; and
- Tools that seek input from a larger community through the internet.

The core objective of the data collection is to help refine specific features of the content or design of the form to maximize communication effectiveness while minimizing compliance burden, specifically by:

- Evaluating one or more draft disclosure forms through iterative qualitative testing with consumers and lenders/brokers, including observation of consumers' usage of the disclosure, their understanding of the contents, and the choices they make.
- Collecting supplementary feedback through the internet from consumers, industry, housing counselors, and other interested parties regarding the draft disclosure(s).

The qualitative testing is focused on the purposes of the integrated disclosure to:

- Improve consumer understanding by better disclosing risks and costs so consumers can choose the home loans that best meet their needs;
- Enable "shopping" in terms of comparing loan products and loan offers; and
- Facilitate compliance and ease implementation for industry.

The CFPB implementation team plans to test at six sites in five rounds to allow for changes to the disclosure between rounds. Because consumers are not the only ones who will interact with the loan disclosure, the testing plan includes one-on-one cognitive testing with brokers and lenders to evaluate the usefulness of the form, any potential areas of confusion, and potential implementation and usability challenges.

Respondents: Individuals, businesses or other for-profit institutions.

Estimated Total Reporting Burden:

Screening Process:

Total number of potential participants to be screened: 156 individuals.

Estimated time to complete screening: 10 minutes.

Estimated participant screening burden: 26 hours (156 × 10/60).

Estimated number of participants: 54 individuals.

Time to conduct study: 90 minutes.

Estimated travel time to and from site: 30 minutes.

Estimated participant burden: 108 hours (54 × 120/60).

Estimated number of floaters: 24.

Time to conduct study: 180 minutes.

Estimated travel time to and from site: 30 minutes.

Estimated floater burden: 84 hours (24 × 210/60).

Total estimated participation burden: 192 hours.

Total Burden English interviews (screening and study participation) = 218 hours (26 + 192)

Spanish cognitive interviews:

Total number of potential participants screened: 74 individuals.

Estimated time to complete screening: 10 minutes.

Estimated participant screening burden: 12 hours (74 × 10/60).

Estimated number of participants: 25 individuals.

Time to conduct study: 90 minutes.

Estimated travel time to and from site: 30 minutes.

Estimated participant burden: 50 hours (25 × 120/60).

Estimated number of floaters: 10.

Time to conduct study: 180 minutes.

Estimated travel time to and from site: 30 minutes.

Estimated floater burden: 35 hours (10 × 210/60).

Total estimated participation burden: 85 hours.

Total Burden Spanish interviews (screening and study participation) = 97 hours (12 + 85)

Social Media Outreach

Estimated number of participants at each opportunity to provide input = 5000.

Time to provide input = 5 minutes.

Estimated participation burden: 417 hours (5 × 5,000/60).

Opportunities for structured input = 3.

Total estimated participation burden = 1,251 hours (417 × 3).

Estimated Maximum Burden: 1,566 hours (218 + 97 + 1,251)

Comments are invited on: (a) Whether the collection of information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques on other forms of information technology; and (e) estimates of capital or start-up costs and cost of operation, maintenance, and purchase of services to provide information. All comments will be a matter of public record.

Agency Contact: Pamela Blumenthal, CFPB implementation team, 1801 L Street, NW., Washington, DC 20036; (202) 435–7167.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–8057 Filed 4–4–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 31, 2011.

The Department of the Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submission may be obtained by contacting the Treasury Departmental Office Clearance Officer listed. Comments regarding these information

collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before May 5, 2011 to be assured of consideration.

Departmental Offices, International Affairs

OMB Number: 1505–NEW.

Type of Review: New collection.

Title: Treasury International Capital Form SLT, "Aggregate Holdings of Long-Term Securities by U.S. and Foreign Residents".

Form: SLT.

Abstract: Form SLT will be part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; E.O. 10033; 31 CFR part 128), for the purpose of providing timely information on international capital movements. Form SLT will be used to collect monthly data on cross-border ownership by U.S. and foreign residents of long-term securities for portfolio investment purposes. These data will be used by the U.S. Government in the formulation of international and financial policies and for the preparation of the U.S. balance of payments accounts and the U.S. international investment position. Form SLT is filed by U.S.-resident custodians, U.S.-resident issuers of long-term securities, and U.S.-resident end-investors (including endowments, foundations, pension funds, mutual funds, and other investment managers/advisors/sponsors) in long-term foreign securities.

Respondents: Private Sector: Businesses or other for-profits; Not-for-profit institutions.

Estimated Total Reporting Burden: 20,520 hours.

Departmental Office Clearance Officer: Dwight Wolkow, DO/International Affairs, 1500 Pennsylvania Ave., NW., Rm. 5205, Washington, DC 20220; (202) 622–1276.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–8008 Filed 4–4–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Advisory Council on Financial Capability

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: The President's Advisory Council on Financial Capability ("Council") will convene its second meeting on April 21, 2011 at the Department of Education, 400 Maryland Avenue, SW., Washington, DC, beginning at 11:00 a.m. Eastern Time. The meeting will be open to the public. The Council will: (1) Receive a report from the Council's subcommittees (National Strategy, Financial Access, Research and Evaluation, Partnerships, and Youth) on their progress; and (2) review the composition and focus of the subcommittees.

DATES: The meeting will be held on April 21, 2011, at 11 a.m. Eastern Time.

Submission of Written Statements: The public is invited to submit written statements to the Council. Written statements should be sent by any one of the following methods:

Electronic Statements

E-mail *ofe@treasury.gov;* or

Paper Statements

Send paper statements to the Department of the Treasury, Office of Financial Education and Financial Access, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Department will make all statements available in their original format, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers, for public inspection and photocopying in the Department's library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. You can make an appointment to inspect statements by calling (202) 622–0990. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Dubis Correal, Director, Office of Financial Education, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 622–5770 or *ofe@treasury.gov.*

SUPPLEMENTARY INFORMATION: On January 29, 2010, the President signed Executive Order 13530, creating the Council to assist the American people in understanding financial matters and making informed financial decisions, thereby contributing to financial stability. The Council is composed of two *ex officio* Federal officials and 12 non-governmental members appointed by the President with relevant backgrounds, such as financial services, consumer protection, financial access, and education. The role of the Council is to advise the President and the Secretary of the Treasury on means to promote and enhance individuals' and families' financial capability. The Council held its first meeting on November 30, 2010. At that meeting, the Chair recommended the establishment of five subcommittees to focus on the following strategic areas: National Strategy, Financial Access, Research and Evaluation, Partnerships, and Youth.

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 and the regulations thereunder, Dubis Correal, Designated Federal Officer of the Council, has ordered publication of this notice that the Council will convene its second meeting on April 21, 2011, at the Department of Education, 400 Maryland Avenue, SW., Washington, DC, beginning at 11 a.m. Eastern Time. The meeting will be open to the public. Members of the public who plan to attend the meeting must RSVP with their name, organization represented (if any), phone number, and e-mail address. To register, please go to *http://www.treasury.gov,* click on Resource Center, then Office of Financial Education and Financial Access, and then on the President's Advisory Council on Financial Capability or call (202) 622–5770 by 5 p.m. Eastern Time on April 14, 2011. For entry into the building on the date of the meeting, attendees must present a government-issued ID, such as a driver's license or passport, which includes a photo. The purpose of the meeting is to receive an update from the Council's subcommittees on their ideas, progress, and direction regarding potential recommendations. The Council will review the number, focus, and composition of the subcommittees.

Dated: March 29, 2011.

Alastair Fitzpayne,

Executive Secretary, U.S. Department of the Treasury.

[FR Doc. 2011–8039 Filed 4–4–11; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL REGISTER

Vol. 76 Tuesday,

No. 65 April 5, 2011

Part II

Department of Labor

Office of the Secretary
Wage and Hour Division

29 CFR Part 4, 516, 531, *et al.*
Updating Regulations Issued Under the Fair Labor Standards Act; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 4

Wage and Hour Division

29 CFR Parts 516, 531, 553, 778, 779, 780, 785, 786, and 790

RIN 1215–AB13, 1235–AA00

Updating Regulations Issued Under the Fair Labor Standards Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Final rule.

SUMMARY: In this final rule, the Department of Labor (Department or DOL) revises regulations issued pursuant to the Fair Labor Standards Act of 1938 (FLSA) and the Portal-to-Portal Act of 1947 (Portal Act) that have become out of date because of subsequent legislation. These revisions conform the regulations to FLSA amendments passed in 1974, 1977, 1996, 1997, 1998, 1999, 2000, and 2007, and Portal Act amendments passed in 1996.

DATES: *Effective Date:* These rules are effective on May 5, 2011.

FOR FURTHER INFORMATION CONTACT: Montaniel Navarro, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–0067 (this is not a toll-free number). Copies of this final rule may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of regulations issued by this agency may be directed to the nearest Wage and Hour Division (WHD) District Office. Locate the nearest office by calling our toll-free help line at (866) 4USWAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the WHD's Web site for a nationwide listing of Wage and Hour District and Area Offices at: *http://www.dol.gov/esa/contacts/whd/america2.htm.*

SUPPLEMENTARY INFORMATION: The Regulatory Information Number (RIN) identified for this rulemaking changed with the publication of the 2010 Spring Regulatory Agenda due to an organizational restructuring. The old RIN was assigned to the Employment Standards Administration, which no longer exists. A new RIN has been assigned to the WHD.

I. Overview of Changes

The FLSA requires covered employers to pay their nonexempt employees a Federal minimum wage and overtime premium pay of time and one-half the regular rate of pay for hours worked in excess of forty (40) in a work week. The FLSA also contains a number of exemptions from the minimum wage and overtime pay requirements.

Over the years, Congress has amended the FLSA to refine or to add to these exemptions and to clarify the minimum wage and overtime pay requirements. A 1974 amendment to section 13(b)(10) of the FLSA, 29 U.S.C. 213(b)(10), extended an overtime exemption to include any salesman primarily engaged in selling boats and eliminated the overtime exemption for partsmen and mechanics servicing trailers or aircraft. Congress also in 1974 revised aspects of the FLSA's tip credit provisions, 29 U.S.C. 203(m) and (t), which were further revised by amendments enacted in 1977 and 1996. As part of the Small Business Job Protection Act of 1996, Congress amended section 4(a) of the Portal Act, 29 U.S.C. 254(a), to define circumstances under which pay is not required for employees who use their employer's vehicle for home-to-work commuting purposes. The 1996 Act also created a youth opportunity wage of $4.25 per hour under section 6(g) of the FLSA, 29 U.S.C. 206(g). In 1997, Congress amended section 13(b)(12) of the FLSA, 29 U.S.C. 213(b)(12), to expand the exemption from overtime pay for workers on ditches, canals, and reservoirs when 90% (rather than 100%) of the water is used for agricultural purposes. In 1998, Congress added section 3(e)(5) to the FLSA, 29 U.S.C. 203(e)(5), to provide that the term "employee" does not include individuals who volunteer to private non-profit food banks solely for humanitarian purposes and who receive groceries from those food banks. In 1999, Congress added section 3(y) to the FLSA, 29 U.S.C. 203(y), to define an employee who is engaged in "fire protection activities." In 2000, Congress added section 7(e)(8) to the FLSA, 29 U.S.C. 207(e)(8), that treats stock options meeting certain criteria as an additional type of remuneration that is excludable from the computation of the regular rate. As part of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Congress increased the FLSA minimum wage in three steps: to $5.85 per hour effective July 24, 2007; to $6.55 per hour effective July 24, 2008; and to $7.25 per hour effective July 24, 2009.

Additionally, a number of courts have examined the interpretation of the FLSA's compensatory time provisions in section 7(o)(5) concerning public agency employers' obligation to grant employees' requests to use "comp time" within a "reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency." 29 U.S.C. 207(o)(5). Finally, the regulations governing the "fluctuating workweek" method of computing half-time overtime pay for salaried nonexempt employees, who work variable or fluctuating hours from week to week need updating to delete outmoded examples.

The Department published a notice of proposed rulemaking (NPRM) in the **Federal Register** on July 28, 2008 (73 FR 43654 (Jul. 28, 2008)), inviting comments on revisions to the regulations to implement these statutory amendments and to address the issues raised by the courts. Comments were due on or before September 11, 2008. In response to a number of requests for an extension of the time period for filing written comments, the Department on August 22, 2008 (73 FR 49621 (Aug. 22, 2008)) extended the deadline 15 days to September 26, 2008. The Department received approximately 30 substantive comments in response to the NPRM from a variety of sources, including labor unions and other employee representatives, employees, employer organizations, governmental representatives, Members of Congress, and law firms. Comments may be viewed at *http://www.regulations.gov*, by searching for docket id: WHD–2008–0003.

The comments reflected a wide variety of views on the merits of particular sections of the proposed regulations. Many included substantive analyses of the proposed revisions. The Department acknowledges that there are strongly held views on several of the issues presented in this rulemaking, and it has carefully considered all of the comments, analyses, and arguments made for and against the proposed changes in developing this final rule. The Department has narrowed the scope of this final rule to address those sections which require change to reflect statutory enactment or outdated examples contained in the regulations and therefore is not proceeding with some of the changes proposed in the NPRM including proposed changes to regulations regarding compensatory time, the fluctuating workweek, and

meal credits. The Department is also not proceeding with the proposed rule that service managers, service writers, service advisors, and service salesman are exempted from the overtime provision. We have also further clarified the tip credit provision to reflect long-standing and settled WHD policy concerning the ownership of tips.

II. Summary of Comments

This section presents a topical summary of the major comments received on the proposed revisions, together with a discussion of the changes that have been made in the final regulatory text in response to the comments received.

1. 2007 Amendment to the FLSA Minimum Wage

The U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110–28, 121 Stat. 112 (May 25, 2007), included an amendment to the FLSA that increased the applicable Federal minimum wage under section 6(a) of the FLSA in three steps: to $5.85 per hour effective July 24, 2007; to $6.55 per hour effective July 24, 2008; and to $7.25 per hour effective July 24, 2009. This legislation did not change the definition of "wage" in section 3(m) of the FLSA for purposes of applying the tip credit formula in determining the wage paid to a qualifying tipped employee. Thus, the minimum required cash (or "direct") wage for a tipped employee under the FLSA remains $2.13 per hour. The maximum allowable tip credit for Federal purposes under the FLSA increased as a result of the 2007 legislation, and is determined by subtracting $2.13 from the applicable minimum wage provided by section 6(a)(1) of the FLSA. *See* 29 U.S.C. 203(m).

The Department proposed changes in several of the FLSA's implementing regulations that cite to the applicable minimum wage to reflect these statutory changes, including at 29 CFR 516.28, 531.36, 531.37, 778.110, 778.111, 778.113, and 778.114, as well as changes to the McNamara-O'Hara Service Contract Act regulations to eliminate outdated references to the FLSA minimum wage in 29 CFR 4.159 and 4.167. The Department did not receive any comments specifically addressing these non-substantive conforming updates, although several commenters did commend the Department generally for its effort to update the regulations. *See, e.g.,* Littler Mendelson, P.C., Chamber of Commerce, International Public Management Association for Human Resources (IMPA–HR), the International Municipal Lawyers Association (IMLA), and the National League of Cities (NLC). Therefore, the final rule adopts the technical updates in these sections as proposed.

2. Small Business Job Protection Act of 1996

On August 20, 1996, Congress enacted the Small Business Job Protection Act of 1996 (SBJPA), Public Law 104–188, 100 Stat. 1755. SBJPA amended the Portal Act to define circumstances under which pay is not required for employees who use their employer's vehicle for home-to-work commuting purposes. It also amended the FLSA by creating a youth opportunity wage and modifying the allowable tip credit.

A. Employee Commuting Flexibility Act of 1996

Sections 2101 through 2103 of Title II of SBJPA, entitled the "Employee Commuting Flexibility Act of 1996," amended section 4(a) of the Portal Act, 29 U.S.C. 254(a). The amendment, effective upon enactment, provides that

> The use of an employer's vehicle for travel by an employee and activities performed by an employee which are incidental to the use of such vehicle for commuting shall not be considered part of the employee's principal activities if the use of such vehicle for travel is within the normal commuting area for the employer's business or establishment and the use of the employer's vehicle is subject to an agreement on the part of the employer and the employee or representative of such employee.

Employee Commuting Flexibility Act of 1996, Section 2102, 29 U.S.C. 254(a).

The House Committee Report states that the purpose of the amendment is to clarify how the Portal Act applies to "employee use of employer-provided vehicles for commuting at the beginning and end of the workday." H.R. Rep. No. 104–585, at 6 (1996). It states that such travel time is to be considered noncompensable if the use of the vehicle is "conducted under an agreement between the employer and the employee or the employee's representative." *Id.* at 4. The agreement may be a formal written agreement, a collective bargaining agreement, or an understanding based on established industry or company practices. *Id.; see Rutti* v. *LoJack Corp., Inc.,* 596 F.3d 1046, 1052 (9th Cir. 2010). In addition, "the work sites must be located within the normal commuting area of the employer's establishment." H.R. Rep. No. 104–585, at 4. Activities that are merely incidental to the use of the vehicle for commuting at the start or end of the day are similarly noncompensable, such as communication between the employee and employer to obtain assignments or instructions, or to report work progress or completion. *Id.* at 5.

This statutory amendment to the Portal Act affects certain regulations in 29 CFR parts 785 and 790 issued pursuant to the FLSA and the Portal Act. Current section 785.9(a) explains the statutory provisions that exclude from work time certain "preliminary" and "postliminary" activities performed prior to or subsequent to the workday. The NPRM proposed to add to that section a new provision that activities incidental to the use of an employer-provided vehicle for commuting are not considered principal activities, and are not compensable, when they meet the requirements of the 1996 amendment. Current § 785.34 discusses the effect of section 4 of the Portal Act on determining whether time spent in travel is working time. The NPRM proposed to add a reference to the statutory conditions under which commuting in an employer-provided vehicle will not be considered part of the employee's principal activities and therefore not compensable. The NPRM also proposed to revise §§ 785.50 and 790.3 to incorporate the 1996 amendment into the quotation of section 4 of the Portal Act.

A number of commenters addressed this proposal. Several commenters noted that the proposal simply quotes the statutory text in the regulation, and they stated that the proposal therefore does not provide adequate guidance regarding the limited impact of this amendment. *See* National Employment Lawyers Association ("NELA"), American Federation of Labor and Congress of Industrial Organizations ("AFL–CIO"), National Employment Law Project ("NELP"), and Comments from Members of United States Congress. A variety of commenters representing employees suggested that the Department should emphasize the narrow nature of this amendment by stating that, under the continuous workday principle, it does not affect the compensability of hours worked within the workday (the time between when an employee commences a principal activity and the time the employee ceases a principal activity). *See, e.g.,* NELA, NELP, North Carolina Justice Center, and Service Employees International Union ("SEIU"). They also suggested that the Department should include clarifying language, such as the statement that "otherwise non-compensable [traveling] is not compensable merely because the

employee uses his employer's vehicle * * * Likewise, otherwise compensable travel time does not become non-compensable simply through the use of an employer-owned vehicle." *See, e.g.,* NELP (quoting *Burton* v. *Hillsborough County,* 181 Fed. Appx. 829, 835 (11th Cir. 2006) (unpublished)), NELA, North Carolina Justice Center, and Greater Boston Legal Services. They also emphasized that the amendment did not change the analysis of what constitutes a "principal" work activity that is compensable. *See* NELP, SEIU, and NELA. These commenters cited court decisions addressing commuting time issues, some of which they thought were correctly decided and some of which they thought were wrong. Many of the commenters suggested that the Department should withdraw its proposal and reissue a new NPRM that would provide concrete examples of what constitutes an activity that is "incidental" to commuting and what activities are compensable. *See, e.g.,* AFL–CIO, SEIU, NELP, and NELA.

Commenters representing employers approved of the addition of language to the regulations to conform them to the Employee Commuting Flexibility Act. *See* Chamber of Commerce, Littler Mendelson, P.C., Society for Human Resource Management ("SHRM"), and National Automobile Dealers Association. Both the Chamber of Commerce and Littler Mendelson stated that it would be helpful for the Department to provide further guidance regarding issues such as what types of activities are incidental to the use of a vehicle for commuting, how the normal commuting area of the employer's business is determined, and what constitutes an agreement regarding the use of an employer-provided vehicle. Both commenters cited court decisions addressing these issues (holding, for example, that transporting tools and equipment during a commute is incidental; that normal commuting area is determined on a case-by-case basis; and that a formal written agreement is not necessary).

SHRM also suggested that the final rule should state that employees should not incur any out-of-pocket expenses related to commuting, such as for gas, tolls, parking or maintaining the employer's vehicle. The Department notes that the House Committee Report similarly stated that "[i]t is the intent of the Committee that the employee incur no out-of-pocket or direct cost for driving, parking or otherwise maintaining the employer's vehicle in connection with commuting in employer-provided vehicles." H.R. Rep. No. 104–585, at 5. While the Department has not added language to this effect to the final rule, it notes that its longstanding interpretation of the amendment comports with both the Committee report and SHRM's comment. *See* Wage and Hour Opinion Letter 2001–11 (April 18, 2001).

As the comments from both employee and employer representatives show, the question of the compensability of employees' commuting time is an important issue. Therefore, the Department does not believe that it would be helpful or appropriate to leave the regulations inconsistent with the statute while it simply starts the NPRM process anew, as a number of employee representatives suggested. Rather, in order to avoid confusion and needless litigation, the Department continues to believe that it is important to update the regulations to reflect the current state of the law by incorporating the statutory provisions of the Employee Commuting Flexibility Act into the regulations. Furthermore, the cases that both employee and employer representatives cited show that issues related to the compensability of driving time and other activities are very fact-specific and must be resolved on a case-by-case basis, in light of all the factors present in the particular situation. As a result, the Department does not believe that it would be useful to include examples in the regulatory text. The Department will consider providing additional guidance at a later date on these and other issues, such as commuting distance, costs, incidental activities, and the nature of the agreement through non-regulatory means. Similarly, because the regulations in 29 CFR part 790 already fully address issues related to the continuous workday principle and principal activities, the Department does not believe it is necessary to add to those regulations. The Department does observe, however, that nothing in the Employee Commuting Flexibility Act or this regulation alters or supersedes continuous workday principles. Only commuting time that occurs before the first principle activity or after the last principle activity in the workday is excluded from compensable time. Therefore, the final rule adopts the changes to §§ 785.9(a), 785.34, 785.50 and 790.3 as proposed.

B. Youth Opportunity Wage

Section 2105 of the SBJPA amended the FLSA by adding section 6(g), which provides that "[a]ny employer may pay any employee of such employer, during the first 90 consecutive calendar days after such employee is initially employed by such employer, a wage which is not less than $4.25 an hour." 29 U.S.C. 206(g)(1). This subminimum wage "shall only apply to an employee who has not attained the age of 20 years." 29 U.S.C. 206(g)(4). The amendment also protects current workers by prohibiting employers from taking action to displace employees, including reducing hours, wages, or employment benefits, for the purpose of hiring workers at the opportunity wage. 29 U.S.C. 206(g)(2). It also states that any employer violating this subsection shall be considered to have violated the anti-discrimination provisions of section 15(a)(3) of the FLSA. 29 U.S.C. 206(g)(3).

The NPRM proposed to add a new subpart G to 29 CFR part 786 to set forth the provisions of the youth opportunity wage. The Department received one comment regarding this update. The National Automobile Dealers Association stated that it supported the proposal. The final rule adopts the new subpart G as proposed but changes the title to "Miscellaneous Exemptions and Exclusions from Coverage."

C. Tip Credit Amendments of 1996

Section 2105 of Title II of the SBJPA also amended section 3(m) of the FLSA, 29 U.S.C. 203(m), by providing that

> In determining the wage an employer is required to pay a tipped employee, the amount paid such employee by the employee's employer shall be an amount equal to—(1) the cash wage paid such employee which for purposes of such determination shall be not less than the cash wage required to be paid such an employee on the date of the enactment of this paragraph; and (2) an additional amount on account of the tips received by such employee which amount is equal to the difference between the wage specified in paragraph (1) and the wage in effect under section 6(a)(1). The additional amount on account of tips may not exceed the value of the tips actually received by an employee. The preceding 2 sentences shall not apply with respect to any tipped employee unless such employee has been informed by the employer of the provisions of this subsection, and all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

Public Law 104–188, § 2105(b) (1996). Prior to the 1996 amendments, section 3(m) of the FLSA required an employer to pay its tipped employees a cash wage equal to 50 percent of the minimum wage (then $4.25 an hour). *See* Public Law 101–157, § 5 (1989). As amended, section 3(m)(1) provides that an employer's minimum cash wage obligation to its tipped employees is the minimum cash wage required on August 20, 1996, the date of the SBJPA enactment. Thus, section 3(m)(1)

established an employer's minimum cash wage obligations to tipped employees at the pre-SBJPA amount: 50 percent of the then-minimum wage of $4.25 per hour, or $2.13 per hour. *See* 29 U.S.C. 203(m)(1).

Subsection (2) of the 1996 amendments bases an employer's maximum allowable tip credit on a specific formula in relation to the applicable minimum wage, stating that an employer may take a tip credit equal to the difference between the required minimum cash wage specified in paragraph 3(m)(1) ($2.13) and the minimum wage ($7.25 effective July 24, 2009). Thus, the maximum Federal tip credit that an employer currently is permitted to claim under the FLSA is $7.25 minus $2.13, or $5.12 per hour.

As explained in the NPRM, this 1996 amendment affects certain regulations in 29 CFR part 531. Current § 531.50(a) quotes section 3(m) of the FLSA as it appeared in 1967, when the regulation was published. To incorporate the 1996 amendment, the NPRM proposed to replace the old statutory language with the current statutory provision. Current §§ 531.56(d), 531.59, and 531.60 refer to the pre-1996 statutory language setting the tip credit at 50 percent of the minimum wage. The proposed rule deleted or changed these references to reflect the current statutory requirements (maximum tip credit equaling the difference between the minimum wage required by section 6(a)(1) of the FLSA and the $2.13 required cash wage). Additional changes related to tipped employees are discussed in this preamble at sections 7B and 8, *infra.*

The Department received many comments relating to tipped employees; however, those comments generally addressed the issues discussed *infra* in sections 7B and 8 of this preamble, not the technical changes to the formula for computing the tip credit addressed here. The Chamber of Commerce and Littler Mendelson, P.C., stated that they supported these changes to the regulations to conform them to the statutory amendments, thereby clarifying that employers are only required to pay $2.13 per hour in cash wages regardless of what the minimum wage is. The Chamber of Commerce also noted that there was a typographical error in § 531.59(b); the cross-reference to § 531.31 should have referred to § 531.54. Because the Department received no other substantive comments relating to these issues, and having the regulations consistent with the statute will help to eliminate confusion, the final rule adopts the changes to §§ 531.50(a), 531.56(d), 531.59 and 531.60 related to the statutory tip credit calculation as proposed, except for the correction of a typographical error in 531.50(a) and the cross-reference in § 531.59.

3. Agricultural Workers on Water Storage/Irrigation Projects

Section 105 of The Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act, Public Law 105–78, 111 Stat. 1467 (Nov. 13, 1997), amended section 13(b)(12) of the FLSA, 29 U.S.C. 213(b)(12), which provides an overtime exemption for agricultural employees and employees employed in connection with the operation or maintenance of certain waterways used for supply and storing of water for agricultural purposes. The 1997 amendment deleted "water for agricultural purposes" and substituted "water, at least 90 percent of which was ultimately delivered for agricultural purposes during the preceding calendar year." Thus, this amendment makes the exemption from overtime pay requirements applicable to workers on water storage and irrigation projects when at least 90 percent of the water is used for agricultural purposes, rather than when the water is used exclusively for agricultural purposes.

The NPRM proposed to update the regulations in 29 CFR part 780, Subpart E to incorporate the statutory amendment. Thus, proposed § 780.400 correctly quoted the statute, including the amendment. Proposed § 780.401 provided an updated general explanatory statement of the history of the exemption. Proposed § 780.406 deleted the last sentence of the current rule, which refers to the 1966 amendments, as no longer necessary. Proposed § 780.408 was updated to describe the "at least 90 percent" requirement for using the water for agricultural purposes.

The Department received one comment addressing this proposal. The AFL–CIO noted that current § 780.408 states that if a small amount of water is used by the farmer for domestic purposes, this does not prevent the application of the exemption. The AFL–CIO stated that the "[t]olerance for a 'small amount' of water that is used for domestic purposes may have made sense under the old statutory provision, which required exclusive use of the water for agricultural purposes. However, now that Congress has amended the exemption to permit 10 percent of the water for non-agricultural purposes, there is no longer any justification for this exception. Any water that is used for 'domestic purposes' (that is, non-agricultural purposes) should count toward the new statutory 10 percent tolerance."

The Department agrees that, in light of the 10 percent tolerance for water used for non-agricultural purposes, there is no longer any need for the specific tolerance of domestic use by a farmer. Therefore, the final rule further modifies proposed § 780.408 to delete the three sentences relating to domestic use on farms. The final rule adopts §§ 780.400, 780.401 and 780.406 as proposed.

4. Certain Volunteers at Private Non-Profit Food Banks

Section 1 of the Amy Somers Volunteers at Food Banks Act, Public Law 105–221, 112 Stat. 1248 (Aug. 7, 1998), amended section 3(e) of the FLSA, 29 U.S.C. 203(e), by adding section (5) to provide that the term "employee" does not include individuals volunteering solely for humanitarian purposes at private non-profit food banks and who receive groceries from those food banks. 29 U.S.C. 203(e)(5). The proposed rule renamed 29 CFR part 786 "Miscellaneous Exemptions and Exclusions From Coverage" and added subpart H to set forth this exclusion from FLSA coverage. The Department did not receive any comments specifically addressing this section of the NPRM. The final rule adopts subpart H as proposed.

5. Employees Engaged in Fire Protection Activities

In 1999, Congress amended section 3 of the FLSA, 29 U.S.C. 203, by adding section (y) to define "an employee in fire protection activities." This amendment states that an "employee in fire protection activities" means

> an employee, including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous material worker, who—(1) is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by a fire department of a municipality, county, fire district, or State; and (2) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

Public Law 106–151, 113 Stat. 1731 (1999); 29 U.S.C. 203(y). Such employees may be covered by the partial overtime exemption allowed by § 7(k) or the overtime exemption for public agencies with fewer than five employees in fire protection activities pursuant to § 13(b)(20). 29 U.S.C. 207(k); 213(b)(20).

The NPRM proposed to make several revisions to 29 CFR part 553, subpart C,

to incorporate this amendment. In the first sentence of proposed § 553.210(a), the statutory amendment language was substituted for the current four-part regulatory definition of the term "any employee * * * in fire protection activities." The proposed rule also deleted the last sentence of current § 553.210(a) stating that, "[t]he term would also include rescue and ambulance service personnel if such personnel form an integral part of the public agency's fire protection services," and it deleted the cross-reference to § 553.215. The "integral part" test for the public agency employees is no longer needed because the new statutory standards define when such rescue and ambulance personnel qualify as employees in fire protection activities. Section 553.215(a) of the current rule discusses ambulance and rescue service employees who are employees of a public agency other than a fire protection or law enforcement agency. The section 3(y) amendment, however, specifically states that one of the requirements to be an "employee in fire protection activities" is that the employee is employed by a fire department of a municipality, county, fire district, or State. The proposed rule, therefore, deleted § 553.215(a) because it permits non-fire department public agencies to treat their ambulance and rescue service employees as employees engaged in fire protection activities, contrary to the new statutory provision. The proposed rule also deleted §§ 553.215(b) (stating that rescue service employees of hospitals and nursing homes cannot qualify for the exemption) and 553.215(c) (stating that ambulance and rescue service employees of private organizations do not come within the exemption) as unnecessary in light of the clear statutory requirement for employment by a fire department. Finally, in §§ 553.221, 553.222, 553.223, and 553.226, the Department proposed to substitute "employee in fire protection activities" or "employees in fire protection activities," respectively, wherever the terms "firefighter" or "firefighters" appeared.

The Department reexamined other regulations in part 553, Subpart C, in light of the section 3(y) amendment to assess whether any other changes were appropriate. Current § 553.210 characterizes as exempt work-related incidental activities, such as equipment maintenance, lecturing and fire prevention inspections. Current § 553.210 also recognizes that employees can be included within the exemption whether their status is "trainee," "probationary," or "permanent," and regardless of their particular specialty or job title or assignment to certain support activities. The Department stated its belief in the NPRM that these provisions are consistent with statutory intent and remain the appropriate interpretation of the new statutory definition and, thus, the Department proposed no further changes to § 553.210.

Current § 553.212 recognizes that exempt employees may engage in some nonexempt work, such as firefighters who work for public forest conservation agencies and who plant trees and perform other conservation activities unrelated to their firefighting duties during slack times, and set a 20% tolerance for such work. As explained in the NPRM, the Department reexamined this regulation, particularly in light of *McGavock* v. *City of Water Valley,* 452 F.3d 423, 427–28 (5th Cir. 2006), in which the appellate court concluded that the 20% tolerance for nonexempt work in § 553.212 was rendered "obsolete and without effect" by the statutory amendment. 73 FR 43658 (Jul. 28, 2008); *see also Huff* v. *DeKalb County, Ga.,* 516 F.3d 1273, 1278 (11th Cir. 2008) (agreeing that new section 3(y) is a streamlined definition that made existing provisions in §§ 553.210 and 553.212 obsolete). The proposed rule therefore deleted § 553.212 as unnecessary in light of these court decisions and the new statutory definition of "employee[s] in fire protection activities" in section 3(y) of the Act.

The Department received several comments addressing these issues. The National Public Employment Labor Relations Association ("NPELRA") stated that the removal of the 20 percent test was "an important clarification" because it was obsolete and yet some people still believe that it applies. This commenter suggested that the rules should go further in describing the terms "legal authority and responsibility to engage in fire suppression" (as meaning that the employee who has been trained may engage in such tasks) and "is engaged in the prevention, control or extinguishment of fires" (because a fire department at an airport may extinguish a fire only once per year or less). The IMPA–HR, IMLA, and NLC stated that it was important to distinguish between the section 3(y)(1) tests relating to "the status of employees who are trained in fire suppression—that they have the legal authority and responsibility to engage in fire suppression and be employed by a public fire department"—and the disjunctive test in section 3(y)(2) relating to the duties of an employee, which require "that the employee either be engaged in firefighting or respond to emergencies." They agreed with the court's statement in *McGavock* that "emergency personnel trained as firefighters could be exempt even if they 'spend one hundred percent of their time responding to medical emergencies.' " They suggested that the Department add a sentence in § 553.210 providing that emergency medical personnel who are employed by a fire department and trained in fire suppression will be exempt as long as they either are engaged in firefighting or respond to emergency situations.

On the other hand, William Pincus, an attorney representing firefighters, stated that the 20% test was not obsolete because, even after the section 3(y) amendment, it is still necessary to distinguish between exempt and nonexempt activities. The 20 percent test defines when employees who perform work that is nonexempt fall outside the exemption. This commenter cited a pre-amendment court decision holding that without the rule a public agency would be free to assign a firefighter to do any kind of work (road repair, sanitation, parks and recreation) without fear of losing the exemption, and stated that nothing in the amendment changes this analysis. The International Association of Fire Fighters ("IAFF") commented that the second sentence of proposed § 553.210(a) would create confusion because, by using the wording "the term includes", the proposal implies that employees engaged in incidental nonfirefighting functions such as equipment maintenance, attending community fire drills and inspecting homes for fire hazards are exempt even if they do not satisfy the section 3(y) statutory criteria. The IAFF also stated that the third sentence of this section is overbroad because is suggests that the term includes all "trainees." The IAFF stated that "trainees who have not completed requisite training and have no certification in fire suppression are neither 'trained,' nor have the 'legal authority * * * to engage,' in fire suppression." The commenter thus distinguished between a ten-year firefighter sent to a training course in hazardous materials who remains exempt and an untrained individual in an introductory fire suppression course before certification. This commenter further suggested that the third sentence, relating to employees assigned to support activities, is incorrect because "[w]here employees have been assigned to other jobs in which they do not have the authority or responsibility

to engage in fire suppression and/or they do not engage in fire protection activities or response to emergency situations, the employees do not fit the statutory definition." Finally, the IAFF stated that existing § 553.210(b) is obsolete, and the Department should remove it or explain why it is retained.

After careful review of the comments received on this issue and reexamining the legislative history of the section 3(y) amendment, it is the Department's view that the statutory definition of an "employee in fire protection activities" requires no further regulatory guidance at this time; however, the Department may provide additional guidance in the future, as appropriate. As a result, this final rule implements the proposed change to § 553.210(a) substituting the statutory amendment language for the current four-part regulatory definition of the term "any employee * * * in fire protection activities." In addition, the Department is deleting the remainder of paragraph (a) as unnecessary due to the statutory definition. This change also removes language from the rule that commenters identified as confusing or inconsistent with FLSA section 3(y). Likewise, current paragraph (b) is deleted from this final rule because it is no longer necessary. Current paragraph (c) of § 553.210 will be redesignated as paragraph (b) in this final rule.

With regard to the 20 percent test, the Department continues to believe that Congress defined, without further limitation, the particular criteria for when an employee qualifies as "an employee in fire protection activities" in section 3(y). Thus, an employee who performs the described duties under the circumstances and the conditions set forth in section 3(y) is "an employee in fire protection activities" without regard to the 20 percent tolerance for nonexempt work contained in § 553.212 of the current rule. The specific definition adopted by Congress renders the 20 percent tolerance for nonexempt work applied under the former regulatory definition obsolete. However, § 553.212 also applies to employees engaged in law enforcement activities, and the definition of "an employee in fire protection activities" in section 3(y) does not impact those employees. Therefore, the final rule does not delete § 553.212(a) in its entirety; instead, it deletes from § 553.212(a) only the reference to employees engaged in "fire protection". The 20 percent tolerance for nonexempt work for employees engaged in law enforcement activities in section 553.212(a) will remain in effect. Likewise, since section 3(y) did not impact the applicability of section 7(p)(2)'s rule regarding the occasional or sporadic employment of public agency employees, including fire protection and law enforcement personnel, the final rule also retains § 553.212(b), which discusses this statutory provision. Section 553.212(b) does contain a reference to the 20 percent tolerance for nonexempt work, and the final rule makes a slight modification to that section to make clear that the 20 percent tolerance is only applicable to law enforcement personnel.

With regard to the IAFF comments, the current regulation at § 553.214 directly addresses the status of trainees, and it clarifies that a trainee qualifies for exemption "only when the employee meets all the applicable tests described in § 553.210." The Department is not aware of instances of the exemption being claimed for trainees who have not gained certification and therefore do not have the legal authority or responsibility to engage in fire suppression, or of confusion surrounding this issue since passage of the section 3(y) amendment. Moreover, the Department believes that the statutory terms, such as legal authority and responsibility, should continue to be interpreted and applied on a case-by-case basis, based upon the specific facts in each situation, as reflected in Wage and Hour Opinion Letter FLSA 2006–20 (June 1, 2006). Therefore, no additional changes are required to implement this statutory provision.

6. Stock Options Excluded From the Computation of the Regular Rate

The Worker Economic Opportunity Act, Public Law 106–202, 114 Stat. 308 (May 18, 2000), amended §§ 7(e) and 7(h) of the FLSA. 29 U.S.C. 207(e), (h). In § 7(e), a new subsection (8) adds to the types of remuneration that are excluded from the computation of the regular rate when determining overtime pay "[a]ny value or income derived from employer-provided grants or rights provided pursuant to a stock option, stock appreciation right, or bona fide employee stock purchase program" meeting particular criteria. In § 7(h), the amendment clarifies that the amounts excluded under § 7(e) may not be counted toward the employer's minimum wage requirement under section 6, and that extra compensation excluded pursuant to the new subsection (8) may not be counted toward overtime pay under § 7.

The proposed rule incorporated the amendments made by the Worker Economic Opportunity Act by adding to the regulatory provisions which simply quote the statute in § 778.200(a) and (b). Section 778.208 was also revised simply to update from "seven" to "eight" the number of types of remuneration excluded in computing the regular rate.

Only two commenters addressed this section of the proposed rule. SHRM stated that "[t]his addition to the existing regulations is appropriate, and we encourage DOL to include it as proposed in its final rule." The AFL–CIO stated that the Department should do more than just restate the statutory language, specifically noting the need to clarify how an employer must communicate to employees the "terms and conditions" of stock benefit programs and under what "other circumstances" an employee may exercise a stock option or stock appreciation right in less than six months. The AFL–CIO did not offer any regulatory language or suggested solutions that it thought would be helpful, but only stated that the Department should withdraw the proposal and reissue a new NPRM providing further guidance.

The Department does not believe that it would be helpful or appropriate to leave the regulations inconsistent with the statute while it starts the NPRM process anew. Rather, in order to avoid confusion, the Department continues to believe that it is important to update the regulations to reflect the current state of the law by incorporating the Worker Economic Opportunity Act into the regulations. Therefore, the final rule adopts the changes to § 778.200 with minor editorial edits and § 778.208 as proposed. The Department will consider offering further guidance on the issues raised in the comments and other issues through non-regulatory means.

7. Fair Labor Standards Act Amendments of 1974

A. Service Advisors Working for Automobile Dealerships and Boat Salespersons

On April 7, 1974, Congress enacted an amendment to section 13(b)(10) of the FLSA, 29 U.S.C. 213(b)(10). Public Law 93–259, 88 Stat. 55 (1974). This amendment added an overtime exemption for salespersons primarily engaged in selling boats (in addition to the pre-existing exemption for sellers of trailers or aircraft). This amendment also eliminated the overtime exemption for partsmen and mechanics servicing trailers or aircraft. The proposed rule revised 29 CFR part 779, Subpart D—Exemptions for Certain Retail or Service Establishments—to conform the regulations to this 1974 amendment. Section 779.371(a) was revised to reflect the amendment's addition of boat salespersons to the exemption. Proposed § 779.372(a) clarified that "any

salesman, partsman, or mechanic" primarily engaged in selling or servicing automobiles, trucks, or farm implements are covered by the exemption; and that salespersons primarily engaged in selling trailers, boats, or aircraft are also exempt, but not partsmen or mechanics for such vehicles. Portions of § 779.372(b) and (c) were also changed accordingly.

Section 13(b)(10)(A) of the FLSA provides that "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers" shall be exempt from the overtime requirements of the Act. 29 U.S.C. 213(b)(10)(A). The current regulation at 29 CFR 779.372(c)(4) states that an employee described as a service manager, service writer, service advisor, or service salesman who is not primarily engaged in the work of a salesman, partsman, or mechanic is not exempt under section 13(b)(10)(A).

As discussed in the preamble to the proposed rule, three appellate courts have held that service advisors are exempt under section 13(b)(10)(A) because they are "salesmen" who are primarily engaged in servicing automobiles. 73 FR 43658 (Jul. 28, 2008). Based upon the two earliest court decisions, the Wage and Hour Division in 1978 recognized in an Administrator-issued opinion letter that in certain circumstances service advisors or writers "can be properly regarded as engaged in selling activities." *See* Wage and Hour Opinion Letter WH–467, 1978 WL 51403 (July 28, 1978). The opinion letter noted, however, that this "would not be true in the case of warranty work, since the selling of the warranty is done by the vehicle salesman when the vehicle is sold, not by the service writer." Therefore, the NPRM proposed to change § 779.372(c), titled "Salesman, partsman, or mechanic," to follow the courts' holdings that employees performing the duties typical of service advisors are within the section 13(b)(10)(A) exemption. Section 779.372(c)(1) was revised to include such an employee as a salesman primarily engaged in servicing automobiles. Section 779.372(c)(4) was rewritten to clarify that such employees qualify for the exemption.

A number of commenters addressed this issue. The National Automobile Dealers Association stated that the retail automobile and truck dealership industry has relied upon the Administrator's 1978 opinion letter and that it supported the proposed clarification that such employees are exempt. Littler Mendelson, P.C., similarly stated that it supported the change, because it "will eliminate confusion resulting from the inconsistency between the [Field Operations Handbook] and the current regulatory guidance, and is not a change in the law."

Other commenters disagreed with the proposed rule. The AFL–CIO stated that the proposal ignored congressional intent "to carve a narrow exemption for salesmen who work at automobile dealerships." The AFL–CIO, NELA, and NELP traced the legislative history, focusing on the addition of the requirement that the salesman must be "primarily engaged in selling or servicing such vehicles." These commenters disagreed with the court decisions interpreting the exemption, stating that service advisors merely coordinate between customers and the mechanics who actually perform the services, and that the exemption should not be extended to employees outside its plain language simply because they are "functionally similar" to an exempt employee. The AFL–CIO concluded that "neither integration with exempt employees nor the performance of functions related to those of exempt employees qualifies an employee as one who is *primarily engaged in either selling or servicing vehicles*." (Emphasis in original). NELA concluded that the exemption "requires an employee to either primarily service the vehicle or 'sell' the vehicle—not sell the service of the vehicle, as *Walton* concluded." Comments submitted by Members of the United States Congress similarly opposed the Department's proposal, stating that the 1966 exemption only exempts salesmen who sell automobiles and mechanics who service automobiles, and not salesmen who sell services. They stated that the Department's proposal "would abandon its longstanding and correct interpretation of Section 13(b)(10)," and would ignore the Supreme Court's command to construe FLSA exemptions narrowly. *Id.*

The AFL–CIO stated that, if the Department does treat service writers as salesmen primarily engaged in servicing vehicles, then it urged the Department to exclude any time spent in "selling" warranty work from the determination of whether the writer has spent the majority of his time in selling, since that right to free parts and service has already been sold by the salesman of the vehicle. NELA stated that the proposed regulatory text was confusing because it appears to exempt service writers only if they are selling the servicing of vehicles that the dealership sells, which would be difficult for both the employee and the employer to know. Both NELP and the North Carolina Justice Foundation commented that the proposal exempts service writers based upon their job title alone, rather than based upon an analysis of their actual job duties, which is contrary to the requirement to look at the circumstances of the whole activity.

Upon further consideration of the issue, the Department has decided not to adopt the proposed change to § 779.372(c)(4) to specifically include service managers, service writers, service advisors, or service salesmen as qualifying for exemption. As commenters point out, the statute does not include such positions and the Department recognizes that there are circumstances under which the requirements for the exemption would not be met. The Department notes that current § 779.372(c)(1) is based on its reading of 13(b)(10)(A) as limiting the exemption to salesmen who sell vehicles and partsmen and mechanics who service vehicles. The Department believes that this interpretation is reasonable and disagrees with the Fourth Circuit's conclusion in *Walton* v. *Greenbrier Ford, Inc.,* 370 F.3d 446, 452 (4th Cir. 2004), that the regulation impermissibly narrows the statute. Therefore, the Department has concluded that current 779.372(c) sets forth the appropriate approach to determining whether employees in such positions are subject to the exemption. However, the final rule adopts § 779.372(a)–(b) as proposed.

B. Tipped Employees

Section 3(m) of the FLSA defines the term "wage." The FLSA was amended in 1966 to include hotels and restaurants within the scope of its coverage for the first time. In order to alleviate these industries' new minimum wage obligations, the 1966 amendments also provided for the first time, within section 3(m)'s definition of a "wage," that an employer could utilize a limited amount of its employees' tips as a credit against its minimum wage obligations to those employees through a so-called "tip credit." The Department's current tip credit regulations were promulgated in 1967, one year after the tip credit was first introduced, and prior to the 1974 amendments to the FLSA, which amended the tip credit provision in section 3(m) by providing that an employer could not take a tip credit unless:

(1) [its] employee has been informed by the employer of the provisions of this subsection and (2) all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

Public Law 93–259, § 13(e), 88 Stat. 55 (1974). Thus, as amended in 1974, section 3(m) required that the employer inform its employees about the tip credit prior to utilizing it, required that a tipped employee retain all of his or her tips, and limited employer-imposed, mandatory tip pools to employees who "customarily and regularly receive tips."

The section 3(m) requirement that the employer "inform" its tipped employees of the provisions of section 3(m) prior to taking a tip credit has been strictly enforced by the Department and by the courts. Courts have disallowed the use of the tip credit for lack of notice even "where the employee has actually received and retained base wages and tips that together amply satisfy the minimum wage requirements," remarking that "[i]f the penalty for omitting notice appears harsh, it is also true that notice is not difficult for the employer to provide." *Reich* v. *Chez Robert, Inc.,* 28 F.3d 401, 404 (3d Cir. 1994) (citing *Martin* v. *Tango's Restaurant,* 969 F.2d 1319, 1323 (1st Cir. 1992)).

Prior to the 1974 amendments, the compensation of tipped employees was often a matter of agreement. Tipped employees could agree, for example, that an employer was only obligated to pay cash wages when an employee's tips were less than the minimum wage, or that the employee's tips would be turned over to the employer, who could then use the tips to pay the full minimum wage. *See Usery* v. *Emersons Ltd.,* 1976 WL 1668, at *2 (E.D. Va. 1976), *vacated and remanded on other grounds sub. nom. Marshall* v. *Emersons Ltd.,* 593 F.2d 565 (4th Cir. 1979). The 1974 section 3(m) amendments were intended to prohibit such agreements. *See* S. Rep. No. 93–690, at 43 (1974) ("The [retention requirement] is added to make clear the original Congressional intent that an employer could not use the tips of a 'tipped employee' to satisfy more than 50 percent of the Act's applicable minimum wage."). The Department's current regulations, which were in effect prior to the 1974 amendments and allowed an employer to require employees to turn over all their tips to the employer, were therefore superseded by the statutory amendment to the extent that they permitted employers to utilize employees' tips to satisfy more than 50% of their minimum wage obligation.

Under the 1974 amendments to section 3(m), an employer's ability to utilize an employee's tips is limited to taking a credit against the employee's tips as permitted by section 3(m). Section 3(m) provides the only method by which an employer may use tips received by an employee. An employer's only options under section 3(m) are to take a credit against the employee's tips up to the statutory differential, or to pay the entire minimum wage directly. *See* Wage and Hour Opinion Letter WH–536, 1989 WL 610348 (October 26, 1989) (defining when an employer does not claim a tip credit as when the employer does not retain any tips and pays the employee the minimum wage).

As amended in 1996, section 3(m) provides that the "wage" of a tipped employee equals the sum of the cash wage paid by the employer, which is fixed at a minimum of $2.13 an hour, and the amount it claims as a tip credit. The maximum permissible tip credit under section 3(m) is calculated using the current Federal minimum wage. Thus, in a situation in which an employee earns $10 an hour in tips and the employer pays $2.13 an hour in cash wages and claims the statutory maximum as a tip credit, the employee has received only the minimum wage because tips in excess of the maximum tip credit are not considered "wages" under 3(m). Using the current minimum wage of $7.25 an hour as an example, the maximum permissible tip credit is $7.25 minus $2.13, which permits the employer to take a tip credit against its minimum wage obligation of $5.12 an hour, provided it has informed its tipped employees of the tip credit provision and has permitted the employees to retain all of their tips.

Since the amount of tips the employee receives in excess of the allowable tip credit are not considered "wages" paid by the employer, any deductions by the employer from the employee's tips would result in a violation of the employer's minimum wage obligation because the employer has only paid the employee the minimum wage (cash wage of $2.13 plus the tip credit up to $7.25). A deduction from the employee's tips would be subtracted from the $7.25 minimum wage payment and would bring the employee below the minimum wage.

The NPRM proposed to update the regulations to incorporate the 1974 amendments, the legislative history, subsequent court decisions, and the Department's interpretations. Proposed §§ 531.52, 531.55(a), 531.55(b), and 531.59 eliminated references to employment agreements providing either that tips are the property of the employer or that employees will turn tips over to their employers, and clarified that the availability of the tip credit provided by section 3(m) requires that all tips received must be paid out to tipped employees in accordance with the 1974 amendments. Section 531.55(a), which describes compulsory service charges, also was updated by changing the example of such a charge from 10 percent to 15 percent to reflect more current customary industry practices.

The 1974 amendments also clarified that section 3(m)'s statement that employees must retain their tips does not preclude the practice of tip pooling "among employees who customarily and regularly receive tips." 29 U.S.C. 203(m). The Department's regulation on the subject provides that "the amounts received and retained by each individual [through a tip pooling arrangement] as his own are counted as his tips for purposes of the Act." 29 CFR 531.54.

Wage and Hour has interpreted the tip pooling clause more fully in opinion letters and in its Field Operations Handbook ("FOH"). The FOH provides, for example, that a tip pooling arrangement cannot require employees to contribute a greater percentage of their tips to the tip pool than is "customary and reasonable." FOH section 30d04(b). The agency expanded upon this position, in its opinion letters and in litigation, that "customary and reasonable" equates to 15 percent of an employee's tips or two percent of daily gross sales. *See, e.g.,* Wage and Hour Opinion Letter WH–468, 1978 WL 51429 (Sept. 5, 1978). Several courts have rejected the agency's maximum contribution percentages, however, "because neither the statute nor the regulations mention [the requirement stated in the agency interpretation] and the opinion letters do not explain the statutory source for the limitation that they create." *Kilgore* v. *Outback Steakhouse of Fla., Inc.,* 160 F.3d 294, 302–03 (6th Cir. 1998); *see Davis* v. *B&S, Inc.,* 38 F. Supp. 2d 707, 718 n.16 (N.D. Ind. 1998) (citing *Dole* v. *Continental Cuisine, Inc.,* 751 F. Supp. 799, 803 (E.D. Ark. 1990) ("The Court can find no statutory or regulatory authority for the Secretary's opinion [articulated in an opinion letter] that contributions in excess of 15% of tips or 2% of daily gross sales are excessive."). In light of these court decisions, the NPRM proposed to update § 531.54 to clarify that section 3(m) of the FLSA does not impose a maximum tip pool contribution percentage. Moreover, the NPRM proposed to state that the

employer must inform each employee of the required tip pool contribution.

The 1974 amendments also revised another aspect of section 3(m). Prior to the 1974 amendments, section 3(m) of the FLSA provided that an employee could petition the Wage and Hour Administrator to review the tip credit claimed by an employer. *See* Public Law 89–601, 80 Stat. 830 (1966) ("[I]n the case of an employee who (either himself or acting through his representative) shows to the satisfaction of the Secretary that the actual amount of tips received by him was less than the amount determined by the employer as the amount by which the wage paid him was deemed to be increased * * * the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount."). The 1974 amendments eliminated the review clause to clarify that the employer, not the employee, bears the ultimate burden of proving "the amount of tip credit, if any, [he] is entitled to claim." S. Rep. No. 93–690, at 43. Two outdated regulatory provisions promulgated in 1967, however, still purport to permit petitions to the Wage and Hour Administrator for tip credit review despite the fact that the statute no longer provides for this review. *See* 29 CFR 531.7, 531.59.

Consistent with the 1974 amendments, the NPRM proposed to delete § 531.7, which permits employees to petition the Wage and Hour Administrator for tip credit review. References to the Administrator's review in § 531.59 also were deleted, and the language was updated to reflect the burden on the employer to prove the amount of the tip credit to which it is entitled.

Numerous commenters addressed the issues relating to tipped employees.

i. Ownership of Employee Tips

Commenters representing employees expressed concern with several of the Department's proposed revisions. First, a variety of commenters stated that they were opposed to the Department's reference in § 531.52 to the fact that an employer is prohibited from using an employee's tips for any reason other than to make up the difference between the required cash wage paid and the minimum wage where "an employee is being paid wages no more than the minimum wage." *See, e.g.,* NELA, AFL–CIO, Bruckner Burch PLLC, and NELP. These commenters further noted that the preamble addresses the converse situation where an employer does pay more than the minimum wage in cash, and the preamble states that such an employer "would be able to make deductions so long as they did not reduce the direct wage payment below the minimum wage." 73 FR 43659 (Jul. 28, 2008). They objected to these statements, based upon the legislative history of the tip credit provisions.

These commenters pointed out that section 3(m) first was amended in 1966, following a Supreme Court decision that concluded that employers could use employees' tips to satisfy the entire minimum wage. That amendment provided that employers could credit tips toward 50 percent of the minimum wage. After the Wage and Hour Division issued regulations concluding that an employer could still require employees to turn over all their tips, effectively achieving a tip credit equal to 100 percent of the minimum wage, Congress again amended the statute in 1974 to provide that all tips received by an employee must be retained by the employee (except for valid, or bona fide, tip pooling). The commenters noted that the legislative history clarifies that Congress wanted in 1974 "to make clear [its] original * * * intent that an employer could not use the tips of a 'tipped employee' to satisfy more than 50 percent of the Act's applicable minimum wage." S. Rep. No. 93–690, at 43. Congress also made it clear in 1974 that "[a]ll tips received [by tipped employees were to] be paid out to tipped employees." *Id.,* at 42. The commenters cited Wage and Hour opinion letters, the FOH and Fact Sheet #15 issued thereafter, which concluded that the 1974 Amendments clarified Congress' determination that tips are the property of the employees who receive them, not the employer, and that any agreement requiring an employee to turn over tips to the employer is, therefore, illegal.

Based upon this history, NELP stated that the proposed rule and the preamble language provides "misleading guidance on tips" and "threaten[s] to increase confusion in this already high-violation industry." NELP asserted that it would be unlawful for an employer to pay a worker a cash wage of $1.00 in excess of the full minimum wage and then withhold $1.00 per hour of a worker's tips, and that the Department "lacks the authority to create this exception to the general rule against tip stealing." NELP further concluded that the proposed regulations include misleading guidance that is "confusing and encourages abuse that would adversely impact both tipped workers and their employers." Employers would hire workers for a wage that appeared to exceed the minimum wage, but then would lower their pay back to the minimum wage, and such action would expose "employers to significant liability because it is out of step with the many state laws prohibiting this action." *See also* North Carolina Justice Center.

NELA similarly stated that the proposed regulations "create confusion with respect to the ownership of tips" because they suggest that if an employer pays a direct (or cash) wage slightly in excess of the minimum wage, it can "thereby obtain unfettered access to its employees' tips." NELA stated that the confusion "is particularly dangerous given that some courts wrongly permit employers to pocket the tips of employees who are 'paid' at least the minimum wage." Therefore, NELA suggested that the Department should clarify that tips are the property of the employee who receives them and that the tip retention requirement applies even if the employer pays a wage in excess of the minimum wage.

The AFL–CIO similarly commented that the Department's regulatory "language—whether intended by the Department or the result of poor drafting—seems to permit employers to take the employee's tips if they are paid the minimum wage or greater * * * [which] was barred by Congress in 1974." *See also* Members of United States Congress. The AFL–CIO cited numerous opinion letters and court decisions for the conclusion that, whether or not an employer claims any tip credit, the employee must retain all tips (asserting the few court decisions that hold to the contrary are incorrect). Therefore, the AFL–CIO concluded that proposed § 531.52 would "turn the 1974 amendment on its head" by allowing employers to require employees to surrender their tips when the amendment bars such agreements; the commenter further stated that the proposal conflicts with proposed § 531.59, which states that section 3(m) requires employers to permit employees to retain all tips received with the exception of a valid, or bona fide, tip pool. Bruckner Burch commented that the final rule could incorporate examples from the Department's opinion letters, such as Wage Hour Opinion Letter WH–536, 1989 WL 610348 (Oct. 26 1989) (cited in the preamble), explaining when deductions may be made from the tips of employees who are paid in excess of the minimum wage, but that the rule as proposed created confusion.

The Chamber of Commerce stated that it supported the elimination of the references in current § 531.52 and other regulations to agreements between employers and employees that would make tips the property of the employer or require employees to turn over their

tips to employers. The commenter stated that "Congress amended the FLSA in 1974 to clarify that employers are not permitted to retain employee tips. References within the current regulations to agreements that could permit employers to do so were misleading and confusing, within the context of the congressional amendment."

The Department agrees with the analysis in the comments that tips are the property of the employee, and that Congress deliberately amended the FLSA's tip credit provisions in 1974 to clarify that section 3(m) provides the only permitted uses of an employee's tips—through a tip credit or a valid tip pool among only those employees who customarily and regularly receive tips. This has been the Department's longstanding position since the 1974 amendments. The Department has also taken the position since the 1974 amendments that these protections against the use of an employee's tips apply irrespective of whether the employer has elected the tip credit.

The legislative history of the Act, as well as caselaw and opinion letters published shortly after the 1974 amendments, support the Department's position that section 3(m) provides the only permissible uses of an employee's tips regardless of whether a tip credit is taken. As noted *supra,* the tip credit provision permitting an employer to use an employee's tips to satisfy 50 percent of the employer's minimum wage obligation was originally enacted in 1966. Public Law 89–601, § 101(a), 80 Stat. 830 (1966). In 1974, when the Act was amended, a Senate Report stated that the amendment was intended to "requir[e] that all tips received be paid out to tipped employees." S. Rep. No. 96–690, at 42 (1974). The same Report further observed that the amendments required employees to retain all of their tips (except to the extent that they are used in a valid tip pool) and clarified that an employer could not use its employees' tips to satisfy more than 50 percent of its minimum wage obligations. *Id.* at 42–43 (quoting 29 CFR 531.52). In 1977, a Senate Report from the Committee on Human Resources considering further amendments to the FLSA indicated that the role of tips in the calculation of an employer's minimum wage obligations to its tipped employees had been resolved by the 1974 amendments:

> Tips are not wages, and under the 1974 amendments tips must be retained by the employees—which can include employees who are in an appropriate tip pool—and cannot be paid to the employer or otherwise used by the employer to offset his wage obligation, except to the extent permitted by section 3(m).

S. Rep. No. 95–440, at 25 (1977). In support of this statement, the Report cites to two cases, *Richard* v. *Marriott Corp.,* 549 F.2d 303 (4th Cir. 1977), and *Usery* v. *Emersons Ltd.,* 1976 WL 1668 (E.D. Va. 1976), both of which recognized shortly after the 1974 amendments that while section 3(m) is not entirely clear, it had the effect of limiting an employer's use of its employees' tips to the extent provided in the statute. In *Marriott Corp.,* the Fourth Circuit concluded that tips belonged to the tipped employee, and that it was "nonsense" to argue after the 1974 amendments "that compliance with the statute results in one-half credit, but that defiance of the statute results in 100 percent credit." 549 F.2d at 305. In *Emersons Ltd.,* the district court stated that "[w]hile [section 3(m)] could have been worded more clearly, it is apparent, at least as a result of the 1974 amendment, that Congress intended to give the employer the benefits of tips received by the employee, but only to a limited extent." 1976 WL 1668, at *4.

The Ninth Circuit recently held that section 3(m)'s limitations on an employer's use of an employee's tips apply only when the tip credit is taken, and that when a tip credit is not taken, tips are only the property of the employee absent an agreement to the contrary. *Cumbie* v. *Woody Woo, Inc. d/b/a Vita Café,* 596 F.3d 577 (9th Cir. 2010); *see also Platek* v. *Duquesne Club,* 961 F. Supp. 835, 839 (W.D. Pa. 1995), *aff'd without opinion,* 107 F.3d 863 (3d Cir.) (Table), *cert. denied,* 522 U.S. 934 (1997). The Department respectfully believes that *Woody Woo* was incorrectly decided. The issue in *Woody Woo* was whether section 3(m)'s limitation on mandatory tip pools to those employees who "customarily and regularly" receive tips applies when an employer does not take a tip credit. In that case, tipped employees were required to turn over the majority of their tips to a tip pool that included employees, such as cooks and dishwashers, who are not "customarily and regularly" tipped employees, and received a small portion of their tips back from the tip pool. The employer was precluded from taking a tip credit by State law and paid its tipped employees the full State minimum wage, which exceeded the Federal minimum wage.

The Ninth Circuit started its analysis in *Woody Woo* with a statement from the 1942 Supreme Court decision in *Williams* v. *Jacksonville Terminal Co.,* 315 U.S. 386 (1942), that "'[i]n businesses where tipping is customary, the tips, *in the absence of an explicit contrary understanding,* belong to the recipient. Where, however, such an arrangement is made * * *, *in the absence of statutory interference, no reason is perceived for its invalidity.'*" *Woody Woo,* 596 F.3d at 579 (quoting *Jacksonville Terminal,* 315 U.S. at 397) (emphasis added by the Ninth Circuit). Thus, the Ninth Circuit stated that *Jacksonville Terminal* established a "default rule that an arrangement to turn over or to redistribute tips is presumptively valid," and that the question before the court was whether the FLSA, as amended, "imposes any 'statutory interference' that would invalidate Woo's tip-pooling arrangement." *Id.* After "unpacking" what it characterized to be "dense statutory language" in section 3(m), the court concluded that it is "clear" that the current statutory language disrupts the *Jacksonville Terminal* default rule only when a tip credit is taken, because the language in the last sentence of section 3(m), providing that an employer cannot take a tip credit unless it has provided notice and permits employees to retain all of their tips (except for a valid tip pool), "imposes *conditions* on taking a tip credit and does not state freestanding *requirements* pertaining to all tipped employees." *Id.* at 581. The Ninth Circuit therefore did not read section 3(m) as imposing any limitations on the use of an employee's tips when a tip credit is not taken. The court thus rejected the Department's position in its *amicus curiae* brief that Woody Woo made improper deductions from the cash wage paid when it required its employees to contribute their tips to an invalid tip pool, and that this improper deduction resulted in a minimum wage violation because the tipped employees did not receive the full minimum wage plus all tips received.

The Department believes the Ninth Circuit incorrectly concluded that the 1974 amendments to the FLSA did not alter what it characterized as *Jacksonville Terminal's* default rule. The fact that section 3(m) does not expressly address the use of an employee's tips when a tip credit is *not* taken leaves a "gap" in the statutory scheme, which the Department has reasonably filled through its longstanding interpretation of section 3(m). *See Barnhart* v. *Walton,* 535 U.S. 212, 218 (2002) ("[S]ilence, after all, normally creates ambiguity. It does not resolve it."); *see also Senger* v. *City of Aberdeen, SD,* 466 F.3d 670, 672 (8th Cir. 2006) (recognizing Department's

authority to fill a "gap" in the FLSA's regulatory scheme). The Ninth Circuit's "plain meaning" construction is unsupportable. Congress would not have had to legislatively permit employers to use their employees' tips to the extent authorized in section 3(m) unless tips were the property of the employee in the first instance. In other words, if tips were not the property of the employee, Congress would not have needed to specify that an employer is only permitted to use its employees' tips as a partial credit against its minimum wage obligations in certain prescribed circumstances because an employer would have been able to use all of its employees' tips for any reason it saw fit. If, as the Ninth Circuit held, the FLSA places limitations on an employer's use of its employees' tips only in the context of a tip credit, an employer could simply eschew the tip credit and use a greater part of its employees' tips toward its minimum wage obligations than permitted under section 3(m). This would stand the 1974 amendment "on its head" and would mean it has "accomplished nothing." *Emersons Ltd.,* 1976 WL 1668, at *4. If an employer could avail itself of this loophole, it would have no reason to ever elect the tip credit because, instead of using only a portion of its employees' tips to fulfill its minimum wage obligation, it could use all of its employees' tips to fulfill its entire minimum wage obligation to the tipped employees or other employees. This is essentially what the panel's decision permits, because if there are no restrictions on an employer's use of its employees' tips when it does not utilize a tip credit, the employer can institute a mandatory tip pool that requires employees to contribute all of their tips regardless of how much they receive back, or mandate that employees turn over all of their tips and use those tips to pay the minimum wage or for any other purpose.

For example, if an employer is subject to the current Federal minimum wage of $7.25 an hour and its tipped employees receive $10 an hour in tips, an employer who uses the maximum tip credit against its minimum wage obligation has to pay a cash wage of $2.13 and can "use" $5.12 of an employee's tips as a credit toward the rest of the minimum wage payment. The employee thus receives $2.13 in cash wages and keeps all of her $10 in tips, for a total of $12.13. *Woody Woo,* however, permits an employer who eschews the tip credit to pay $7.25 to its tipped employees in cash wages to satisfy its minimum wage obligation and require an employee to turn over all $10 of the employee's tips. The employee now receives only $7.25 an hour, rather than $12.13. And the employer, while it pays $7.25, gains $10.00 that it can direct for its own purposes (in essence realizing a $2.75 profit from the employee's tips). Thus, under the Ninth Circuit's "plain language" reading of section 3(m), an employer that does not utilize a tip credit is permitted to use its employee's tips to a greater extent than an employer that does utilize such credit. This yields an absurd result and makes the 1974 amendment superfluous.

As noted *supra,* the Department stated publicly immediately after the 1974 amendments that its tip credit regulations permitting employers to take control of employee tips through agreements were outdated, and indicated that new regulations were forthcoming. *See* Wage and Hour Opinion Letter WH–310, 1975 WL 40934, at *1 (Feb. 18, 1975). The Department also explicitly stated that the 1974 amendments superseded *Jacksonville Terminal,* explaining that "the situation of a tipped employee is far different" than it was in 1942. Wage and Hour Opinion Letter WH–321, 1975 WL 40945, at *1 (Apr. 30, 1975). As also noted *supra,* a number of commenters voiced concern that the proposed regulatory text in § 531.52 was confusing on this point, and did not make the Department's position clear. In order to codify its longstanding interpretation of section 3(m) in its regulations, and in response to these commenters, the Department is amending § 531.52 in the final rule to make clear that tips are the property of the employee, and that section 3(m) sets forth the only permitted uses of an employee's tips—either through a tip credit or a valid tip pool—whether or not the employer has elected the tip credit.

The inclusion of the text in proposed § 531.52 reading "Where an employee is being paid wages no more than the minimum wage" was intended to convey the fact that the Department only has authority under the FLSA to enforce, *inter alia,* the minimum wage provisions of that Act. *See, e.g.,* 29 U.S.C. 216, 217. Thus, if an employer pays the employee a direct wage in excess of the minimum wage—and thus did not claim a credit against any portion of the employee's tips and did not utilize the employee's tips in any way—the employer would be able to make deductions but only from the cash wage amount paid directly by the employer and only to the extent that the deductions did not reduce the employer's direct wage payment to an amount below the minimum wage. *See* Wage and Hour Opinion Letter WH–536, 1989 WL 610348 (Oct. 26, 1989). In such a situation, the deduction would be viewed as coming from the employer's direct wage payment that exceeds the minimum wage. This is consistent with the Department's position regarding impermissible deductions in the non-tip context. *See* Wage and Hour Opinion Letter FLSA 2006–21, 2006 WL 1910966 (June 9, 2006) (explaining that no FLSA action lies against an employer who makes impermissible deductions from cash wages paid if those wages are in excess of the minimum wage and the deductions do not reduce the employee's pay below the minimum wage). However, the Department agrees with the commenters that the payment of tipped employees under the FLSA and State laws is a very complex issue, and that retention of this language from the proposed rule could result in unintended confusion among the regulated community. Consequently, the text in proposed § 531.52 is revised to delete the introductory phrase in the fourth sentence of that section that reads: "Where an employee is being paid wages no more than the minimum wage," to clarify under the final rule that an employer in all cases is prohibited from using an employee's tips for any reason other than as a tip credit to make up the difference between the required cash wage paid and the minimum wage or in furtherance of a valid tip pool.

ii. Required Employer Notice

Commenters representing employees also objected to the Department's proposal in § 531.59(b) and the accompanying preamble providing that employers only have to "inform" employees orally that they will treat tips as satisfying part of the employer's minimum wage obligation, but do not have to "explain" the tip credit or provide anything in writing. For example, NELP commented that the legislative history "makes clear that informing workers is no mere formality, but that the employer must indeed *explain* the tip credit." NELP quoted S. Rep. 93–690 at 43 (1974), which provides that the employer is responsible for informing a tipped employee how the wage was calculated and that "the employer must explain the tip provision of the Act to the employee and that all tips received by such employee must be retained by the employee." NELP stated that many tipped employees are low-wage and immigrant employees working in high-violation industries, and they do not understand the complicated tip credit rules. NELP suggested that requiring

employers to provide a clear written explanation to employees upon hire would help them understand the rules and would help employers because it "would enable them to protect themselves from litigation claiming that they failed to provide adequate notice and therefore cannot take the tip credit." *See also* North Carolina Justice Center, Greater Boston Legal Services (simply informing an employee that it will use the tip credit would be "jargon that would be meaningless to many workers, especially those with limited English proficiency or immigrant workers with limited experience with wages in this country * * * Having the explanation in writing, moreover, is especially important to those workers who may want or need to seek additional assistance, outside the workplace, to understand the information they are being provided."); Members of United States Congress (the regulation should require employers to explain the tip credit rules so that employees understand "how their wages are calculated, as a matter of fairness and as a way of enforcing the law * * * To satisfy these goals, the Department should require employers to provide written notice * * * Written notice will also prevent unnecessary litigation, by improving employees' understanding of their rights.").

The AFL–CIO submitted similar comments and stated that the proposed regulation "fails to satisfy the plain language of the statute, which requires not just that the employer 'inform' the employee that it is taking a tip credit, but that 'the employer [inform the employee] of the provisions of this subsection.' " NELA also submitted similar comments and stated that, given the increasing importance of employee tips vis-à-vis the minimum wage, the tip credit regulations should ensure the fair operation of the tip credit provisions.

Because the FLSA poster (Publication 1088) provides only a limited description of the tip credit rules and recognizes that "other conditions must also be met," several commenters suggested that the regulation should set forth a sample notice providing the required explanation in full. NELA, the AFL–CIO, and Bruckner Burch PLLC stated that employers must tell employees not only that the employer will be using the tip credit, but also that a minimum wage is required by law, the amount of the minimum wage, how the tip credit works—that the employer must pay $2.13 and the balance of the full minimum wage required by the Act can come from the tip credit but that the employer must make up the difference if the employee does not receive sufficient tips, that the employee will retain all of his or her tips, and the formula for any tip pooling arrangement. These commenters stated that the Department should not rely on *Kilgore* v. *Outback Steakhouse of Florida, Inc.,* 160 F.3d 294 (6th Cir. 1998), the case cited in the preamble to the proposed rule, because it was wrongly decided on the notice issue in that it did not take into account the legislative history or the statutory language requiring employees to be informed of the provisions of section 3(m). These commenters pointed, instead, to other decisions that held employers could not utilize the tip credit where they had not adequately informed employees of the law's requirements. Finally, NELA objected to the suggestion that paychecks received after the work is performed or prior work history can provide the requisite notice, because the statute requires an employer to provide notice of the tip credit provisions prior to taking any tip credit.

Epstein Becker commented that the notice provision of section 3(m) does not require an employer to communicate its intent to use the tip credit; rather, it requires an employer to communicate the provisions of the section. Epstein Becker stated that the cases that require an employer to communicate its intent to treat tips as satisfying part of the minimum wage obligation do so without analysis of the statutory language and are incorrect. Epstein Becker further asserted that the information that would be useful to employees and required by section 3(m) is that the employer must supplement an employee's tips if they are insufficient to raise the wage level to the minimum wage, that the cash wage must be at least $2.13, and all tips earned must be retained by the employee absent a valid tip pooling arrangement (and perhaps information regarding the required information as to the tip pool, although this is "difficult to reconcile with the statute's language"). The commenter stated that the proposed regulation, requiring communication of the employer's intent to use the tip credit, does little to advance the purpose of the statute because virtually all employees know their employer intends to pay them a reduced tip wage based on prior work in the industry and any misunderstanding would be resolved with the first paycheck. Finally, Epstein Becker stated that the information on the FLSA poster (Publication 1088) is concise and understandable, and that the poster should contain all information that employers are required to communicate.

The Chamber of Commerce and Littler Mendelson, P.C., agreed with the proposal regarding what an employer must communicate to employees and stated that it can be oral. They stated the proposal is a positive step in clarifying employer obligations and, thus, it should reduce the litigation on this issue by clearly articulating the required content of the notice.

Section 3(m)(2) of the Act provides that the tip credit provisions "shall not apply with respect to any tipped employee unless *such* employee has been informed by the employer of the *provisions of this subsection,* and all tips received by such employee have been retained by such employee [except for] pooling of tips among employees who customarily and regularly receive tips." 29 U.S.C. 203(m)(2) (emphasis added). The "provisions of this subsection" include how to determine the wage an employer is required to pay a tipped employee, which is "the amount paid such employee by the employee's employer" (an amount that cannot be less than the cash wage required to be paid to a tipped employee on August 20, 1996, which was $2.13), and "the additional amount on account of the tips received by such employee" (an amount equal to the difference between the actual cash wage paid and the full minimum wage in effect under section 6(a)(1) of the Act). A Senate Report accompanying the 1974 amendments stated that the amendment "modifies Section 3(m) of the [FLSA] by requiring *employer explanation* to employees of the tip credit provisions, and by requiring that all tips received be paid out to tipped employees. * * * The tip credit provision of S. 2747 is designed to insure employer responsibility for proper computation of the tip allowance and to make clear that the employer is responsible for informing the tipped employee of how such employee's wage is calculated. Thus, the bill specifically requires that the employer must explain the provision of the Act to the employee and that all tips received by such employee must be retained by the employee." S. Rep. No. 93–690 at 42–43 (1974) (emphasis added).

As discussed in the preamble to the proposed rule, the courts have disagreed over the level of notice required to "inform" a tipped employee about section 3(m). Thus, in *Kilgore* v. *Outback Steakhouse of Florida, Inc.,* 160 F.3d 294, 298 (6th Cir. 1998), the Sixth Circuit held that while an employer must "inform its employees of its intent to take a tip credit toward the

employer's minimum wage obligation," it was not required to "explain" the tip credit. In *Martin* v. *Tango's Restaurant, Inc.,* on the other hand, the First Circuit interpreted section 3(m)'s notice provision to require, "at the very least notice to employees of the employer's intention to treat tips as satisfying part of the employer's minimum wage obligations," and stated that the provision "could easily be read to require more." 969 F.2d 1319, 1322 (1st Cir. 1992); *see Reich* v. *Chez Robert, Inc.,* 821 F. Supp. 967, 977 (D. N.J. 1993) (an employer does not meet its obligation to "inform" under section 3(m) when it tells its tipped employees that they will be paid a specific wage but does not explain that that wage is below the minimum wage and that it is permitted by law based on the employees' tips), *rev'd on other grounds,* 28 F.3d 401 (3d Cir. 1994)). In *Pellon* v. *Business Representation Int'l, Inc.,* 528 F. Supp. 2d 1306, 1310–11 (S.D. Fla. 2007), *aff'd,* 291 Fed. Appx. 310 (11th Cir. 2008), the district court held that the employer in that case had fulfilled its duty to "inform" its tipped employees of the provisions of section 3(m) by posting the FLSA poster and verbally notifying the employees that they would be paid $2.13 an hour plus tips, but noted that "a prominently displayed poster containing all of the relevant tip credit information" would also constitute sufficient notice. In *Bonham* v. *Copper Cellar Corp.,* 476 F. Supp. 98 (E.D. Tenn. 1979), on the other hand, the court held that vague references to the minimum wage and a poster that was not prominently displayed did not meet the requirement to "inform."

The Department has concluded that notice of the specific provisions of 3(m) is required to adequately inform the employee of the requirements of the tip credit. To the extent that the Sixth Circuit and other courts have reached different results, the Department notes that those courts generally failed to consider the important legislative developments underlying the FLSA's tip credit provisions and we choose to not be guided by those decisions in this revision of the regulations. Accordingly, based on the express provisions of the statute and the supporting legislative history, the Department agrees with the commenters stating that an employer must inform a tipped employee before it utilizes the tip credit, of the following: (1) The direct cash wage the employer is paying a tipped employee, which can be more than, but cannot be less than, $2.13 per hour; (2) the additional amount the employer is using as a credit against tips received, which cannot exceed the difference between the minimum wage specified in section 6(a)(1) of the FLSA and the actual cash wage paid by the employer to the employee; (3) that the additional amount claimed by the employer on account of tips as the tip credit may not exceed the value of the tips actually received by the employee; (4) that the tip credit shall not apply with respect to any tipped employee unless the employee has been informed of the tip credit provisions of section 3(m) of the Act; and (5) that all tips received by the tipped employee must be retained by the employee except for the pooling of tips among employees who customarily and regularly receive tips. Furthermore, the current FLSA recordkeeping regulation, at 29 CFR 516.28(a)(3), expressly requires that the amount per hour that the employer takes as a tip credit shall be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding week.

Upon careful reexamination of the terms of the statute, its legislative history, and a review of the public comments, the Department is revising its interpretation from the NPRM of the level of explanation that employers must provide when informing tipped employees about the tip credit pursuant to section 3(m). Accordingly, the text of the second and third sentences in proposed § 531.59(b) are combined and revised in the final rule to provide:

> * * * Pursuant to section 3(m), an employer is not eligible to take the tip credit unless it has informed its tipped employees in advance of the employer's use of the tip credit of the provisions of section 3(m) of the Act, *i.e.:* The amount of the cash wage that is to be paid to the tipped employee by the employer; the additional amount by which the wages of the tipped employee are increased on account of the tip credit claimed by the employer, which amount may not exceed the value of the tips actually received by the employee; that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and that the tip credit shall not apply to any employee who has not been informed of these requirements in this section. * * *

Many commenters urged the Department to require employers to provide written notice to its tipped employees that explain section 3(m)'s tip credit provision. Although the Department is not requiring in this rule that the employer "inform" its tipped employees of section 3(m)'s requirements in writing, employers may wish to do so, since a physical document would, if the notice is adequate, permit employers to document that they have met the requirements in section 3(m) and the Department's regulations to "inform" tipped employees of the tip credit provision. Finally, the Final Rule changes the word "bona fide" in the last sentence in proposed § 531.59(b) to "valid"; although both terms in this context refer to a tip pool that includes only those employees who customarily and regularly receive tips, the term "valid" is used in those regulations pertaining to tips for consistency.

iii. Tip Pools

Commenters also addressed issues relating to tip pooling. As noted, the NPRM proposed to add two new sentences to § 531.54 ("Tip pooling") to explain that the FLSA does not set a maximum cap on the percentage of an employee's tips that may be contributed to a valid tip pool, but that an employer must notify its tipped employees of any required tip pool contribution amount. 73 FR 43667 (Jul. 28, 2008). UNITE HERE stated its belief that tip pooling must be voluntary, as indicated by current § 531.54 stating that an employer may redistribute tips to employees "upon some basis to which they have mutually agreed among themselves," and concluded that an employer should not be able to require employees to participate in a tip pool because the rules the employer created might not be fair. It particularly saw a mandatory pool as a concern if it actually involved mandatory tip splitting, because then the employer could reduce the tipped employee to the minimum wage and use the tips "to augment the cash compensation of other employees, thereby allowing the employer to reduce its own expenditures." It stated that the requirement that an employee retain all tips "would be swallowed up by the exception" in this situation. Therefore, UNITE HERE objected to the new language in § 531.54 referring to "any required tip pool contribution amount" and stated that employers should not be permitted to require tipping out or tip pooling. It also stated that where tip pooling is voluntary, there is no need for a percentage limitation and the common practice is for employees to contribute all tips. UNITE HERE further commented that, if the Department allows mandatory tip pooling, the regulations should ensure that the pool is valid or "bona fide" such as by clarifying that employers may not retain any of the tips, tips may only go to employees who regularly and customarily receive tips (not employees such as cooks, dishwashers and

janitors), and employers may only take credit for the amount each employee actually ultimately receives.

NELP objected to the proposed rule's statement that the FLSA does not impose a maximum contribution percentage on tip pools, stating that not having a cap "makes it easier for employers to skim tips for themselves." It suggested that the rule impose a "customary and reasonable" standard, which it concluded may reasonably be read into the FLSA. *See also* North Carolina Justice Center and AFL–CIO.

The Chamber of Commerce and Littler Mendelson, P.C. stated that they supported the elimination of the cap on "the amount employers could require tipped employees to 'tip out' to other tipped employees," noting that the rule requires an employer to notify employees of the amount they will be required to contribute to a tip pool. They stated that the tip credit rules ensure that employees will retain a sufficient proportion of their tips to satisfy minimum wage. Accordingly, Littler Mendelson, P.C., concluded that "no employee will be harmed in any way even if a higher percentage of their tips are contributed to a tip pool."

In response to the comments, the Department has modified the two proposed new sentences at the end of § 531.54 to read:

> * * * Section 3(m) does not impose a maximum contribution percentage on valid mandatory tip pools, which can only include those employees who customarily and regularly receive tips. However, an employer must notify its employees of any required tip pool contribution amount, may only take a tip credit for the amount of tips each employee ultimately receives, and may not retain any of the employees' tips for any other purpose.

Other aspects of tip pooling are discussed in the section on ownership of tips, *supra.*

8. Fair Labor Standards Act Amendments of 1977

On November 1, 1977, Congress amended section 3(t) of the FLSA, 29 U.S.C. 203(t). Public Law 95–151, § 3(a), 91 Stat. 1245. Section 3(t) of the FLSA defines the phrase "tipped employee." Prior to the 1977 amendment, the definition encompassed "any employee engaged in an occupation in which he customarily and regularly receives more than $20 a month in tips." The 1977 amendment raised the threshold in section 3(t) to $30 a month in tips. The proposed rule changed the references in 29 CFR 531.50(b), 531.51, 531.56(a)–(e), 531.57, and 531.58 from $20 to $30. The commenters did not specifically address these technical updates to conform to the statute. Therefore, the final rule adopts the proposed changes to these regulations.

9. Meal Credit Under Section 3(m)

The NPRM proposed to amend § 531.30 to incorporate the Department's longstanding enforcement position regarding the acceptance of meals furnished as a credit towards the minimum wage. A "wage" paid pursuant to section 3(m) of the FLSA may include "the reasonable cost * * * to the employer of furnishing * * * board, lodging, or other facilities * * * customarily furnished by such employer to his employees." 29 U.S.C. 203(m). "Facilities" include employer-provided meals. *See* 29 CFR 531.32. The Department's regulation at 29 CFR 531.30, however, provides that an employer's ability to take credit for a facility is limited to those instances where an employee's acceptance was "voluntary and uncoerced." In other words, an employer could not take a wage credit for employees who did not choose to accept the meal.

After a number of courts rejected the agency's position on this point with regard to credit for meals, the agency adopted an enforcement position providing that an employer can take a meal credit even if an employee does not voluntarily accept the meal. *See* FOH section 30c09(b) ("WH no longer enforces the 'voluntary' provision with respect to meals."); *see also Davis Bros., Inc.* v. *Donovan,* 700 F.2d 1368, 1370 (11th Cir. 1983); *Donovan* v. *Miller Properties, Inc.,* 711 F.2d 49, 50 (5th Cir. 1983) (per curiam).

Thus, under the agency's current enforcement policy articulated in the FOH, an employer may require an employee to accept a meal provided by the employer as a condition of employment, and may take credit for no more than the actual cost of that meal even if the employee's acceptance is not voluntary. The NPRM proposed to amend 29 CFR 531.30 to reflect previous court decisions and the agency's current enforcement posture on meal credits.

Several commenters addressed this issue. Littler Mendelson, P.C., stated that it supported the proposal providing that an employee does not have to voluntarily accept a meal, stating that this was "not a change in the law" because it merely incorporates the Wage and Hour Division's current policy and court decisions into the regulations.

Commenters representing employees expressed a variety of views. The AFL–CIO stated that it opposed the change because it will make it easier for employers to deduct from workers' pay, "whether or not such meals are adequate, and whether or not the employer is only deducting the reasonable cost of such meals." It also stated that it disadvantages employees who are unable to eat a meal because of dietary or health restrictions. Therefore, it concluded that the Department should issue guidance on the circumstances when an employer can claim a meal credit. NELP similarly stated that workers should not be required to pay for meals that they cannot eat. NELP stated that workers sometimes are not given an opportunity to eat a mid-shift meal, and yet an employer may automatically make a deduction for that meal. The meal provided may also consist of inferior ingredients or other dishes that cannot be offered for sale. *See also* North Carolina Justice Center. Comments by Members of United States Congress also stated that they opposed the change because "employees may not even be able to consume employer-provided meals, because of dietary restrictions associated with their health, religion, personal preference, or the lack of time to eat the meals." The SEIU recognized that the proposed change to reflect the court cases and the FOH policy was "unremarkable" and that whether an employee accepted a meal voluntarily had not been a pressing issue for 25 years. The SEIU commented that the real issue was employees not being given the time to eat the meal for which they were charged or given notice of how the cost of the meal is calculated. Therefore, the SEIU suggested that the regulation require that employers using a meal credit "maintain timekeeping records to indicate that the workers subject to the meal credit deduction actually had the time and opportunity to consume the meal" and that they must provide employees with written notice that the meal cost will be deducted and an explanation as to how the cost was calculated.

As explained *supra,* the former requirement that employee acceptance of a meal must be voluntary was rejected in the early 1980s by two courts of appeals. *Davis Bros.* v. *Donovan,* 700 F.2d 1368 (11th Cir. 1983); *Donovan* v. *Miller Properties, Inc.,* 711 F.2d 49 (5th Cir. 1983) (per curiam). The Department's enforcement position adopted after those rulings provided that where an employee is required to accept a meal as a condition of employment, the Department would take no enforcement action *provided* the employer takes credit for no more than the actual cost incurred. FOH 30c09(b). It should be noted that the employer in *Davis Bros.* deducted from employees'

wages no more than the actual or reasonable cost of the food provided, and allowed exceptions for employees who for medical reasons could not eat the food offered. There was no allegation of minimum wage violations based on the *amount* of the credit claimed, but simply that the employee's *acceptance* was made mandatory and not voluntary in contravention of § 531.30. 700 F.2d at 1369–70. The Eleventh Circuit failed to discern any basis for the Department's construction in section 3(m) of "customarily furnished" by the employer to mean "voluntarily accepted" by the employees. *Id.* at 1370. In the *Miller Properties* case, the Fifth Circuit affirmed a lower district court ruling in the employer's favor in a very brief decision that did not analyze the particular facts but simply stated it was affirming based on the reasoning of the Eleventh Circuit in *Davis Bros. Donovan* v. *Miller Properties, Inc.,* 711 F.2d at 50.

The proposed revisions to § 531.30 did not modify or otherwise excuse compliance with other applicable requirements that limit an employer's credit for the reasonable or actual costs to the employer of furnishing the employee with board, lodging, or other facilities (if customarily furnished) under Section 3(m) of the Act (*see* 29 CFR 531.3). Section 3(m) of the Act prescribes certain limitations and safeguards that control the payment of wages in other than cash or its equivalent. Special recordkeeping requirements must also be met as provided in 29 CFR part 516 (*see* § 516.27), the provisions of which also were not modified by the revisions proposed in the NPRM.

After careful consideration of the comments, the Department has determined that further study is warranted to assess the extent to which dietary or religious restrictions prevent employees from consuming employer-provided meals and whether adequate time is allowed for the employee to eat. The Department therefore is not adopting the proposal, but may provide guidance on this issue in the future.

10. Section 7(o) Compensatory Time Off

Section 7 of the FLSA requires that a covered employee receive compensation for hours worked in excess of 40 in a workweek at a rate not less than one and one-half times the regular rate of pay at which the employee is employed. 29 U.S.C. 207(a). In 1985, subsequent to the U.S. Supreme Court's decision in *Garcia* v. *San Antonio Metropolitan Transit Authority,* 469 U.S. 528 (1985), which held that the FLSA may be constitutionally applied to State and local governments, Congress added section 7(o), 29 U.S.C. 207(o), to the FLSA to permit public agencies (*i.e.,* States, local governments, and interstate agencies) to grant employees compensatory time off in lieu of cash overtime compensation pursuant to an agreement with the employees or their representatives. The purpose of this exception to the Act's usual requirement of cash overtime pay was "to provide flexibility to State and local government employers and an element of choice to their employees regarding compensation for statutory overtime hours." H.R. Rep. No. 99–331 (1985).

Section 7(o) provides a detailed scheme for the accrual and use of compensatory time off. Subsection 7(o)(1) authorizes the provision of compensatory time off in lieu of overtime pay. Subsection 7(o)(2) specifies how a public employer creates a compensatory time off plan. Subsection 7(o)(3) establishes limits for the amount of compensatory time off that an employee may accrue. Section 7(o)(4) provides the requirements for cashing out compensatory time upon an employee's termination.Section 7(o)(5) governs a public employee's use of accrued compensatory leave. That section states:

> An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency—(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and (B) who has requested the use of such compensatory time, shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

29 U.S.C. 207(o)(5)(A), (B).

In 1987, after notice and comment, the Department issued final regulations implementing section 7(o) (29 CFR 553.20–.28). Section 553.25 of the regulations implements section 7(o)(5)'s requirements regarding the use of compensatory time off. Section 553.25(c) provides:

> (1) Whether a request to use compensatory time has been granted within a "reasonable period" will be determined by considering the customary work practices within the agency based on the facts and circumstances in each case. Such practices include, but are not limited to (a) the normal schedule of work, (b) anticipated peak workloads based on past experience, (c) emergency requirements for staff and services, and (d) the availability of qualified substitute staff.
>
> (2) The use of compensatory time in lieu of cash payment for overtime must be pursuant to some form of agreement or understanding between the employers and the employee (or the representative of the employee) reached prior to the performance of the work. (*See* § 553.23). To the extent that the []conditions under which an employee can take compensatory time off are contained in an agreement or understanding as defined in § 553.23, the terms of such agreement or understanding will govern the meaning of "reasonable period".

Section 553.25(d) states:

> When an employer receives a request for compensatory time off, it shall be honored unless to do so would be "unduly disruptive" to the agency's operations. Mere inconvenience to the employer is an insufficient basis for denial of a request for compensatory time off. (*See* H. Rep. 99–331, p. 23.) For an agency to turn down a request from an employee for compensatory time off requires that it should reasonably and in good faith anticipate that it would impose an unreasonable burden on the agency's ability to provide services of acceptable quality and quantity for the public during the time requested without the use of the employee's services.

The Department has consistently interpreted its regulations as requiring that an employee's request for compensatory time on a specific date must be granted unless doing so would unduly disrupt the agency's operations. Wage and Hour Opinion Letter 1994 WL 1004861 (Aug. 19, 1994); *DeBraska* v. *City of Milwaukee,* 131 F. Supp. 2d 1032, 1034–35 (E.D. Wis. 2000) (deferring to the Department's interpretation of its regulations as requiring that the specific compensatory time requested must be granted absent undue disruption). As discussed in the NPRM, however, the Ninth Circuit in *Mortensen* v. *County of Sacramento,* 368 F.3d 1082 (9th Cir. 2004), and the Fifth Circuit in *Houston Police Officers Union* v. *City of Houston,* 330 F.3d 298 (5th Cir.), *cert. denied,* 540 U.S. 879 (2003), both declined to defer to the Department's regulations because they found the plain language of section 7(o)(5)(B) to require only that an employee be allowed to use compensatory time within a "reasonable period" of the date requested for such leave unless doing so would "unduly disrupt" the agency. *Cf., Aiken* v. *City of Memphis,* 190 F.3d 753 (6th Cir. 1999), *cert. denied,* 528 U.S. 1157 (2000) (finding no FLSA violation where the city and the plaintiffs-police officers had agreed that "the reasonable period for requesting the use of banked compensatory time begins thirty days prior to the date in question and ends when the number of officers requesting the use of compensatory time on the given date would bring the precinct's staffing levels to the minimum level necessary for efficient operation").

Based on these appellate decisions, the NPRM proposed to revise section

553.25(c) to add a sentence that states that section 7(o)(5)(B) does not require a public agency to allow the use of compensatory time on the day specifically requested, but only requires that the agency permit the use of the time within a reasonable period after the employee makes the request unless the use would unduly disrupt the agency's operations. Additionally, the phrase "within a reasonable period after the request" was added to the final sentence of proposed § 553.25(d) and the phrase "during the time requested" was replaced with "during the time off" to clarify the employer's obligation.

Many commenters addressed the compensatory time off issue. NPELRA stated that it "wholeheartedly supports the proposed regulatory change." It commented that its member agencies have been so concerned about litigation regarding this issue that they have eliminated all FLSA compensatory time off, but that the proposed rules will ensure consistency throughout the country, thereby "reducing any incentives for public employers to eliminate FLSA compensatory time off, which benefits both employers and employees." NPELRA suggested that the Department revise § 553.25(d) to "state that the term 'unduly disrupt' may be defined in the collective bargaining process in the same manner as the term 'reasonable period' may be defined," stating that this would allow the parties to address circumstances unique to their particular organization and would result in less litigation. Finally, NPELRA commented that having to pay an employee overtime to fill in for an employee who is off creates an undue disruption and defeats the purpose of compensatory time off, as the *Mortensen* court found. Therefore, it suggested that the regulations specify that this is a factor an employer can consider in deciding whether to grant time off.

The IPMA–HR, IMLA, and NLC also commended the Department for the proposed change, stating that it would be "of great assistance to localities that must have adequate staff in order to provide services to citizens." They also urged the Department to provide that employers are not required to grant compensatory time off if it would mean that the employer would incur overtime expenses. Littler Mendelson, P.C., and SHRM also stated that they supported the proposed change, which appropriately conformed the regulation to the cited appellate court decisions.

Commenters representing employees strongly opposed the proposal. *See* American Federation of State, County and Municipal Employees (AFSCME), American Federation of Government Employees (AFGE), International Union of Police Associations (I.U.P.A.), International Association of Fire Fighters, and AFL–CIO. AFSCME urged the Department to withdraw the proposal, stating that allowing an employer to deny an employee's requested day off without demonstrating that it creates an undue hardship would "make a drastic change to the scope of the statute." AFSCME stated that there is no uniformity in the courts mandating the change, stating that a number of district court decisions have upheld the Department's current regulation. AFSCME also asserted that the Supreme Court's decision in *Christensen* v. *Harris County,* 529 U.S. 576, 583–85 (2000), provides additional support for the conclusion that an employer cannot deny the specific date requested for reasons other than those set forth in section 7(o)(5), because the Court stated that the section "imposes a restriction upon an employer's efforts to prohibit the use of compensatory time when employees request to do so." Therefore, AFSCME concluded "that, at best, there are conflicting interpretations of the language of the statute and the implementing regulation." *Id.* Because employees request specific dates for "milestones such as children's birthdays, family and friends' weddings, funerals, scheduled vacations and other date specific activities," it would harm employees to allow employers to deny the date requested absent undue disruption. Thus, absent consistent court interpretations, it stated it would be unwise public policy to change the regulation. *See also* AFGE (the current regulations "strike the proper balance between the public sector employer's interest in assuring that its mission is carried out and the employee's interest in being able to use compensatory time in a meaningful manner"); I.U.P.A. (the current rule appropriately balances agencies' needs and the interests of employees, while the proposal "would upset that balance, placing all of the burden on the employees, and allowing the employer to reap all the benefits"); and James D. Sewell ("When an officer or fireman needs to be off for a particular date, they need to be off that day, not a day the employer decides for them.").

The AFL–CIO made similar comments, stating that section 7(o)(5) is ambiguous and is best read as requiring an employer to act on an employee's request within a reasonable period after the request is made and to approve the specific day requested absent undue disruption. It noted that the Department had agreed with this interpretation in the current regulation, an *amicus* brief and an opinion letter, and it disputed that there was unanimity even among the appellate courts compelling a change. It cited the decision in *Beck* v. *City of Cleveland,* 390 F.3d 912 (6th Cir. 2004), which it stated found "*Aiken* to have been effectively overruled by the Supreme Court's decision in *Christensen,*" and it emphasized that neither the Fifth Circuit (in *City of Houston*) nor the Ninth Circuit (in *Mortensen*) considered the Supreme Court's decision in reaching their conclusions. The AFL–CIO emphasized that the current regulation is consistent with the legislative history, citing Senate Report 99–159, which stated that when an employer receives a comp time request, "that request should be honored unless to do so would be unduly disruptive." It argued that the proposal "would render meaningless the 'unduly disrupt' language" because it would likely never come into play if an employer can simply substitute a date that it wants for the date the employee requested.

The I.U.P.A. also referred to the legislative history (House Report 99–331 (1985)), which states that compensatory time off "was intended to give 'freedom and flexibility' to public employees and 'additional options' to employers." The union therefore stated that the "reasonable period" is better read as referring to the time between the date the employees submit their requests and the dates requested for time off, so that "requests cannot provide such short notice that the employer would be scrambling to find a replacement." The I.U.P.A. commented that the rationale the Department offered for the change—that the courts uniformly interpreted the statutory language as unambiguous—does not hold up because several district courts have held that the statute is ambiguous and agreed with the Department's current regulation. It stated that if the Department's rationale is correct, then the regulations are unnecessary; it is only if the Department's rationale is incorrect, and a court agrees that the statute is ambiguous, that the regulations will have an impact because the court will defer to the regulations for assistance in interpreting the statute. Therefore, the I.U.P.A. stated that the proposal would place "responsibility squarely on the shoulders of the Department" because a court that found the statute ambiguous would defer to the regulation in denying police officers their chosen days off. *Id.*

Comments by Members of United States Congress also opposed the Department's proposal, stating that it "will undermine the ability of nearly 20

million public employees to use their accrued compensatory time off." They stated that the current rule is correct and consistent with the legislative history, and that the proposal upsets the careful balance that Congress struck. They also noted that only three of 13 courts of appeals have addressed this issue, and "just two of them have expressed disapproval of the Department's longstanding view." Moreover, they noted that a number of district courts have upheld the current rule so the "issue is unsettled in the federal courts."

The IAFF stated that the "proposal is nonsensical in that it essentially eviscerates the purposes for which comp time usage is requested." The IAFF noted that under the proposed rule an employer would have authority to deny a comp time request for no reason whatsoever, so long as some alternative date within a reasonable period were offered. It also stated that, in many fire departments, employees request time off weeks or months in advance, which aids departments in maintaining adequate staffing by allowing them time to fill vacancies. However, the IAFF stated that the proposal leads to an illogical conclusion, because the more lead time an employee provides, the less likely it is that the employee will receive statutory protection of the right to use the requested time off. The IAFF concluded that, as the Department acknowledged in the NPRM, some fire fighters will simply not accept compensatory time in lieu of cash if the proposal is adopted. "Such an outcome would depart from the plain Congressional intent in enacting this statutory provision. It also would likely impose a substantial financial burden on local government departments that rely on compensatory time, rather than cash overtime * * *"

Since the publication of the NPRM, another appellate court has addressed the issue of whether an employee's specific request to use compensatory time must be granted unless it unduly disrupts the agency's operation. In *Heitmann* v. *City of Chicago,* 560 F.3d 642 (7th Cir. 2009), the plaintiffs-police officers argued that the need to consider whether a request for leave created an "undue disruption" presupposed a particular time for the leave and that employees were therefore entitled to leave on the date and time of their choosing unless it would result in an undue disruption to the city. For its part, the city argued that it was required only to offer leave within a "reasonable time" of the employee's request for leave. The court noted that the city's position was supported by *Houston* and *Mortensen,* while the plaintiffs' view was supported by *Beck* v. *Cleveland,* 390 F.3d 912 (6th Cir. 2004), and section 553.25 of the Department's regulations. The court rejected the Fifth and Ninth Circuit's plain language reading of 7(o)(5), stating that section 7(o)(5) "is anything but clear."

> Words such as "reasonable" and "undue" are open-ended. They need elaboration, and the relation between these requirements needs explication. Here the agency has added vital details and its work prevails * * * unless it represents an implausible resolution.

560 F.3d at 646. The court found that the Department's interpretation of the requirements of section (7)(o)(5) in its regulations, which "makes compensatory leave more attractive to workers and hence a more adequate substitute for money," was reasonable and entitled to deference. *Id.* The court found that section 553.25(d) requires the employer to grant leave on the date and time requested unless doing so would create an undue disruption (in which case the employer would be able to defer the requested leave for a reasonable time). *Id.* at 647.

The Seventh Circuit's *Heitmann* decision, which finds support in the Sixth Circuit's decision in *Beck,* indicates that the appellate courts are not as uniform in their reading of section 7(o)(5) as the Department understood them to be at the time of the NPRM. The Department now views the courts of appeals as being split on the proper interpretation of 7(o)(5), with the Sixth and Seventh Circuits requiring agencies to grant the specific leave requested absent undue disruption, and the Fifth and Ninth Circuits requiring agencies to grant leave within a reasonable time of the leave requested unless doing so would create an undue disruption. The Department believes that the better reading of section 7(o)(5) is that it requires employers to grant compensatory time on the specific date requested unless doing so would unduly disrupt the agency. The statutory reading set forth in *Houston* and *Mortensen,* which requires that the employer grant compensatory time within a reasonable period of the date requested, essentially nullifies the "unduly disrupt" provision of 7(o)(5). *See Beck* v. *City of Cleveland,* 390 F.3d 912, 925 (6th Cir. 2005) ("to grant the City the unlimited discretion to deny compensatory leave requests relieves the city of establishing the undue disruption requirement imposed by Congress"); *DeBraska* v. *City of Milwaukee,* 131 F. Supp. 2d 1032, 1037 (E.D. Wis. 2000). Accordingly, in light of the recent appellate decision, and in consideration of the extensive comments received on this section, the Department has decided not to finalize the proposed revision to section 553.25(c) and (d) and to leave the current regulation unchanged consistent with its longstanding position that employees are entitled to use compensatory time on the date requested absent undue disruption to the agency. In response to comments concerning whether the payment of overtime is a consideration in determining whether the use of compensatory time off is unduly disruptive, the Department does not believe that any regulatory change is warranted. The Department maintains its longstanding position that the fact that overtime may be required of one employee to permit another employee to use compensatory time off is not a sufficient reason for the employer to claim that the compensatory time off request is unduly disruptive. *See* Wage and Hour Opinion Letter 1994 WL 1004861 (Aug. 19, 1994); 52 FR 2012, 2017 (Jan. 16, 1987) ("The Department recognizes that situations may arise in which overtime may be required of one employee to permit another employee to use compensatory time off. However, such a situation, in and of itself, would not be sufficient for an employer to claim that it is unduly disruptive.").

11. Fluctuating Workweek Method of Computing Overtime Under 29 CFR 778.114

The NPRM proposed to modify the Department's regulation at 29 CFR 778.114 addressing the fluctuating workweek method of computing overtime compensation for salaried nonexempt employees to permit the payment of non-overtime bonuses and incentives without invalidating the guaranteed salary criterion required for the half-time overtime pay computation. The current regulation provides that an employer may use the fluctuating workweek method for computing half-time overtime compensation if an employee works fluctuating hours from week to week and receives, pursuant to an understanding with the employer, a fixed salary as straight-time compensation "(apart from overtime premiums)" for whatever hours the employee is called upon to work in a workweek, whether few or many. In such cases, an employer satisfies the overtime pay requirement of section 7(a) of the FLSA if it compensates the employee, in addition to the salary amount, at least one-half of the regular rate of pay for the hours worked in excess of 40 hours in each workweek.

Because the employee's hours of work fluctuate from week to week, the regular rate must be determined separately each week based on the number of hours actually worked each week.

Paying employees bonus or premium payments for certain activities such as working undesirable hours is a common and beneficial practice for employees. The NPRM proposed that bona fide bonus or premium payments would not invalidate the fluctuating workweek method of compensation, but that such payments (as well as "overtime premiums") must be included in the calculation of the regular rate unless they are excluded by FLSA sections 7(e)(1)-(8). The proposal also added an example to § 778.114(b) to illustrate these principles where an employer pays an employee a nightshift differential in addition to a fixed salary.

The Department's view, at that time, was that the proposed modification clarified the rule and was consistent with the Supreme Court's decision in *Overnight Transportation Co.* v. *Missel,* 316 U.S. 572 (1942), on which the existing regulation is patterned. *See* 73 FR 43662 (Jul. 28, 2008). The Department's proposed modification was intended to allow employers to pay additional bona fide premium payments.

The NPRM also proposed to increase the numerical values in the examples of overtime computations in § 778.114(b) so the rates of pay would be no less than the current minimum wage. Frank Dean commented that the term "approximately" in two places carried over from the current regulatory language is potentially misleading and confusing and should be eliminated to make it clear that the calculation of statutorily mandated overtime is exacting. Mr. Dean recommended changing one of the weekly hour totals from 44 to 37.5 so that there would be an exact regular rate calculation in each instance, thereby eliminating the need to use "approximately." We agree with this analysis and have incorporated his suggested revision into the final rule.

Wage and Hour Consulting Services commented that the statement limiting the weekly hours worked in the example to "never in excess of 50 hours in a workweek" in proposed § 778.114(b)(1) was confusing and redundant and should be deleted as unnecessary because it is clearly explained elsewhere in the section that the wage rate of an employee paid under the fluctuating workweek method cannot fall below the minimum wage. This phrase was carried over from the current regulation and we believe that it does not cause confusion and is needed to establish in the example the concept that the employee's regular rate will not fall below the minimum wage. We have, therefore, retained the concept but have made minor wording changes to clarify the example.

Beyond these two minor editorial comments, the comments were sharply divided on the substance of the proposed revisions to the fluctuating workweek provisions. In general, commenters representing employers favored the revisions while commenters representing employees strongly opposed the revisions.

SHRM noted that it is common practice to pay a nonexempt salaried employee a bonus or premium as an incentive for various reasons, such as working less desirable hours. SHRM commented that other payment methods, such as hourly, piece rates, day rates, and job rates, contemplate that an employee may receive a bonus or other premium payments in addition to normal pay and asserted that it was logical and consistent to permit such payments under the fluctuating workweek method of compensation.

The Chamber of Commerce also favored the revisions but sought further clarifications as to when and how bonuses should be included in regular rate calculations, particularly when bonuses (1) cover more than one workweek, (2) are not paid in the same workweek when the work was performed to which the bonus applies, and (3) are not allocable among workweeks in proportion to the amount of bonus actually earned each week. Littler Mendelson, P.C., also supported the proposed revisions, but suggested further revisions to add cross-references to other sections in part 778 regarding how to include bonuses in the regular rate to clarify that all the rules regarding bonuses for nonexempt employees apply equally whether the nonexempt employee is paid by the hour, on a salary basis or under the fluctuating workweek method. Because we believe the principles for including bonuses in the regular rate discussed in other sections of the regulations are clear, we do not find that further clarifications or additional cross-references are necessary in this section.

Fisher & Phillips LLP noted that part 778 is an interpretative rule and similarly noted that § 778.114 "is simply one in a series of *examples* of how the regular-rate principles of Section 778.109 apply in different situations." The commenter recommended revisions to clarify that the half time overtime calculation in section 778.114 applies regardless of whether the employee's hours fluctuate. The Department disagrees with this comment and notes that the application of section 778.114 is properly limited to situations where the employee's hours fluctuate. *See Flood* v. *New Hanover County,* 125 F.3d 249, 253 (4th Cir. 1997); FOH section 32b04b.

Comments expressing strong opposition to the proposed revisions were mostly based on two primary criticisms. First, that receipt of premium and bonus payments is inconsistent with payment of a fixed salary. *See* NELP, SEIU, NELA, AFL–CIO, Members of United States Congress, and North Carolina Justice Center. Second, that the proposed revisions will encourage employers to schedule additional overtime for employees paid under the fluctuating workweek method or otherwise disadvantage workers by expanding its use to a larger portion of the workforce. *See* NELP, North Carolina Justice Center, NELA, AFL–CIO, and Members of United States Congress. A number of these comments opposing the revisions questioned the Department's authority for making the revisions and asserted they would administratively overturn uniform, well-settled case law without justification and urged the Department to withdraw them. Commenters stating that premium and bonus payments are inconsistent with the concept of a fixed salary generally asserted that the proposed revisions are inconsistent with the Supreme Court's decision in *Missell,* in which the Court approved the use of the fluctuating workweek method requiring payment of only the additional half-time premium for hours worked over 40 per week for an employee paid a fixed weekly wage who worked weekly hours that fluctuated. Based on the Court's ruling and the language of current § 778.114(a), which provides that "[a]n employee employed on a salary basis may have hours of work which fluctuate from week to week and the salary may be paid him pursuant to an understanding with his employer that he will receive such fixed amount as straight time pay for whatever hours he is called upon to work in a workweek, whether few or many," these commenters asserted that employees paid under the fluctuating workweek method must receive fixed weekly pay that does not vary. The proposal departs from this fundamental concept, the commenters asserted. These commenters also took issue with the statement in the NPRM that the current regulation has presented challenges in the courts, asserting that courts applying the fluctuating workweek method of payment have uniformly concluded that

paying additional "non-overtime" premiums violates section 779.114. *See* NELA (citing *O'Brien* v. *Town of Agawam,* 350 F.3d 279 (1st Cir. 2003); *Dooley* v. *Liberty Mutual Ins. Co.,* 369 F. Supp. 2d 81 (D. Mass. 2005); *Ayers* v. *SGS Control Services, Inc.,* 2007 WL 646326 (S.D.N.Y. 2007)), SEIU, AFL–CIO, NELP, Members of United States Congress, and North Carolina Justice Center.

Several commenters also noted that the proposal would permit employers to reduce employees' fixed weekly salaries and shift the bulk of the employees' wages to bonus and premium pay. *See* NELP, NELA, SEIU, and North Carolina Justice Center. These commenters argued that this would harm employees because it would lead to significant variations in weekly wages based on the hours worked. They stated that such variations in pay are inconsistent with the purpose of the fluctuating workweek. They further objected to the proposal because it would expand the use of the fluctuating workweek method to industries in which bonus and premium payments are common. *See* NELA, Members of United States Congress, SEIU, and North Carolina Justice Center. Comments submitted by Members of the United States Congress urged that instead of modifying this section to expand its use, the Department should consider narrowing the scope of the section to prevent employers from abusing this method to lower workers' pay.

The Department has carefully considered all of the comments submitted on this section. While the Department continues to believe that the payment of bonus and premium payments can be beneficial for employees in many other contexts, we have concluded that unless such payments are overtime premiums, they are incompatible with the fluctuating workweek method of computing overtime under section 778.114. As several commenters noted, the proposed regulation could have had the unintended effect of permitting employers to pay a greatly reduced fixed salary and shift a large portion of employees' compensation into bonus and premium payments, potentially resulting in wide disparities in employees' weekly pay depending on the particular hours worked. It is just this type of wide disparity in weekly pay that the fluctuating workweek method was intended to avoid by requiring the payment of a fixed amount as straight time pay for all hours in the workweek, whether few or many. The basis for allowing the half-time overtime premium computation under the fluctuating workweek method is the mutual understanding between the employer and the employee regarding payment of a fixed amount as straight time pay for whatever hours are worked each workweek, regardless of their number. While the example provided in the NPRM of nightshift premiums resulted in a relatively modest change in the employee's straight time pay, the Department now believes that the proposed regulation would have been inconsistent with the requirement of a fixed salary payment set forth by the Supreme Court in *Overnight Motor Transport* v. *Missel.* Moreover, on closer examination, the Department is persuaded that the courts have not been unduly challenged in applying the current regulation to additional bonus and premium payments. *See O'Brien* v. *Town of Agawam,* 350 F.3d 279 (1st Cir. 2003); *Adeva* v. *Intertek USA,* 2010 WL 97991 (D.N.J. 2010); *Dooley* v. *Liberty Mutual Ins. Co.,* 369 F. Supp. 2d 81 (D. Mass. 2005); *Ayers* v. *SGS Control Services, Inc.,* 2007 WL 646326 (S.D.N.Y. 2007).

Finally, while the proper use of the fluctuating workweek method of pay results in an employee being paid time and one-half of the employee's regular rate for overtime hours, the Department is cognizant that this method of pay results in a regular rate that diminishes as the workweek increases, which may create an incentive to require employees to work long hours. The Department does not believe that it would be appropriate to expand the use of this method of computing overtime pay beyond the scope of the current regulation. Accordingly, the final rule has been modified from the proposal to restore the current rule requiring payment of the fixed salary amount as the straight time pay for whatever hours are worked in the workweek, that a clear mutual understanding of the parties must exist that the fixed salary is compensation (apart from overtime premiums) for the hours worked each workweek whatever their number, that the fixed salary amount must be sufficient to provide compensation at a rate not less than the minimum wage, and that the employee must receive extra compensation in addition to the fixed salary for all overtime hours worked at a rate not less than one-half the regular rate of pay. Editorial revisions have been included in the text of the final rule to delete gender-specific references and to update the computation examples to provide wage rates above the minimum wage and the exact calculation of the regular rate. The proposed examples in the NPRM at § 778.114(b)(2) suggesting methods for making supplemental nightshift premium payments as part of the fluctuating workweek methodology for computing half-time overtime pay have been deleted from the final rule.

Other Revisions

The current recordkeeping regulations on tipped employees at 29 CFR 516.28 include an outdated parenthetical reference that suggests a limit "(not in excess of 40 percent of the applicable statutory minimum wage)" as the maximum amount of tip credit an employer may claim under the FLSA. 29 CFR 516.28(a)(3). This outdated reference reflected the former provisions of section 3(m) of the FLSA as amended by the 1977 FLSA Amendments, which has since been overtaken by subsequent statutory amendments passed in 1989 and 1996. *See* Public Law 95–151, § 3(b)(2), 91 Stat. 1249 (Nov. 1, 1977); Public Law 101–157, § 5, 103 Stat. 941 (Nov. 17, 1989); Public Law 104–188, § 2105(b), 110 Stat. 1929 (Aug. 20, 1996). The Department inadvertently overlooked updating this reference in part 516 when updating the other tip credit references in the NPRM. Because the regulatory reference has been superseded by subsequent statutory enactments, the Department is updating this section of the recordkeeping regulation in this final rule to conform it to current law and, because of the technical nature of the change, is doing so without prior notice and opportunity for public comment. The Department hereby finds, pursuant to the Administrative Procedure Act, that prior notice and opportunity for public comment on this ministerial change that is required by statutory amendment are impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 553(b)(3)(B).

The current interpretative regulation on "Hours Worked," at 29 CFR 785.7 ("Judicial construction"), cites incorrectly to a holding of the U.S. Supreme Court in *Tennessee Coal, Iron & Railroad Co.* v. *Muscoda Local No. 123,* 321 U.S. 590, 598 (1944). The typographical error in the phrase "primarily for the benefit of the employer *of* his business" is corrected by replacing the incorrect "of" with "and." Because this change is required to conform the text to the cited holding, the Department is making this correction without prior notice and opportunity for public comment. The Department hereby finds, pursuant to the Administrative Procedure Act, that prior notice and opportunity for public comment on this ministerial change are

impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 553(b)(3)(B).

IV. Paperwork Reduction Act

This rule does not impose new information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

V. Executive Orders 12866 and 13563; Small Business Regulatory Enforcement Fairness Act; Regulatory Flexibility

This final rule is not economically significant within the meaning of Executive Order 12866, or a "major rule" under the Unfunded Mandates Reform Act or Section 801 of the Small Business Regulatory Enforcement Fairness Act.

As discussed previously in this preamble, over the years, Congress has amended the FLSA to refine or to add to exemptions and to clarify the minimum wage and overtime pay requirements. However, in many cases, the Department of Labor did not update the FLSA regulations to reflect these statutory changes. The Department believes that the existing outdated regulatory provisions may cause confusion within the regulated community resulting in inadvertent violations and the costs of corrective compliance measures to remedy them.

The Department has determined that the final rule changes will not result in any additional compliance costs for regulated entities because the current compliance obligations derive from current law and not the outdated regulatory provisions that have been superseded years ago.

The Department is aware that this interpretation appears to be inconsistent with OMB Circular A–4's guidance on the use of analysis baselines, which states: "In some cases, substantial portions of a rule may simply restate statutory requirements that would be self-implementing, even in the absence of the regulatory action. In these cases, you should use a pre-statute baseline" to conduct the regulatory impact analysis. However, as the discussion below indicates, the Department believes the use of a pre-statute baseline would be extremely difficult for statutes enacted a decade or more in the past. Fundamental changes in the economy and labor market (*e.g.,* the introduction of technology, changes in the size and composition of the labor force, changes in the economy that impact the demand for labor, *etc.*) would make it difficult, if not impossible, to separate those changes from changes that resulted from enactment of the statute.

Moreover, the Department believes the economic impacts due to the statutory changes to the FLSA are typically greatest in the short run and diminish over time. This is due to labor markets determining the most efficient way to adjust to the new requirements, and because the Department believes many of the changes mandated by various revisions to the FLSA are reflective of the natural evolution of the labor market and would have become more common even in the absence of regulatory changes. For example, as nominal wages rise overtime, the marginal impact of a fixed minimum wage provision decreases, since it is less binding on the market. Therefore, the impacts resulting from the promulgation of the final regulations are not likely to be measurable. In fact, the Department anticipates that this final rule will simply enhance the Department's enforcement of, and the public's understanding of, compliance obligations under the FLSA by replacing outdated regulations with updated provisions that reflect current law.

1996 and 2007 Amendments to the FLSA Minimum Wage

The current FLSA regulations reference the minimum wage in several places, some referring to the 1981 minimum wage of $3.35 and others referring to the 1991 minimum wage of $4.25. To eliminate the current inconsistencies between the FLSA regulations and the statute, the Department revised the regulations to refer to the statutory minimum wage provision rather than a specific minimum wage. Since the final regulations do not include any reference to a specific minimum wage, the Department believes they do not impose the burden of increasing the minimum wage from the levels specified in the current regulations. That burden was imposed by the statutory changes and is not derived from the FLSA regulations. Thus, the Department concludes that the only incremental effect of this final rule on the public from these changes is possibly clearing up some confusion. This differentiates the minimum wage provisions from many other rulemakings in which the Department is given little statutory discretion, but nonetheless is still required to update the CFR.

Small Business Job Protection Act of 1996

Sections 2101 through 2103 of Title II of SBJPA, entitled the "Employee Commuting Flexibility Act of 1996," amended section 4(a) of the Portal Act, 29 U.S.C. 254(a), to state that for travel time involving the employee's use of employer-provided vehicles for commuting at the beginning and end of the workday to be considered noncompensable, the use of the vehicle must be "conducted under an agreement between the employer and the employee or the employee's representative." The Department believes that since 1996 the labor market has adjusted to this statutory change and that it would be very difficult, if not impossible, to estimate the impact of this amendment. It is likely that as part of their overall compensation package, some employers and their employees have agreed to make the travel time compensable while others have agreed to make it noncompensable. In addition, since this provision simply clarifies that compensability should be subject to an agreement, but does not otherwise restrict the type of agreement employers and employees may reach, the Department believes this provision by its nature does not impose a significant burden on the public. Therefore, the Department concludes that the final rule will have no measurable effect on the public except to possibly clear up some confusion.

In addition, section 2105 of the SBJPA amended the FLSA effective August 20, 1996, by adding section 6(g), 29 U.S.C. 206(g), which provides that "[a]ny employer may pay any employee [who has not attained the age of 20] of such employer, during the first 90 consecutive calendar days after such employee is initially employed by such employer, a wage which is not less than $4.25 an hour." The Department believes that the labor market has also adjusted to this change during the period since the enactment of the SBJPA. Although youths would obviously want to receive the normal minimum wage rather than the youth wage, some youths will decide to accept the lower youth wage in order to gain experience in the labor market. Similarly, although some employers may want to pay the lower youth wage, some may find compliance with the added requirements associated with the youth wage not to be worth the savings in wages. Thus, the Department concludes that the final rule will have no measurable effect on the public except to possibly clear up some confusion.

Agricultural Workers on Water Storage/ Irrigation Projects

Public Law 105–78, 111 Stat. 1467 (Nov. 13, 1997), amended section 13(b)(12) of the FLSA, 29 U.S.C. 213(b)(12), by extending the exemption from overtime pay requirements applicable to workers on water storage and irrigation projects where at least 90

percent of the water is used for agricultural purposes, rather than where the water is used exclusively for agricultural purposes. The Department believes that the labor market has also adjusted to this change during the period since the enactment of the amendment. Although agricultural workers and workers employed on water storage/irrigation projects listed in the exemption are not required to be paid time and one-half for the hours worked in excess of 40 in a work week, their overall compensation will be determined by market forces. In some cases, employers and their employees will choose some form of premium overtime pay (even though it is not mandated by the FLSA) while others may choose a higher salary with no additional compensation for the hours worked in excess of 40 in a week. In addition, this provision applies to a relatively small part of the overall U.S. labor force; thus, the Department believes any possible impacts due to this exemption would likely not be substantial. Therefore, the Department concludes that the final rule will have no measurable effect on the public except to possibly clear up some confusion.

Certain Volunteers at Private Non-Profit Food Banks

Section 1 of the Amy Somers Volunteers at Food Banks Act, Public Law 105–221, 112 Stat. 1248 (Aug. 7, 1998), amended section 3(e) of the FLSA, 29 U.S.C. 203(e), by adding section (5) to provide that the term "employee" does not include individuals volunteering solely for humanitarian purposes at private non-profit food banks and who receive groceries from those food banks. 29 U.S.C. 203(e)(5). The Department believes that the labor market has also adjusted to this change during the period since the enactment of the amendment. The Department also believes this regulatory change is not likely to cause an impact we would consider significant, since its application is limited and it simply clarifies that certain individuals may be considered volunteers.

Employees Engaged in Fire Protection Activities

In 1999, Congress amended section 3 of the FLSA, 29 U.S.C. 203, by adding section (y) to define "an employee in fire protection activities." This change in definition impacts fire protection employees who may be covered by the partial overtime exemption allowed by § 7(k) (29 U.S.C. 207(k)) or the overtime exemption for public agencies with fewer than five employees in fire protection activities pursuant to § 13(b)(20) (29 U.S.C. 213(b)(20)). The Department believes that these provisions apply to a relatively small proportion of the labor market, and that the market has adjusted to this change during the period since the enactment of the amendment. Thus, the Department concludes that the final regulatory changes will have no measurable effect on the public except to possibly clear up some confusion by replacing outdated regulations with updated provisions to reflect current law.

Stock Options Excluded From the Computation of the Regular Rate

The Worker Economic Opportunity Act enacted by Congress on May 18, 2000, amended §§ 7(e) and 7(h) of the FLSA. 29 U.S.C. 207(e), (h). In § 7(e), a new subsection (8) adds "[a]ny value or income derived from employer-provided grants or rights provided pursuant to a stock option, stock appreciation right, or bona fide employee stock purchase program" meeting particular criteria to the types of remuneration that are excluded from the computation of the regular rate. In § 7(h), the amendment clarifies that the amounts excluded under § 7(e) may not be counted toward the employer's minimum wage requirement under section 6, and that extra compensation excluded pursuant to the new subsection (8) may not be counted toward overtime pay under § 7. The Department believes that the labor markets have adjusted to this statute, which provides additional alternatives for employee compensation, but does not otherwise limit or mandate the overall levels of compensation owed to any category of worker. The final regulatory changes merely help to correct any confusion in this area.

Fair Labor Standards Act Amendments of 1974 and 1977

On April 7, 1974, Congress enacted an amendment to section 13(b)(10) of the FLSA, 29 U.S.C. 213(b)(10). Public Law 93–259, 88 Stat. 55 (1974). This amendment added an overtime exemption for salespersons primarily engaged in selling boats (in addition to the pre-existing exemption for sellers of trailers or aircraft). This amendment also eliminated the overtime exemption for partsmen and mechanics servicing trailers or aircraft. The Department believes that these provisions apply to a relatively small proportion of the labor market, and that the labor market has also adjusted to this change during the long period since the enactment of the amendment. Although salespersons primarily engaged in selling boats are not required to be paid time and one-half for the hours worked in excess of 40 in a work week, their overall compensation will be determined by market forces. In some cases, employers and their employees may choose some form of premium overtime pay (even though it is not mandated by the FLSA) while others may choose a higher salary and commissions with no additional compensation for the hours worked in excess of 40 in a week.

Similarly, the Department believes that the market has adjusted to no exemptions for partsmen and mechanics servicing trailers or aircraft. Although there may have been some short run effects related to the statutory change, in the years since enactment of the statute, employers and their employees have adjusted to the overtime requirement. Thus, the Department concludes that the final regulatory changes will have no measurable effect on the public except to possibly clear up some confusion.

On November 1, 1977, Congress amended section 3(t) of the FLSA, 29 U.S.C. 203(t). Public Law 95–151, § 3(a), 91 Stat. 1245. Section 3(t) of the FLSA defines the phrase "tipped employee." The amendment changed the conditions for taking the tip credit when making wage payments to qualifying tipped employees under the FLSA. Prior to the 1977 amendment, the definition encompassed "any employee engaged in an occupation in which he customarily and regularly receives more than $20 a month in tips." The 1977 amendment raised the threshold in section 3(t) to $30 a month in tips. Although the mandatory paid wage ($2.13) for tipped employees is below the full minimum wage, these workers must still receive hourly compensation (cash wages plus tips) at least equal to the minimum wage. Moreover, regardless of the minimum wage, if the hourly compensation is too low employers will have trouble finding a sufficient number of workers. The Department believes that the labor market has also adjusted to this change during the period since the enactment of the amendment and that the regulatory changes will have no measurable economic effect on the public except to possibly clear up some confusion.

Meal Credit Under Section 3(m)

The Department proposed to amend § 531.30 to reflect that, with the exception of meals, the employee's acceptance of a facility for which the employer seeks to take a 3(m) credit must be voluntary and uncoerced. The Department determined that the

proposed change would have no measurable economic impact. After consideration of the comments received, the Department has determined that further study of this issue is warranted, and therefore is not adopting the proposal. Because the Department is not implementing this proposal, there is no change to the status quo. As a result, the Department does not believe that there will be any measurable economic impact on the public.

Section 7(o) Compensatory Time Off

In 1987, the Department issued final regulations implementing a detailed scheme for the accrual and use of compensatory time off under Section 7(o). 29 U.S.C. 207(o). Section 7(o)(5) governs a public employee's use of accrued compensatory leave. That section states:

> An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency—(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and (B) who has requested the use of such compensatory time, shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

29 U.S.C. 207(o)(5). As discussed supra, the Department proposed to amend § 553.25(c) to comport with appellate court decisions reading the statutory language to state that once an employee requests compensatory time off, the employer has a reasonable period of time to allow the employee to use the time unless doing so would be unduly disruptive. Additionally, the Department proposed to clarify the employer's obligation when denying an employee's request for the use of compensatory time off in § 553.25(d).

In the NPRM, the Department stated its belief that the proposed changes would eliminate some of the confusion over the use of compensatory time off. The Department stated that it did not believe the proposed changes altered the nature of compensatory time off rights and responsibilities, but recognized that because of uncertainty as to their ability to use compensatory time when requested, some employees might choose not to accrue compensatory time off, thus resulting in some slight economic impacts.

As already discussed in this preamble, since the publication of the NPRM, another appellate court has addressed this issue and concluded that the statutory language is unclear and the Department's regulations requiring an employer to grant the specific time requested unless it would unduly disrupt the agency's operations is reasonable. The Department has therefore reexamined its proposal based on all the appellate decisions and the public comments and has decided not to finalize the proposed revision to section 553.25(c) and (d) and to leave the current regulation unchanged consistent with its longstanding position that employees are entitled to use compensatory time on the date requested absent undue disruption to the agency. Because the proposed changes will not be implemented, the Department does not believe that there will be any measurable economic impact on the public.

Fluctuating Workweek Method of Computing Overtime Under 29 CFR 778.114

The Department proposed to modify the regulation at 29 CFR 778.114 addressing the fluctuating workweek method of computing overtime compensation for salaried nonexempt employees. The proposed regulation provided that bona fide bonus or premium payments would not invalidate the fluctuating workweek method of compensation, but that such payments (as well as "overtime premiums") must be included in the calculation of the regular rate unless they are excluded by FLSA sections 7(e)(1)–(8). Paying employees bonus or premium payments for certain activities such as working undesirable hours is a common and beneficial practice for both employers and their employees.

For the reasons discussed earlier in this preamble, while the Department continues to believe that the payment of bonus and premium payments can be beneficial for employees in many other contexts, we have concluded that unless such payments are overtime premiums, they are incompatible with the fluctuating workweek method of computing overtime under section 778.114. Therefore the final rule does not implement this proposed provision. Because the proposed changes will not be implemented, the Department does not believe that there will be any measurable economic impact on the public.

1. Executive Orders 12866 and 13563 (Regulatory Review)

The Department does not believe that incorporating these statutory amendments into the FLSA and Portal Act regulations will impose measurable costs on private or public sector entities. The final rule changes should not result in additional compliance costs for regulated entities because employers have been obligated to comply with the underlying statutory provisions for many years. With this action, DOL is merely bringing up-to-date regulatory provisions that were superseded years ago.

2. Regulatory Flexibility Act

Furthermore, because the final rule will not impose any measurable costs on employers, both large and small entities, the Department has determined that it would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Department certified to the Chief Counsel for Advocacy to this effect at the time the NPRM was published. The Department received no contrary comments that questioned the Department's analysis or conclusions in this regard. Consequently, the Department certifies once again pursuant to 5 U.S.C. 604 that the revisions being implemented in connection with promulgating this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the Department need not prepare a regulatory flexibility analysis.

VI. Unfunded Mandates Reform Act

This final rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA). 2 U.S.C. 1501 *et seq*. For the purposes of the UMRA, this rule does not impose any Federal mandate that may result in increased expenditures by State, local, or Tribal governments, or increased expenditures by the private sector, of more than $100 million in any year.

VII. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, Aug. 10, 1999). This rule does not have federalism implications as outlined in E.O. 13132. The rule does 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.

VIII. Executive Order 13175, Indian Tribal Governments

The Department has reviewed this rule under the terms of Executive Order 13175 and determined it did not have "tribal implications." The rule does not have "substantial direct effects on one or more Indian tribes, on the relationship

between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." As a result, no Tribal summary impact statement has been prepared.

IX. Effects on Families

The Department certifies that this rule will not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

X. Executive Order 13045, Protection of Children

The Department has reviewed this rule under the terms of Executive Order 13045 and determined this action is not subject to E.O. 13045 because it is not economically significant as defined in E.O. 12866 and it does not impact the environmental health or safety risks of children.

XI. Environmental Impact Assessment

The Department has reviewed this rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* the regulations of the Council of Environmental Quality, 40 CFR 1500 *et seq.,* and the Departmental NEPA procedures, 29 CFR part 11, and determined that this rule will not have a significant impact on the quality of the human environment. There is, thus, no corresponding environmental assessment or an environmental impact statement.

XII. Executive Order 13211, Energy Supply

The Department has determined that this rule is not subject to Executive Order 13211. It will not have a significant adverse effect on the supply, distribution or use of energy.

XIII. Executive Order 12630, Constitutionally Protected Property Rights

The Department has determined that this rule is not subject to Executive Order 12630 because it does not involve implementation of a policy "that has taking implications" or that could impose limitations on private property use.

XIV. Executive Order 12988, Civil Justice Reform Analysis

The Department drafted and reviewed this final rule in accordance with Executive Order 12988 and determined that the rule will not unduly burden the Federal court system. The rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

List of Subjects

29 CFR Part 4

Administrative practice and procedures, Employee benefit plans, Government contracts, Labor, Law enforcement, Minimum wages, Penalties, Wages.

29 CFR Part 516

Employment, Recordkeeping, Law enforcement, Labor.

29 CFR Part 531

Employment, Labor, Minimum wages, Wages.

29 CFR Part 553

Firefighters, Labor, Law enforcement officers, Overtime pay, Wages.

29 CFR Part 778

Employment, Overtime pay, Wages.

29 CFR Part 779

Compensation, Overtime pay.

29 CFR Part 780

Agriculture, Irrigation, Overtime pay.

29 CFR Part 785

Compensation, Hours of work.

29 CFR Part 786

Compensation, Minimum wages, Overtime pay.

29 CFR Part 790

Compensation, Hours of work.

Signed at Washington, DC, this 16th day of March 2011.

Nancy J. Leppink,

Acting Administrator, Wage and Hour Division.

For the reasons set forth above, the Department amends Title 29, Parts 4, 516, 531, 553, 778, 779, 780, 785, 786, and 790 of the Code of Federal Regulations as follows:

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

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

Authority: 41 U.S.C. 351 *et seq.;* 41 U.S.C. 38 and 39; 5 U.S.C. 301; Pub. L. 104–188, § 2105(b); Pub. L. 110–28, 121 Stat. 112; Secretary's Order 9–2009, 74 FR 58836 (Nov. 13, 2009).

§ 4.159 General minimum wage. [Amended]

■ 2. Amend § 4.159 by removing the last sentence.

■ 3. Amend § 4.167 by revising the twelfth sentence to the end, to read as follows:

§ 4.167 Wage payments—medium of payment.

* * * The general rule under that Act provides, when determining the wage an employer is required to pay a tipped employee, the maximum allowable hourly tip credit is limited to the difference between $2.13 and the applicable minimum wage specified in section 6(a)(1) of that Act. (*See* § 4.163(k) for exceptions in section 4(c) situations.) In no event shall the sum credited as tips exceed the value of tips actually received by the employee. The tip credit is not available to an employer unless the employer has informed the employee of the tip credit provisions and all tips received by the employee have been retained by the employee (other than as part of a valid tip pooling arrangement among employees who customarily and regularly receive tips; *see* section 3(m) of the Fair Labor Standards Act).

PART 516—RECORDS TO BE KEPT BY EMPLOYERS

■ 4. The authority citation for part 516 is revised to read as follows:

Authority: Sec. 11, 52 Stat. 1066, as amended, 29 U.S.C. 211. Section 516.28 also issued under Pub. L. 104–188, § 2105(b); Pub. L. 110–28, 121 Stat. 112. Section 516.33 also issued under 52 Stat. 1060, as amended; 29 U.S.C. 201 *et seq.* Section 516.34 also issued under Sec. 7, 103 Stat. 944, 29 U.S.C. 207(q).

■ 5. Amend § 516.28 by revising the first sentence of paragraph (a)(3) to read as follows:

§ 516.28 Tipped employees.

(a) * * *

(3) Amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of the difference between $2.13 and the applicable minimum wage specified in section 6(a)(1) of the Act). * * *

* * * * *

PART 531—WAGE PAYMENTS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

■ 6. The authority citation for part 531 is revised to read as follows:

Authority: Sec. 3(m), 52 Stat. 1060; sec. 2, 75 Stat. 65; sec. 101, 80 Stat. 830; sec. 29(B), 88 Stat. 55, Pub. L. 93–259; Pub. L. 95–151, 29 U.S.C. 203(m) and (t); Pub. L. 104–188, § 2105(b); Pub. L. 110–28, 121 Stat. 112.

§ 531.7 [Removed and Reserved]

■ 7. Remove and reserve § 531.7.

■ 8. Amend § 531.36 by revising paragraph (a) to read as follows:

§ 531.36 Nonovertime workweeks.

(a) When no overtime is worked by the employees, section 3(m) and this part apply only to the applicable minimum wage for all hours worked. To illustrate, where an employee works 40 hours a week at a cash wage rate of at least the applicable minimum wage and is paid that amount free and clear at the end of the workweek, and in addition is furnished facilities, no consideration need be given to the question of whether such facilities meet the requirements of section 3(m) and this part, since the employee has received in cash the applicable minimum wage for all hours worked. Similarly, where an employee is employed at a rate in excess of the applicable minimum wage and during a particular workweek works 40 hours for which the employee receives at least the minimum wage free and clear, the employer having deducted from wages for facilities furnished, whether such deduction meets the requirement of section 3(m) and subpart B of this part need not be considered, since the employee is still receiving, after the deduction has been made, a cash wage of at least the minimum wage for each hour worked. Deductions for board, lodging, or other facilities may be made in nonovertime workweeks even if they reduce the cash wage below the minimum wage, provided the prices charged do not exceed the "reasonable cost" of such facilities. When such items are furnished the employee at a profit, the deductions from wages in weeks in which no overtime is worked are considered to be illegal only to the extent that the profit reduces the wage (which includes the "reasonable cost" of the facilities) below the required minimum wage. Facilities must be measured by the requirements of section 3(m) and this part to determine if the employee has received the applicable minimum wage in cash or in facilities which may be legitimately included in "wages" payable under the Act.

* * * * *

■ 9. Revise § 531.37 to read as follows:

§ 531.37 Overtime workweeks.

(a) Section 7 requires that the employee receive compensation for overtime hours at "a rate of not less than one and one-half times the regular rate at which he is employed." When overtime is worked by an employee who receives the whole or part of his or her wage in facilities and it becomes necessary to determine the portion of wages represented by facilities, all such facilities must be measured by the requirements of section 3(m) and subpart B of this part. It is the Administrator's opinion that deductions may be made, however, on the same basis in an overtime workweek as in nonovertime workweeks (*see* § 531.36), if their purpose and effect are not to evade the overtime requirements of the Act or other law, providing the amount deducted does not exceed the amount which could be deducted if the employee had only worked the maximum number of straight-time hours during the workweek. Deductions in excess of this amount for such articles as tools or other articles which are not "facilities" within the meaning of the Act are illegal in overtime workweeks as well as in nonovertime workweeks. There is no limit on the amount which may be deducted for "board, lodging, or other facilities" in overtime workweeks (as in workweeks when no overtime is worked), provided that these deductions are made only for the "reasonable cost" of the items furnished. These principles assume a situation where bona fide deductions are made for particular items in accordance with the agreement or understanding of the parties. If the situation is solely one of refusal or failure to pay the full amount of wages required by section 7, these principles have no application. Deductions made only in overtime workweeks, or increases in the prices charged for articles or services during overtime workweeks will be scrutinized to determine whether they are manipulations to evade the overtime requirements of the Act.

(b) Where deductions are made from the stipulated wage of an employee, the regular rate of pay is arrived at on the basis of the stipulated wage before any deductions have been made. Where board, lodging, or other facilities are customarily furnished as additions to a cash wage, the reasonable cost of the facilities to the employer must be considered as part of the employee's regular rate of pay. *See Walling* v. *Alaska Pacific Consolidated Mining Co.,* 152 F.2d 812 (9th Cir. 1945), *cert. denied,* 327 U.S. 803.

■ 10. Remove the undesignated center heading above § 531.50.

■ 11. Designate §§ 531.50 through 531.60 as subpart D, and add a heading for subpart D to read as follows:

Subpart D—Tipped Employees

■ 12. Revise § 531.50 to read as follows:

§ 531.50 Statutory provisions with respect to tipped employees.

(a) With respect to tipped employees, section 3(m) provides that, in determining the wage an employer is required to pay a tipped employee, the amount paid such employee by the employee's employer shall be an amount equal to—

(1) the cash wage paid such employee which for purposes of such determination shall be not less than the cash wage required to be paid such an employee on August 20, 1996 [*i.e.,* $2.13]; and

(2) an additional amount on account of the tips received by such employee which amount is equal to the difference between the wage specified in paragraph (1) and the wage in effect under section 206(a)(1) of this title.

(b) "Tipped employee" is defined in section 3(t) of the Act as follows: *Tipped employee* means any employee engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips.

§§ 531.51, 531.56, 531.57, 531.58 [Amended]

■ 13. In addition to the amendments set forth above, in 29 CFR part 531, remove the words "$20" and add, in their place, the words "$30" wherever they appear in the following places:

■ a. Section 531.51;

■ b. Section 531.56, the section heading and paragraphs (a) through (e);

■ c. Section 531.57; and

■ d. Section 531.58.

■ 14. Amend § 531.52 by revising the second sentence to the end of the paragraph to read as follows:

§ 531.52 General characteristics of "tips."

* * * Whether a tip is to be given, and its amount, are matters determined solely by the customer, who has the right to determine who shall be the recipient of the gratuity. Tips are the property of the employee whether or not the employer has taken a tip credit under section 3(m) of the FLSA. The employer is prohibited from using an employee's tips, whether or not it has taken a tip credit, for any reason other than that which is statutorily permitted in section 3(m): As a credit against its minimum wage obligations to the employee, or in furtherance of a valid tip pool. Only tips actually received by an employee as money belonging to the employee may be counted in determining whether the person is a "tipped employee" within the meaning of the Act and in applying the provisions of section 3(m) which govern wage credits for tips.

■ 15. Amend § 531.54 by adding two sentences to the end of the paragraph to read as follows:

§ 531.54 Tip pooling.

* * * Section 3(m) does not impose a maximum contribution percentage on valid mandatory tip pools, which can only include those employees who customarily and regularly receive tips. However, an employer must notify its employees of any required tip pool contribution amount, may only take a tip credit for the amount of tips each employee ultimately receives, and may not retain any of the employees' tips for any other purpose.

■ 16. Revise § 531.55 to read as follows:

§ 531.55 Examples of amounts not received as tips.

(a) A compulsory charge for service, such as 15 percent of the amount of the bill, imposed on a customer by an employer's establishment, is not a tip and, even if distributed by the employer to its employees, cannot be counted as a tip received in applying the provisions of section 3(m) and 3(t). Similarly, where negotiations between a hotel and a customer for banquet facilities include amounts for distribution to employees of the hotel, the amounts so distributed are not counted as tips received.

(b) As stated above, service charges and other similar sums which become part of the employer's gross receipts are not tips for the purposes of the Act. Where such sums are distributed by the employer to its employees, however, they may be used in their entirety to satisfy the monetary requirements of the Act.

■ 17. Amend § 531.56 by revising the last sentence in paragraph (d) to read as follows:

§ 531.56 "More than $30 per month in tips."

* * * * *

(d) * * * It does not govern or limit the determination of the appropriate amount of wage credit under section 3(m) that may be taken for tips under section 6(a)(1) (tip credit equals the difference between the minimum wage required by section 6(a)(1) and $2.13 per hour).

* * * * *

■ 18. Revise § 531.59 to read as follows:

§ 531.59 The tip wage credit.

(a) In determining compliance with the wage payment requirements of the Act, under the provisions of section 3(m) the amount paid to a tipped employee by an employer is increased on account of tips by an amount equal to the formula set forth in the statute (minimum wage required by section 6(a)(1) of the Act minus $2.13), provided that the employer satisfies all the requirements of section 3(m). This tip credit is in addition to any credit for board, lodging, or other facilities which may be allowable under section 3(m).

(b) As indicated in § 531.51, the tip credit may be taken only for hours worked by the employee in an occupation in which the employee qualifies as a "tipped employee." Pursuant to section 3(m), an employer is not eligible to take the tip credit unless it has informed its tipped employees in advance of the employer's use of the tip credit of the provisions of section 3(m) of the Act, *i.e.:* The amount of the cash wage that is to be paid to the tipped employee by the employer; the additional amount by which the wages of the tipped employee are increased on account of the tip credit claimed by the employer, which amount may not exceed the value of the tips actually received by the employee; that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and that the tip credit shall not apply to any employee who has not been informed of these requirements in this section. The credit allowed on account of tips may be less than that permitted by statute (minimum wage required by section 6(a)(1) minus $2.13); it cannot be more. In order for the employer to claim the maximum tip credit, the employer must demonstrate that the employee received at least that amount in actual tips. If the employee received less than the maximum tip credit amount in tips, the employer is required to pay the balance so that the employee receives at least the minimum wage with the defined combination of wages and tips. With the exception of tips contributed to a valid tip pool as described in § 531.54, the tip credit provisions of section 3(m) also require employers to permit employees to retain all tips received by the employee.

■ 19. Amend § 531.60(a) by removing the paragraph designation "(a)" and revising the first and third sentences to read as follows:

§ 531.60 Overtime payments.

When overtime is worked by a tipped employee who is subject to the overtime pay provisions of the Act, the employee's regular rate of pay is determined by dividing the employee's total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by the employee in that workweek for which such compensation was paid. * * * In accordance with section 3(m), a tipped employee's regular rate of pay includes the amount of tip credit taken by the employer per hour (not in excess of the minimum wage required by section 6(a)(1) minus $2.13), the reasonable cost or fair value of any facilities furnished to the employee by the employer, as authorized under section 3(m) and this part 531, and the cash wages including commissions and certain bonuses paid by the employer. * * *

* * * * *

PART 553—APPLICATION OF THE FAIR LABOR STANDARDS ACT TO EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

■ 20. The authority citation for part 553 is revised to read as follows:

Authority: Secs. 1–19, 52 Stat. 1060, as amended (29 U.S.C. 201–219); Pub. L. 99–150, 99 Stat. 787 (29 U.S.C. 203, 207, 211). Pub. L. 106–151, 113 Stat. 1731 (29 U.S.C. 203(y)).

■ 21. Amend § 553.210 by revising paragraph (a), removing paragraph (b), and redesignating paragraph (c) as (b) to read as follows:

§ 553.210 Fire Protection Activities.

(a) As used in sections 7(k) and 13(b)(20) of the Act, the term "any employee * * * in fire protection activities" refers to "an employee, including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker, who—(1) is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by a fire department of a municipality, county, fire district, or State; and (2) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk."

■ 22. In § 553.212, revise paragraph (a) and the last sentence of paragraph (b) to read as follows:

§ 553.212 Twenty percent limitation on nonexempt work.

(a) Employees engaged in law enforcement activities as described in § 553.211 may also engage in some nonexempt work which is not performed as an incident to or in conjunction with their law enforcement activities. The performance of such nonexempt work will not defeat either the section 13(b)(20) or 7(k) exemptions unless it exceeds 20 percent of the total hours worked by that employee during the workweek or applicable work period. A person who spends more than

20 percent of his/her working time in nonexempt activities is not considered to be an employee engaged in law enforcement activities for purposes of this part.

(b) * * * In addition, the hours of work in the different capacity need not be counted as hours worked for overtime purposes on the regular job, nor are such hours counted in determining the 20 percent tolerance for nonexempt work for law enforcement personnel discussed in paragraph (a) of this section.

§ 553.215 [Removed and Reserved]

■ 23. Remove and reserve § 553.215.

§§ 553.221, 553.222, 553.223, 553.226, and 553.231 [Amended]

■ 24. Amend §§ 553.221, 553.222, 553.223, 553.226 and 553.231 to remove and add terms as follows. Remove the words "firefighter" or "firefighters" and add, in their place, the words "employee in fire protection activities" or "employees in fire protection activities," respectively, wherever they appear in the following places:

■ a. Section 553.221(a), (d), and (g);
■ b. Section 553.222(a) and (c);
■ c. Section 553.223(a), (c), and (d);
■ d. Section 553.226(c); and
■ e. Section 553.231(b).

PART 778—OVERTIME COMPENSATION

■ 25. The authority citation for part 778 is revised to read as follows:

Authority: 52 Stat. 1060, as amended; 29 U.S.C. 201 *et seq.* Section 778.200 also issued under Pub. L. 106–202, 114 Stat. 308 (29 U.S.C. 207(e) and (h)).

■ 26. Revise § 778.110 to read as follows:

§ 778.110 Hourly rate employee.

(a) *Earnings at hourly rate exclusively.* If the employee is employed solely on the basis of a single hourly rate, the hourly rate is the "regular rate." For overtime hours of work the employee must be paid, in addition to the straight time hourly earnings, a sum determined by multiplying one-half the hourly rate by the number of hours worked in excess of 40 in the week. Thus a $12 hourly rate will bring, for an employee who works 46 hours, a total weekly wage of $588 (46 hours at $12 plus 6 at $6). In other words, the employee is entitled to be paid an amount equal to $12 an hour for 40 hours and $18 an hour for the 6 hours of overtime, or a total of $588.

(b) *Hourly rate and bonus.* If the employee receives, in addition to the earnings computed at the $12 hourly rate, a production bonus of $46 for the week, the regular hourly rate of pay is $13 an hour (46 hours at $12 yields $552; the addition of the $46 bonus makes a total of $598; this total divided by 46 hours yields a regular rate of $13). The employee is then entitled to be paid a total wage of $637 for 46 hours (46 hours at $13 plus 6 hours at $6.50, or 40 hours at $13 plus 6 hours at $19.50).

■ 27. Revise § 778.111 to read as follows:

§ 778.111 Pieceworker.

(a) *Piece rates and supplements generally.* When an employee is employed on a piece-rate basis, the regular hourly rate of pay is computed by adding together total earnings for the workweek from piece rates and all other sources (such as production bonuses) and any sums paid for waiting time or other hours worked (except statutory exclusions). This sum is then divided by the number of hours worked in the week for which such compensation was paid, to yield the pieceworker's "regular rate" for that week. For overtime work the pieceworker is entitled to be paid, in addition to the total weekly earnings at this regular rate for all hours worked, a sum equivalent to one-half this regular rate of pay multiplied by the number of hours worked in excess of 40 in the week. (For an alternative method of complying with the overtime requirements of the Act as far as pieceworkers are concerned, *see* § 778.418.) Only additional half-time pay is required in such cases where the employee has already received straight-time compensation at piece rates or by supplementary payments for all hours worked. Thus, for example, if the employee has worked 50 hours and has earned $491 at piece rates for 46 hours of productive work and in addition has been compensated at $8.00 an hour for 4 hours of waiting time, the total compensation, $523.00, must be divided by the total hours of work, 50, to arrive at the regular hourly rate of pay—$10.46. For the 10 hours of overtime the employee is entitled to additional compensation of $52.30 (10 hours at $5.23). For the week's work the employee is thus entitled to a total of $575.30 (which is equivalent to 40 hours at $10.46 plus 10 overtime hours at $15.69).

(b) *Piece rates with minimum hourly guarantee.* In some cases an employee is hired on a piece-rate basis coupled with a minimum hourly guaranty. Where the total piece-rate earnings for the workweek fall short of the amount that would be earned for the total hours of work at the guaranteed rate, the employee is paid the difference. In such weeks the employee is in fact paid at an hourly rate and the minimum hourly guaranty is the regular rate in that week. In the example just given, if the employee was guaranteed $11 an hour for productive working time, the employee would be paid $506 (46 hours at $11) for the 46 hours of productive work (instead of the $491 earned at piece rates). In a week in which no waiting time was involved, the employee would be owed an additional $5.50 (half time) for each of the 6 overtime hours worked, to bring the total compensation up to $539 (46 hours at $11 plus 6 hours at $5.50 or 40 hours at $11 plus 6 hours at $16.50). If the employee is paid at a different rate for waiting time, the regular rate is the weighted average of the 2 hourly rates, as discussed in § 778.115.

■ 28. Amend § 778.113 by revising paragraph (a) and the fifth sentence of paragraph (b) to read as follows:

§ 778.113 Salaried employees—general.

(a) *Weekly salary.* If the employee is employed solely on a weekly salary basis, the regular hourly rate of pay, on which time and a half must be paid, is computed by dividing the salary by the number of hours which the salary is intended to compensate. If an employee is hired at a salary of $350 and if it is understood that this salary is compensation for a regular workweek of 35 hours, the employee's regular rate of pay is $350 divided by 35 hours, or $10 an hour, and when the employee works overtime the employee is entitled to receive $10 for each of the first 40 hours and $15 (one and one-half times $10) for each hour thereafter. If an employee is hired at a salary of $375 for a 40-hour week the regular rate is $9.38 an hour.

(b) * * * The regular rate of an employee who is paid a regular monthly salary of $1,560, or a regular semimonthly salary of $780 for 40 hours a week, is thus found to be $9 per hour. * * *

* * * * *

■ 29. Amend § 778.114 by revising paragraph (b) to read as follows:

§ 778.114 Fixed salary for fluctuating hours.

* * * * *

(b) The application of the principles above stated may be illustrated by the case of an employee whose hours of work do not customarily follow a regular schedule but vary from week to week, whose total weekly hours of work never exceed 50 hours in a workweek, and whose salary of $600 a week is paid with the understanding that it constitutes the employee's compensation, except for overtime

premiums, for whatever hours are worked in the workweek. If during the course of 4 weeks this employee works 40, 37.5, 50, and 48 hours, the regular hourly rate of pay in each of these weeks is $15.00, $16.00, $12.00, and $12.50, respectively. Since the employee has already received straight-time compensation on a salary basis for all hours worked, only additional half-time pay is due. For the first week the employee is entitled to be paid $600; for the second week $600.00; for the third week $660 ($600 plus 10 hours at $6.00 or 40 hours at $12.00 plus 10 hours at $18.00); for the fourth week $650 ($600 plus 8 hours at $6.25, or 40 hours at $12.50 plus 8 hours at $18.75).

* * * * *

■ 30. Amend § 778.200 by adding paragraph (a) (8) and revising paragraph (b) to read as follows:

§ 778.200 Provisions governing inclusion, exclusion, and crediting of particular payments.

(a) * * *

(8) Any value or income derived from employer-provided grants or rights provided pursuant to a stock option, stock appreciation right, or bona fide employee stock purchase program which is not otherwise excludable under any of paragraphs (a)(1) through (a)(7) of this section if—

(i) Grants are made pursuant to a program, the terms and conditions of which are communicated to participating employees either at the beginning of the employee's participation in the program or at the time of the grant;

(ii) In the case of stock options and stock appreciation rights, the grant or right cannot be exercisable for a period of at least 6 months after the time of grant (except that grants or rights may become exercisable because of an employee's death, disability, retirement, or a change in corporate ownership, or other circumstances permitted by regulation), and the exercise price is at least 85 percent of the fair market value of the stock at the time of grant;

(iii) Exercise of any grant or right is voluntary; and

(iv) Any determinations regarding the award of, and the amount of, employer-provided grants or rights that are based on performance are—

(A) Made based upon meeting previously established performance criteria (which may include hours of work, efficiency, or productivity) of any business unit consisting of at least 10 employees or of a facility, except that, any determinations may be based on length of service or minimum schedule of hours or days of work; or

(B) Made based upon the past performance (which may include any criteria) of one or more employees in a given period so long as the determination is in the sole discretion of the employer and not pursuant to any prior contract.

(b) *Section 7(h).* This subsection of the Act provides as follows:

(1) Except as provided in paragraph (2), sums excluded from the regular rate pursuant to subsection (e) shall not be creditable toward wages required under section 6 or overtime compensation required under this section.

(2) Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) of this section shall be creditable toward overtime compensation payable pursuant to this section.

* * * * *

■ 31. Amend § 778.208 by revising the first sentence to read as follows:

§ 778.208 Inclusion and exclusion of bonuses in computing the "regular rate."

Section 7(e) of the Act requires the inclusion in the regular rate of all remuneration for employment except eight specified types of payments. * * *

PART 779—THE FAIR LABOR STANDARDS ACT AS APPLIED TO RETAILERS OF GOODS OR SERVICES

■ 32. The authority citation for part 779 is revised to read as follows:

Authority: Secs. 1–19, 52 Stat. 1060, as amended; 75 Stat. 65; Sec. 29(B), Pub. L. 93–259, 88 Stat. 55; 29 U.S.C. 201–219.

■ 33. Revise the undesignated center heading for §§ 779.371 and 779.372 to read as follows:

Automobile, Truck and Farm Implement Sales and Services, and Trailer, Boat and Aircraft Sales

■ 34. Amend § 779.371 by revising the fifth sentence of paragraph (a) to read as follows:

§ 779.371 Some automobile, truck, and farm implement establishments may qualify for exemption under section 13(a)(2).

(a) * * * Section 13(b)(10) is applicable not only to automobile, truck, and farm implement dealers but also to dealers in trailers, boats, and aircraft. * * *

* * * * *

■ 35. Amend § 779.372 by revising paragraphs (a), (b)(1)(ii), (b)(2), and (c) to read as follows:

§ 779.372 Nonmanufacturing establishments with certain exempt employees under section 13(b)(10).

(a) *General.* A specific exemption from only the overtime pay provisions of section 7 of the Act is provided in section 13(b)(10) for certain employees of nonmanufacturing establishments engaged in the business of selling automobiles, trucks, farm implements, trailers, boats, or aircraft. Section 13(b)(10)(A) states that the provisions of section 7 shall not apply with respect to "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers." Section 13(b)(10)(B) states that the provisions of section 7 shall not apply with respect to "any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers." This exemption will apply irrespective of the annual dollar volume of sales of the establishment or of the enterprise of which it is a part.

(b) * * *

(1) * * *

(ii) The establishment must be primarily engaged in the business of selling automobiles, trucks, or farm implements to the ultimate purchaser for section 13(b)(10)(A) to apply. If these tests are met by an establishment the exemption will be available for salesmen, partsmen and mechanics, employed by the establishment, who are primarily engaged during the work week in the selling or servicing of the named items. Likewise, the establishment must be primarily engaged in the business of selling trailers, boats, or aircraft to the ultimate purchaser for the section 13(b)(10)(B) exemption to be available for salesmen employed by the establishment who are primarily engaged during the work week in selling these named items. An explanation of the term "employed by" is contained in §§ 779.307 through 779.311. The exemption is intended to apply to employment by such an establishment of the specified categories of employees even if they work in physically separate buildings or areas, or even if, though working in the principal building of the dealership, their work relates to the work of physically separate buildings or areas, so long as they are employed in a department which is functionally operated as part of the dealership.

(2) This exemption, unlike the former exemption in section 13(a)(19) of the Act prior to the 1966 amendments, is not limited to dealerships that qualify as retail or service establishments nor is it limited to establishments selling automobiles, trucks, and farm implements, but also includes dealers in trailers, boats, and aircraft.

(c) *Salesman, partsman, or mechanic.* (1) As used in section 13(b)(10)(A), a salesman is an employee who is employed for the purpose of and is primarily engaged in making sales or obtaining orders or contracts for sale of the automobiles, trucks, or farm implements that the establishment is primarily engaged in selling. As used in section 13(b)(10)(B), a salesman is an employee who is employed for the purpose of and is primarily engaged in making sales or obtaining orders or contracts for sale of trailers, boats, or aircraft that the establishment is primarily engaged in selling. Work performed incidental to and in conjunction with the employee's own sales or solicitations, including incidental deliveries and collections, is regarded as within the exemption.

(2) As used in section 13(b)(10)(A), a partsman is any employee employed for the purpose of and primarily engaged in requisitioning, stocking, and dispensing parts.

(3) As used in section 13(b)(10)(A), a mechanic is any employee primarily engaged in doing mechanical work (such as get ready mechanics, automotive, truck, or farm implement mechanics, used car reconditioning mechanics, and wrecker mechanics) in the servicing of an automobile, truck or farm implement for its use and operation as such. This includes mechanical work required for safe operation, as an automobile, truck, or farm implement. The term does not include employees primarily performing such nonmechanical work as washing, cleaning, painting, polishing, tire changing, installing seat covers, dispatching, lubricating, or other nonmechanical work. Wrecker mechanic means a service department mechanic who goes out on a tow or wrecking truck to perform mechanical servicing or repairing of a customer's vehicle away from the shop, or to bring the vehicle back to the shop for repair service. A tow or wrecker truck driver or helper who primarily performs nonmechanical repair work is not exempt.

* * * * *

PART 780—EXEMPTIONS APPLICABLE TO AGRICULTURE, PROCESSING OF AGRICULTURAL COMMODITIES, AND RELATED SUBJECTS UNDER THE FAIR LABOR STANDARDS ACT

■ 36. The authority citation for part 780 is revised to read as follows:

Authority: Secs. 1–19, 52 Stat. 1060, as amended; 75 Stat. 65; 29 U.S.C. 201–219. Pub. L. 105–78, 111 Stat. 1467.

■ 37. Revise § 780.400 to read as follows:

§ 780.400 Statutory provisions.

Section 13(b)(12) of the Fair Labor Standards Act exempts from the overtime provisions of section 7 any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water, at least 90 percent of which was ultimately delivered for agricultural purposes during the preceding calendar year.

■ 38. Amend § 780.401 by revising the first sentence of paragraph (a) and paragraph (b) to read as follows:

§ 780.401 General explanatory statement.

(a) Section 13(b)(12) of the Act contains the same wording exempting any employee employed in agriculture as did section 13(a)(6) prior to the 1966 amendments. * * *

(b) In addition to exempting employees engaged in agriculture, section 13(b)(12) also exempts from the overtime provisions of the Act employees employed in specified irrigation activities. The effect of the 1997 amendment to section 13(b)(12) is to expand the overtime exemption for any employee employed in specified irrigation activities used for supply and storing of water for agricultural purposes by substituting "water, at least 90 percent of which was ultimately delivered for agricultural purposes during the preceding calendar year" for the prior requirement that all the water be used for agricultural purposes. Prior to the 1966 amendments employees employed in specified irrigation activities were exempt from the minimum wage and overtime pay requirements of the Act.

* * * * *

■ 39. Revise § 780.406 to read as follows:

§ 780.406 Exemption is from overtime only.

This exemption applies only to the overtime provisions of the Act and does not affect the minimum wage, child labor, recordkeeping, and other requirements of the Act.

■ 40. Revise § 780.408 to read as follows:

§ 780.408 Facilities of system at least 90 percent of which was used for agricultural purposes.

Section 13(b)(12) requires for exemption of irrigation work that the ditches, canals, reservoirs, or waterways in connection with which the employee's work is done be "used exclusively for supply and storing of water at least 90 percent of which was ultimately delivered for agricultural purposes during the preceding calendar year." If a water supplier supplies water of which more than 10 percent is used for purposes other than "agricultural purposes" during the preceding calendar year, the exemption would not apply. For example, the exemption would not apply where more than 10 percent of the water supplier's water is delivered to a municipality to be used for general, domestic, and commercial purposes. Water used for watering livestock raised by a farmer is "for agricultural purposes."

PART 785—HOURS WORKED

■ 41. The authority citation for part 785 is revised to read as follows:

Authority: 52 Stat. 1060; 29 U.S.C. 201–219; 29 U.S.C. 254. Pub. L. 104–188, 100 Stat. 1755.

■ 42. Amend § 785.7 by revising the first sentence to read as follows:

§ 785.7 Judicial construction.

The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business." * * *

■ 43. Amend § 785.9 by adding a sentence after the third sentence in paragraph (a) to read as follows:

§ 785.9 Statutory exemptions.

(a) * * * The use of an employer's vehicle for travel by an employee and activities that are incidental to the use of such vehicle for commuting are not considered "principal" activities when meeting the following conditions: The use of the employer's vehicle for travel is within the normal commuting area for

the employer's business or establishment and the use of the employer's vehicle is subject to an agreement on the part of the employer and the employee or the representative of such employee. * * *

■ 44. Amend § 785.34 by adding a sentence after the first sentence to read as follows:

§ 785.34 Effect of section 4 of the Portal-to-Portal Act.

* * * Section 4(a) further provides that the use of an employer's vehicle for travel by an employee and activities that are incidental to the use of such vehicle for commuting are not considered principal activities when the use of such vehicle is within the normal commuting area for the employer's business or establishment and is subject to an agreement on the part of the employer and the employee or the representative of such employee. * * *

■ 45. Amend § 785.50 by adding a sentence at the end of paragraph (a)(2) to read as follows:

§ 785.50 Section 4 of the Portal-to-Portal Act.

* * * * *

(a) * * *

(2) * * * For purposes of this subsection, the use of an employer's vehicle for travel by an employee and activities performed by an employee which are incidental to the use of such vehicle for commuting shall not be considered part of the employee's principal activities if the use of such vehicle for travel is within the normal commuting area for the employer's business or establishment and the use of the employer's vehicle is subject to an agreement on the part of the employer and the employee or representative of such employee.

* * * * *

PART 786—MISCELLANEOUS EXEMPTIONS AND EXCLUSIONS FROM COVERAGE

■ 46. The authority citation for part 786 is revised to read as follows:

Authority: 52 Stat. 1060, as amended; 29 U.S.C. 201–219. Pub. L. 104–188, 100 Stat. 1755. Pub. L. 105–221, 112 Stat. 1248, 29 U.S.C. 203(e).

■ 47. Revise the heading to part 786 to read as set forth above.

■ 48. Add subpart G consisting of § 786.300 to read as follows:

Subpart G—Youth Opportunity Wage

§ 786.300 Application of the youth opportunity wage.

Section 6(g) of the Fair Labor Standards Act allows any employer to pay any employee who has not attained the age of 20 years a wage of not less than $4.25 an hour during the first 90 consecutive calendar days after such employee is initially employed by such employer. For the purposes of hiring workers at this wage, no employer may take any action to displace employees, including partial displacements such as reducing hours, wages, or employment benefits. Any employer that violates these provisions is considered to have violated section 15(a)(3) of the Act.

■ 49. Add subpart H consisting of § 786.350 to read as follows:

Subpart H—Volunteers at Private Non-Profit Food Banks

§ 786.350 Exclusion from definition of "employee" of volunteers at private non-profit food banks.

Section 3(e)(5) of the Fair Labor Standards Act excludes from the definition of the term "employee" individuals who volunteer their services solely for humanitarian purposes at private non-profit food banks and who receive groceries from the food banks.

PART 790—GENERAL STATEMENT AS TO THE EFFECT OF THE PORTAL-TO-PORTAL ACT OF 1947 ON THE FAIR LABOR STANDARDS ACT OF 1938

■ 50. The authority citation for part 790 is revised to read as follows:

Authority: 52 Stat. 1060, as amended; 110 Stat. 1755; 29 U.S.C. 201–219; 29 U.S.C. 254.

■ 51. Amend § 790.3 by adding a sentence at the end of paragraph (a)(2) to read as follows:

§ 790.3 Provisions of the statute.

* * * * *

(a) * * *

(2) * * * For purposes of this subsection, the use of an employer's vehicle for travel by an employee and activities performed by an employee which are incidental to the use of such vehicle for commuting shall not be considered part of the employee's principal activities if the use of such vehicle for travel is within the normal commuting area for the employer's business or establishment and the use of the employer's vehicle is subject to an agreement on the part of the employer and the employee or representative of such employee.

* * * * *

[FR Doc. 2011–6749 Filed 4–4–11; 8:45 am]

BILLING CODE 4510–27–P

Reader Aids

Federal Register

Vol. 76, No. 65

Tuesday, April 5, 2011

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, APRIL

18001–18346 1
18347–18630 4
18631–18860 5

CFR PARTS AFFECTED DURING APRIL

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revison date of each title.

1 CFR

304 18635

3 CFR

Proclamations:
8641 18629
8642 18631
8643 18633

5 CFR

Proposed Rules:
Ch. XLII 18104

7 CFR

946 18001
989 18003
Proposed Rules:
301 18419
319 18419
1260 18422

9 CFR

91 18347
201 18348

10 CFR

Proposed Rules:
430 .....18105, 18425
431 .....18127, 18428

12 CFR

213 18349
226 18354
717 18365
748 18365
965 18367
966 18367
969 18367
987 18367
1270 18367
Proposed Rules:
234 18445

13 CFR

109 18007
120 18376

14 CFR

39 .....18020, 18022, 18024, 18029, 18031, 18033, 18038, 18376
71 .....18040, 18041, 18378
97 .....18379, 18382
Proposed Rules:
33 18130
39 .....18454, 18664

16 CFR

1303 18645

19 CFR

Proposed Rules:
4 18132
24 18132

20 CFR

404 18383
416 18383
Proposed Rules:
Ch. IV 18104
Ch. V 18104
Ch. VI 18104
Ch. VII 18104
Ch. IX 18104

21 CFR

520 18648

23 CFR

1340 18042

25 CFR

Proposed Rules:
Ch. III 18457

26 CFR

301 .....18059, 18385
Proposed Rules:
301 18134

29 CFR

4 18832
516 18832
531 18832
553 18832
778 18832
779 18832
780 18832
785 18832
786 18832
790 18832
2520 18649
4042 18388
Proposed Rules:
Subtitle A 18104
Ch. II 18104
Ch. IV 18104
Ch. V 18104
Ch. XVII 18104
Ch. XXV 18104
Ch. XL 18134

30 CFR

Proposed Rules:
Ch. I 18104
104 18467
938 18467

31 CFR

306 18062
356 18062
357 18062
363 18062

33 CFR

165 .....18389, 18391, 18394,

18395, 18398
Proposed Rules:
165 .....18669, 18672, 18674

37 CFR

1 18400

40 CFR

52 18650
60 18408
63 18064
75 18415
80 18066
300 18066
Proposed Rules:
300 18136

41 CFR

300 18326
302 18326
Proposed Rules:
Ch. 50 18104
Ch. 60 18104
Ch. 61 18104

42 CFR

Proposed Rules:
424 18472

45 CFR

Proposed Rules:
1355 18677
1356 18677
1357 18677

47 CFR

73 18415
300 18652
Proposed Rules:
1 .....18137, 18476, 18490, 18679
17 18679
22 18679
24 18679
25 18679
27 18679
64 18490
73 18497
80 18679
87 18679
90 18679

48 CFR

Ch. 1 18304
1 18324
2 18304
4 18304
6 18304
13 18304
14 18304
15 18304
18 18304
19 18304
26 18304
33 18304
36 18304
42 18304
52 18304
53 .....18072, 18304, 18322
Proposed Rules:
2 18497
31 18497
32 18497
45 18497
49 18497
52 18497
53 18497
Ch. 29 18104

49 CFR

40 18072
213 18073

50 CFR

17 18087
622 18416
635 .....18417, 18653
648 18661
679 18663
Proposed Rules:
17 .....18138, 18684, 18701
300 18706
635 18504
648 18505
660 .....18706, 18709

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 1079/P.L. 112–7

Airport and Airway Extension Act of 2011 (Mar. 31, 2011; 125 Stat. 31)

Last List March 21, 2011

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.